IN THE SUPREME COURT OF FLORIDA

FERGUSON TRANSPORTATION, INC., f/k/a Murray Van & Storage, Inc. and Award Winning Murray Van and Storage, Inc.

Petitioner,

v.

NORTH AMERICAN VAN LINES, INC., a foreign corporation,

Respondent.

_____/

CASE NO.: 84,156

NORTH AMERICAN VAN LINES, INC., a foreign corporation,

Petitioner,

v.

FERGUSON TRANSPORTATION, INC., f/k/a Murray Van & Storage, Inc. and Award Winning Murray Van and Storage, Inc.,

Respondent.

_____/

CASE NO.: 84,167

Certified Question Of Great Public Importance From The District Court Of Appeal, Fourth District

# Cross-Reply Brief On The Merits Of North American Van Lines

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In accordance with this Court's Amended Order of January 20, 1995, Respondent and Cross-Petitioner North American Van Lines, Inc. ("North American") submits this Cross-Reply Brief in support of its cross-appeal, and in response to new issues and arguments presented by Petitioner/Cross Respondent Ferguson Transportation Inc. ("Ferguson Transportation") in its Reply Brief ("F.T. Reply Br."). As North American explained in its motion for leave to address these new issues (attached as Appendix A), Ferguson not only devoted an excessively long portion of its reply brief (42 pages) to the main appeal, but changed the theory of its case, evidently in response to this Court's recent decision in Ethan Allen, Inc. v. Georgetown Manor, Inc., 19 Fla.L. Weekly S566 (Nov. 10, 1994). Thus, before replying on the cross-appeal, North American briefly sets forth why Ethan Allen disposes of this case and why Ferguson Transportation's belated change of theory is improper and meritless.

## I. THIS COURT'S RECENT RULING IN *ETHAN ALLEN* EFFECTIVELY ANSWERS THE CERTIFIED QUESTION IN THIS CASE.

The certified question in this case, as drafted by Ferguson Transportation, is whether a party that has an exclusive contract within a geographical territory is afforded a business relationship with "all prospective customers" within that territory, or whether the party must prove a business relationship with "identifiable customers" in order to recover for tortious interference. The Fourth District Court of Appeal, relying on Southern Alliance Corp. v. Winter Haven, 505 So.2d 489, 496 (Fla. 2d DCA 1987), held that tortious interference requires proof of a

business relationship "with an identifiable person and not with the public at large." North American Van Lines v. Ferguson Transportation, Inc., 639 So.2d 32, 33 (4th DCA 1994). In Ethan Allen, Inc. v. Georgetown Manor, Inc., 19 Fla.L. Weekly S566 (Nov. 10, 1994), this Court, also citing Southern Alliance, reaffirmed this principle. The Court's decision in Ethan Allen thus confirms the correctness of the Fourth District's judgment, answers the certified question, and eliminates any need for further review of this case.

**A. *Ethan Allen* Is Dispositive**

In Ethan Allen, a furniture retailer properly recovered damages for tortious interference when it alleged and proved that the defendant's actions caused a number of its existing customers to cancel pending furniture orders. The key issue before this Court was whether that plaintiff also could recover damages based on its relationships with past customers who might have bought furniture from it again in the future. This Court rejected that claim. The Court unanimously confirmed that an action for tortious interference with a business relationship requires a business relationship "evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed" if the defendant had not interfered. Ethan Allen, 19 Fla.L. Weekly at S566 (emphasis added). The Court further explained that "no cause of action exists for tortious interference with a business's relationship to the community at large." Id., citing Southern Alliance Corp. v. Winter Haven, 505 So.2d 489, 496 (Fla. 2d DCA 1987).

Ethan Allen disposes of this case. Ethan Allen confirms that a plaintiff may not claim a protectible business relationship with "all prospective customers" within its community, but must prove a business relationship with "identifiable customers" in order to recover for tortious interference. The Fourth District Court's ruling was therefore correct, and the certified question should be dismissed.

Ferguson Transportation's attempt to evade the plain import of Ethan Allen is without merit. Ferguson Transportation chiefly tries to argue, counter to the factual supposition underlying the certified question, that it did introduce evidence of "identifiable business relationships." But it never identified a single pending transaction that it lost to Advance. Indeed, unlike the furniture retailer in Ethan Allen, Ferguson Transportation could not identify even a prior customer who later actually moved with Advance. (The one customer it did identify ultimately moved with Ferguson Transportation. (R.200))

The most that Ferguson Transportation can point to is Joe Ferguson's testimony (which it brazenly misstates) that 99 percent of Advance's Broward County customers should have been told to move with Ferguson Transportation. F.T. Reply Br. 12-15, 29-30, 34-36, 37; see R.518-25 and N.A. Initial Br. 13-15. Ferguson's testimony does not begin to establish that Advance's customers had an understanding or agreement with Ferguson Transportation -- to the contrary, Ferguson admitted that he had never even given an estimate to any of these customers. (R.525) On the record below, one can only speculate as to what Advance's customers would have

done in the absence of Advance's advertisements and solicitation. There is certainly nothing in the record to support a finding that they would have moved with Ferguson Transportation. To the contrary, if Advance had not advertised or solicited in Broward County, its Broward County customers might have chosen to move with any mover -- including (1) the other authorized North American agents in Broward County (the Molloy Brothers companies) whose authority to advertise and solicit in Broward County was expressly recognized in Ferguson Transportation's contract (see N.A. Initial Br. 5); (2) other moving companies not affiliated with North American (say, other movers beginning with the letter "A" in the phone book); and even (3) Advance itself, because (as Joe Ferguson admitted) Broward County customers were free to move with Advance if they chose to do so for reasons other than Advance's decision to advertise or solicit as a North American agent in Broward County (R.518, 520-21).

In short, there is not a shred of evidence in this record that any of Advance's customers ever had "an actual and identifiable understanding or agreement" to move with Ferguson Transportation. Ethan Allen, Inc. v. Georgetown Manor, Inc., 19 Fla.L. Weekly S566 (Nov. 10, 1994) (emphasis added). Accordingly, there is no basis for a finding of tortious interference.

### B. Ferguson Transportation's New Tort Claim Is Erroneous

Apart from Ethan Allen's requirement of proof of actual and identifiable business relationships, Ferguson Transportation faces a second insuperable obstacle to reversing the judgment

below: the well-established principle of law that a breach of contract cannot form the basis for a claim in tort. Ginsberg v. Lennar Florida Holdings, Inc., 19 Fla. L. Weekly D2117, 2118 (Fla. 3d DCA Oct. 5, 1994); see Lewis v. Guthartz, 428 So.2d 222 (Fla. 1982). For this reason as well, Ferguson Transportation may not rely on its contractual right to be North American's agent in Broward County as the source of its "protectible rights" in tort.

In tacit recognition that its claim of tortious interference with business relationships is legally untenable, Ferguson Transportation now switches to a new theory of the tort at issue in this case. It tries to introduce, for the first time in its Reply Brief, the remarkable notion that the separate and independent tort in this case was not tortious interference with business relationships created by its contract (see F.T. Initial Br. 45, 47), but rather that "3½ years of post-breach of contract lies, deception, misrepresentation, and false advertising constitutes a separate and independent tort." F.T. Reply Br. at 17-23, 37-38, 41. This revisionism must be rejected.

First, to switch theories at this late stage is impermissible. The tort that Ferguson Transportation alleged in its complaint and on which the jury received instructions was tortious interference with business relations, not misrepresentation, fraud, or false advertising. Ferguson Transportation cannot point to those torts to save its punitive damages award, because the separate elements of those torts were neither pleaded nor proved. Its punitive damages claim must ride or fall on the question whether the elements of a separate and independent claim

of tortious interference with business relations were proved. They were not.

Second, to the extent Ferguson Transportation now argues that North American's breach of contract was accompanied by outrageous conduct, such allegations, even if true, would not create the basis for a separate and independent tort. This Court has held that a finding that a defendant "acted intentionally, willfully, and outrageously as to the breach of contract does not by itself create a tort where a tort otherwise does not exist." Lewis v. Guthartz, 428 So.2d 222, 224 (Fla. 1982).

Finally, it is notable that these newly alleged torts are just as derivative of the breach of contract claim as the original claim of tortious interference. For example, the "false advertising" upon which Ferguson Transportation now relies is nothing more than the very advertising that it claimed constituted the breach of its exclusive agency agreement. In the absence of the exclusive agency provision in Ferguson Transportation's contract with North American, there is simply nothing tortious about permitting more than one agent to advertise and solicit in the same county. Thus, whether Ferguson is confined (as it should be) to its original tort claim as tried to the jury and expressed by the certified question, or is belatedly allowed to switch horses in its reply brief, the fundamental fact remains that this is a case about a breach of contract, and nothing more.[1]

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[1] On the issue of vicarious liability, Ferguson Transportation's tardy reliance on Empire Fire & Marine Ins. Co. v. Insurance Co. of Pennsylvania, 19 Fla.L. Weekly D1152, 1153 (continued...)

## II. THE TRIAL COURT'S TWIN ERRORS IN ADMITTING EVIDENCE REGARDING BOTH NORTH AMERICAN'S NET WORTH AND ITS PRIOR SETTLEMENT AGREEMENT WITH FERGUSON TRANSPORTATION EACH INDEPENDENTLY REQUIRES RETRIAL OF THE BREACH OF CONTRACT CLAIM.

The erroneous decision of the trial judge to permit Ferguson Transportation to take its tort claim to the jury fatally prejudiced North American's ability to obtain a fair trial on the contract claim. As a consequence of this fundamental error, the trial court mistakenly allowed the jury to hear improper and prejudicial evidence and argument concerning both North American's net worth and a ten-year old settlement between the parties. None of Ferguson Transportation's objections to a retrial on the contract claim has merit.

1. As this Court recently held, defendants "are prejudiced by [a] procedure which permits evidence of a defendant's net worth to be introduced when liability for punitive damages has not yet been determined." W.R. Grace & Co. - Conn. v. Waters, 638 So. 2d 502, 506 (Fla. 1994) (emphasis added). The Court therefore ordered courts to bifurcate net-worth evidence from trial on liability upon the defendant's request. Id. at 506.

Here, however, the trial court, over North American's objection, permitted Ferguson Transportation to introduce evidence of North American's net worth of approximately $198 million before the jury made any determination as to North American's liability

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[1] (...continued)
(3d DCA May 24, 1994) for the proposition that 49 U.S.C. § 10934 "clearly does" preempt state tort law is frivolous. Empire involved the priority of insurance coverage under two overlapping policies; it did not address vicarious liability, preemption, state tort law, or section 10934.

and to refer extensively to that net worth in closing argument. This was clear error.

In its brief, Ferguson Transportation chiefly asserts that this argument has not been preserved, claiming that North American failed to request a bifurcated trial on the issue of punitive damages. This argument misses the point. North American did not need to request a "bifurcated" trial because the issue of punitive damages never should have gone to the jury at all. North American objected to the introduction of net worth evidence, argued that it was relevant only to punitive damages, and moved for a directed verdict and JNOV on the tort and punitive damages claim. R.247-251; R.859; see also R.3351. Had the trial court correctly directed a verdict on the tort and punitive damages claim, as North American requested, the jury never would have heard the evidence on net worth. North American's objection to the introduction of net worth evidence thus was properly preserved.

Ferguson Transportation also argues that the improper admission of North American's net worth was harmless error. F.T. Reply Br. 43. This argument simply ignores this Court's conclusion in W. R. Grace (along with at least thirteen other states that have adopted similar rules) that evidence of a defendant's net worth is so inherently prejudicial as to warrant separate punitive damage proceedings in every case upon request by the defendant, without any particularized showing of prejudice. 638 So.2d at 506 & n.3. Inherent in this Court's decision to make this procedure available to defendants as a matter of right is the finding that the prejudice resulting from introduction of such evidence is both real

and substantial. And indeed, Ferguson Transportation's heavy reliance on North American's net worth in closing argument surely affected the jury's decision to return a massive $1.3 million compensatory damages award. See N.A. Initial Br. 11-13.

2. The trial of the contract claim also was substantially prejudiced by the trial court's erroneous decision to introduce documents and evidence pertaining to North American's 1974 settlement agreement with Ferguson Transportation's predecessor. This evidence could have been relevant only to the punitive damages claim and thus should not have been admitted.

Ferguson Transportation's arguments to the contrary are without merit. It first claims that the 1974 documents were admissible as extrinsic evidence to construe the 1983 contract. F.T. Reply Br. 44. But this argument is irreconcilable with the undisputed fact -- which Ferguson Transportation itself concedes, as it must -- that the trial court "ruled that [the 1983 contract] language was unambiguous." Id. (emphasis added). The trial court did indeed rule that the exclusivity provision "considered in context with the entire contract is not ambiguous." R.2165. Prior to the trial court's ruling on this issue, the parties stipulated that if the contract provision were unambiguous, then "extrinsic evidence of its interpretation is not admissible." Id. Thus, Ferguson Transportation's assertion (F.T. Reply Br. 44) that the 1974 settlement documents were admitted to "clarify" the unambiguous 1983 agreement is nonsense.

Equally meritless is Ferguson Transportation's claim that any error was harmless. In reality, Ferguson Transportation used

the 1974 settlement agreement not to "clarify" the unambiguous 1983 contract but to prejudice the jury's consideration of all of the relevant facts. Simply put, from opening to closing argument, the central theme of plaintiff's case, repeated over and over by Ferguson Transportation, was that this case involved an ongoing breach of contract over an 18-year period. (E.g., R.18-19; R.67-68; R.106-117; R.1457-1459; R.1580; R.1613. But see PX 53).

There was no "'curative ruling or event.'" See Fincke v. Peeples, 476 So.2d 1319, 1324 (Fla. 4th DCA 1985), quoting Palmes v. State, 397 So.2d 648, 653-54 (Fla.), cert. denied, 454 U.S. 882 (1981). Furthermore, "the general weight and quality of the evidence" (id.) -- apart from the erroneously admitted evidence -- tended to show that North American's alleged breach of contract was inadvertent and arose from its failure to take adequate steps to restrain Advance. N.A. Initial Br. 4-10. Moreover, the evidence also tended to show that Ferguson Transportation's financial difficulties were attributable to factors other than Advance's competition. Id. at 12-13. The jury's decision to disregard these factors, and to award Ferguson Transportation the full value of its business, reflected an intent to punish North American for what it perceived to be repetitive breaches. But for the trial court's erroneous admission of the 1974 settlement agreement, the jury could not have been swayed improperly by this evidence, and it is quite likely that, at a minimum, the jury would not have found North American liable for all of the damages claimed by Ferguson Transportation, if liable at all.

In short, the admission of the prior-settlement evidence was part and parcel of the erroneous decision to convert this case from one involving a breach of contract to one involving a tort. Therefore, the admission of that evidence -- like the evidence of North American's net worth -- was plainly prejudicial and requires retrial.

## CONCLUSION

For the foregoing reasons and those stated in North American's Answer/Initial Brief on the Merits, if this Court accepts jurisdiction, the judgment of the Fourth District Court of Appeal reversing the judgment on the tort claim and the award of punitive damages should be affirmed; and the final judgment entered on the breach of contract claim should be reversed and remanded for a new trial.[2]

Respectfully submitted,

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[2] Should the Court reinstate Ferguson Transportation's tortious interference claim, this case should be remanded to the Fourth District to permit that court to address, in the first instance, North American's additional objections to the punitive damages award that were briefed for, but not decided by, that court, and which were not briefed before this Court. See N.A. Initial Brief at 17 n.1; Hall v. Billy Jack's, Inc., 458 So.2d 760 (Fla. 1984) (remanding for consideration of unaddressed issues). Savoie v. State, 422 So.2d 308, 312 (Fla. 1982), on which Ferguson Transportation relies (F.T. Reply Br. 1-2), is not to the contrary, because there this Court chose to reach an issue that had been been briefed before this Court.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight delivery this 14th day of February, 1995, to: Jack Scarola, P.O. Drawer 3626, West Palm Beach, FL 33402-3626 and Edna L. Caruso, Suite 4-B, Barristers Building, 1615 Forum Place, West Palm Beach, FL 33401.

Donald H. Smith
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ATTACHMENT A

IN THE SUPREME COURT OF FLORIDA

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CASE NO.: 84,167

**MOTION TO STRIKE REPLY BRIEF**
**OR, IN THE ALTERNATIVE,**
**FOR LEAVE TO RESPOND TO NEW ARGUMENTS**

Respondent and Cross-Petitioner North American Van Lines, Inc. ("North American"), by and through its attorneys, hereby moves to strike Petitioner's Reply Brief and Answer Brief on Cross-Petition ("Reply Brief"), or in the alternative, for leave to respond to new issues and arguments presented therein.

Petitioner, Ferguson Transportation, Inc. ("Ferguson Transportation"), has violated at least the spirit, if not the letter, of the Rules of Appellate Procedure by using North

American's two-page cross appeal as an excuse to file a 50-page reply brief, 42 pages of which are devoted to its initial appeal. Furthermore, Ferguson Transportation uses these extra pages to advance fundamentally new arguments on the merits. Accordingly, North American respectfully requests that this Court either strike Ferguson Transportation's Reply Brief or, in the alternative, that it grant North American leave to devote a portion of its 15-page reply brief on the cross-appeal to the new arguments and cases raised in Ferguson Transportation's Reply Brief.

In support of its Motion, North American states as follows:

1. Ferguson Transportation alleged that North American breached an exclusive agency agreement with it by allowing a competing agent, Advance Relocation, to advertise and solicit in Ferguson Transportation's exclusive territory. Ferguson Transportation also alleged that North American tortiously interfered with prospective business relationships allegedly created by the exclusive agency agreement.

2. North American moved for a directed verdict on the tort claim on several grounds, including that Ferguson Transportation had failed to identify any existing business relationships allegedly disrupted by North American, and that it had failed to demonstrate any tort separate and independent from

the breach of contract claim. The trial court denied North American's motion for a directed verdict, and permitted both the breach of contract claim and the tort claim to go to the jury. The jury awarded identical sums of $1.3 million in compensatory damages on both claims, and awarded punitive damages of $13 million. (R.3225-3229) Pursuant to stipulation, the trial court struck one of the two identical compensatory damage awards, but entered judgment on the remaining compensatory damage award and the punitive damage award. (R.1419-1420; 3228-3229)

3. On appeal, the Fourth District Court of Appeal held that Ferguson Transportation had failed to prove the first element of tortious interference: the existence of a business relationship under which the plaintiff has legal rights. 639 So.2d 32, 33 (Fla. 4th DCA 1994). The court held that the business relationship must be with an identifiable person and not with the public at large, citing Southern Alliance Corp. v. Winter Haven, 505 So.2d 489 (Fla. 2d DCA 1987). The court rejected Ferguson Transportation's argument that its exclusive agency agreement obviated the need to prove interference with any identifiable customer. Id. The Fourth District held that North American's motion for directed verdict on the tort claim should have been granted, and therefore reversed the punitive damages award. The court declined, however, to reverse the $1.3 million award against North American on the breach of contract claim.

4. In response to the Fourth District's ruling, and citing the then-pending certified question in Georgetown Manor, Inc., v. Ethan Allen, Inc., 991 F.2d 1533 (11th Cir. 1993), Ferguson Transportation drafted the following certified question, which the Fourth District then certified to this Court as one of "great public importance." The certified question is:

> WHETHER, UNDER FLORIDA LAW, A PLAINTIFF WHO HAS AN EXCLUSIVE CONTRACT WITHIN A GEOGRAPHICAL TERRITORY, IS AFFORDED A BUSINESS RELATIONSHIP WITH ALL PROSPECTIVE CUSTOMERS WITHIN THAT TERRITORY, WHICH IS PROTECTIBLE AGAINST TORTIOUS INTERFERENCE, OR MUST THE PLAINTIFF PROVE A BUSINESS RELATIONSHIP WITH IDENTIFIABLE CUSTOMERS?

5. In its initial brief to this Court, Ferguson Transportation argued at length that the type of business relationship required to establish the first element of tortious interference "can be either an existing business relation or an expectancy," and that the business relationship can be "either existing or prospective." Petitioner's Brief on the Merits at 31; see id. at 30-33. The primary thrust of Ferguson Transportation's argument was that, as a matter of law, its exclusive agency agreement created a protectible business relationship or expectancy with all prospective customers within its geographic territory. Id. at 37-39. Thus, in its initial brief, Ferguson Transportation argued that its exclusive agency agreement "was sufficient proof in and of itself of a business relationship or expectancy with all prospective Broward County customers who decided to move with NAVL." Id. at 37.

6. After Ferguson Transportation filed its initial brief (and after North American filed its answer brief), this Court held that an action for tortious interference with a business relationship requires a business relationship "evidenced by an actual and identifiable understanding or agreement" which in all probability would have been completed if the defendant had not interfered. Ethan Allen, Inc. v. Georgetown Manor, Inc., 19 Fla. L. Weekly S566 (Nov. 10, 1994).

7. In its Reply Brief, Ferguson Transportation has essentially abandoned its argument based on future business relationships with "prospective" customers and now argues at length that 99 percent of the customers who used Advance Relocation's services would have moved with Ferguson Transportation but for the alleged tortious interference. Ferguson Transportation initially made this argument only in passing. Compare Initial Brief at 34-36 with Reply Brief at 12-15, 29-30, 34-36, 37. Ferguson Transportation also addressed this Court's opinion in Ethan Allen at length. See Reply Brief at 33-35.

8. Ferguson Transportation's Reply Brief also abandons the initial brief's description of North American's allegedly tortious conduct (see Initial Brief at 45, 47), and now argues that North American's tortious conduct consisted of lies, deceptions, misrepresentation, fraudulent misrepresentation, fraud, and false advertising. Reply Brief at 19, 20, 22, 24, 37, 38, 41. These claims were not advanced in Ferguson

Transportation's initial brief to this Court. See Initial Brief at 45, 47.

## ARGUMENT

Rule 9.210 of Florida's Rules of Appellate Procedure provides that initial briefs and answer briefs may be up to 50 pages in length, and that reply briefs, responding to issues raised in answer briefs, may be up to 15 pages. In cases involving cross-appeals, however, briefs combining a reply and a response to the cross-appeal may be up to 50 pages. Although the rule does not explicitly provide that such briefs must be divided proportionately, the structure and purpose of the rule strongly suggests that reply arguments -- those addressed to issues raised by the principal appeal -- should not exceed 15 pages.

Ferguson Transportation's initial brief consisted of 50 pages addressed solely to the elements of its tort claim. In response, North American devoted 48 pages to the issues raised by Ferguson Transportation, and 2 pages to a narrow cross-appeal limited to two discrete issues. Ferguson Transportation has now used these two pages of cross-appeal as an excuse to file what amounts to a 42-page reply brief on the initial appeal, as well as a 7-page answer on the cross-appeal. Thus, Ferguson Transportation has submitted 92 pages of argument on its principal appeal while North American has submitted 48. If North American had not raised the narrow issues presented in its cross-appeal, Ferguson Transportation could have submitted no more than

65 pages in total. The mere fortuity that North American elected to file a limited cross-appeal should not permit Ferguson Transportation to submit almost twice as many pages on the initial appeal as North American.

The problem is not simply one of inequality in pages. Ferguson Transportation has taken advantage of the rules to present extended briefing on new issues and arguments that were not advanced in its initial brief. For example, Ferguson Transportation has entirely recast its description of the conduct that it claims supports a finding of tortious interference with business relations. Compare Initial Brief at 45, 47 with Reply Brief at 19, 20, 22, 24, 37, 38, 41 (arguing that tort consists of lies, deceptions, fraudulent misrepresentation, fraud, and false advertising). Similarly, Ferguson Transportation has abandoned the position that it has a protectible business relationship with "all prospective customers" within its geographical territory, and instead now argues at great length a point it initially made only in passing -- that 99 percent of its competitors' customers would have gone to it absent the alleged tortious interference. Furthermore, Ferguson Transportation has extensively briefed the Ethan Allen case, which North American cited to the Court as supplemental authority, but has had no opportunity to brief.

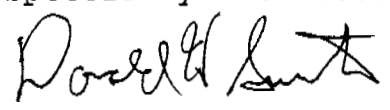
Fundamental fairness requires that Ferguson Transportation's extended new argument not be permitted to remain

on the record unrebutted. An appropriate sanction would be to strike the Reply Brief altogether. In the alternative, North American should be permitted a concise response to Ferguson Transportation's Reply Brief not to exceed the normal 15-page limit for replies on cross-appeals. Thus, if the Court elects not to strike Ferguson Transportation's Reply Brief, North American requests that it be permitted to address Ferguson Transportation's new arguments regarding its appeal, together with North American's cross-appeal, in 15 pages or less, in North American's cross-reply. This approach will not lengthen the record or unduly burden the Court, but will permit North American to respond to the new issues that Ferguson Transportation has raised.

## CONCLUSION

For the foregoing reasons, the Court should strike Ferguson Transportation's Reply Brief from the record. In the alternative, the Court should grant North American leave to address Ferguson Transportation's new arguments regarding its appeal, and North American's cross-appeal, in 15 pages or less, in North American's cross-reply, to be filed within 20 days after the Court's ruling on this Motion.

Respectfully submitted,



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CASE NO.: 84,167

**REQUEST TO TOLL TIME TO FILE CROSS-REPLY**

Respondent and Cross-Petitioner North American Van Lines, Inc. ("North American"), has filed herewith an Unopposed Motion For Extension Of Time in which to respond to Petitioner's Reply Brief and Answer Brief on Cross-Petition. In the alternative, for the reasons described in the accompanying Motion To Strike Reply Brief Or, In The Alternative, For Leave To Respond to New Arguments ("Motion to Strike"), North American

hereby requests that the time for it to file its cross-reply in this proceeding be tolled until 20 days after the Court's ruling on the accompanying Motion to Strike.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by overnight mail this 16th day of January, 1995, to: Jack Scarola, P.O. Drawer 3626, West Palm Beach, FL 33402-3626 and Edna L. Caruso, Suite 4-B, Barristers Building, 1615 Forum Place, West Palm Beach, FL 33401.

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