

---

**SUPREME COURT OF THE STATE OF FLORIDA**

---

**IVANA VIDOVIC MLINAR,**  
**Appellant/Plaintiff,**  
**vs.**

**CASE NO: SC14-54**  
**LOWER TRIBUNAL Nos.**  
**FOURTH DCA: 4D12-1332**  
**15<sup>th</sup> JUD. CIR.: 502008CA036246**  
**(PALM BEACH)**

**UNITED PARCEL SERVICE INC.,**  
**Appellee/Defendant,**

**RECOVERY MANAGEMENT**  
**CORP. d/b/a CARGO LARGO,**  
**PAK MAIL OF WELLINGTON,**  
**INC., and AARON ANDERSON,**  
**Defendants.**

---

**APPENDIX TO INITIAL BRIEF OF APPELLANT**  
**Volume Four**

---

**ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEALS**  
**AFFIRMING FINAL JUDGMENT OF**  
**THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT**  
**OF FLORIDA IN AND FOR PALM BEACH COUNTY**

---

**SEARCY DENNEY SCAROLA**  
**BARNHART & SHIPLEY, P.A.**  
**2139 Palm Beach Lakes Blvd.**  
**West Palm Beach, FL 33409**  
*Attorneys for Appellants*  
**By: Jack Scarola**  
**Fla. Bar No. 169440**  
**Patrick E. Quinlan**  
**Fla. Bar No. 750263**  
**Mara Ritchie Poncy Hatfield**  
**Fla. Bar No. 037053**

**LAW OFFICES OF SHANNON**  
**MAHONEY, PA**  
**315 11<sup>th</sup> Street**  
**West Palm Beach, FL 33401**  
*Attorneys for Appellants*  
**By: Shannon M. Mahoney**  
**Fla. Bar No.: 0194948**  
[smmahoney@mahoneylegal.com](mailto:smmahoney@mahoneylegal.com)  
[mrh@searcylaw.com](mailto:mrh@searcylaw.com)  
[jsx@searcylaw.com](mailto:jsx@searcylaw.com)  
[peq@searcylaw.com](mailto:peq@searcylaw.com)

---

## **TABLE OF CONTENTS**

### **VOLUME ONE:**

- TAB O: Opinion of Fourth District Court of Appeal
- TAB A: Initial Brief of Appellant filed in Fourth District Court of Appeal
- TAB B: Answer Brief of Appellee filed in Fourth District Court of Appeal
- TAB C: Reply Brief of Appellant filed in Fourth District Court of Appeal

### **VOLUME TWO:**

- TAB R: Record of Sixteenth Judicial Circuit on Appeal, pages 1-156

### **VOLUME THREE:**

- TAB R: Record of Sixteenth Judicial Circuit on Appeal, pages 157-253

### **VOLUME FOUR:**

- TAB R: Record of Sixteenth Judicial Circuit on Appeal, pages 254-End

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-serve, and US Mail this 3<sup>rd</sup> day of JUNE, 2014, to all counsel on the attached list.

/s/ Mara Ritchie Poncy Hatfield  
MARA R.P. HATFIELD  
Florida Bar No. 37053  
Email: [mrh@searcylaw.com](mailto:mrh@searcylaw.com); dtm@searcylaw.com  
Searcy Denney Scarola Barnhart & Shipley, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach FL 33409  
Telephone: (561) 686-6300

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2008 CA 036246XXXXMB  
AH

IVANA VIDOVIC MLINAR,

Plaintiff,

vs.

UNITED PARCEL SERVICE INC., PAK  
MAIL OF WELLINGTON, INC.,  
RECOVERY MANAGEMENT CORP. d/b/a  
CARGO LARGO and AARON ANDERSON,

Defendants,

---

**MEMORANDUM IN OPPOSITION TO UPS'S MOTION TO DISMISS**

Plaintiff, by and through her undersigned counsel, files this Memorandum in Opposition to the Defendant UPS's Motion to Dismiss and states as follows:

**Introduction**

1. Defendant UPS's motion seeks to dismiss all four claims alleged against it in the Second Amended Complaint, which as stated in UPS's motion was filed on September 30, 2011. Three of those claims (conversion, conspiracy and misappropriation of identity) were raised in the original and the amended complaint, which was answered by UPS in 2009.
2. Before the 2011 amendment, UPS stated an affirmative defense based upon the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C 14706—the same defense upon which it bases the present Motion to Dismiss. When the prior complaint was at issue, UPS filed a Motion for Summary Judgment. That motion was set for hearing and was

based entirely on Carmack preemption; however, UPS cancelled the hearing in recognition that pending discovery was germane to the defense.

3. By September 2011, UPS production and the testimony of its witnesses made it clear that UPS would never consider Ivana Vidovic Mlinar to be the shipper of record, thus obviating the question of whether the Carmack defense could apply to any claim she might raise. Plaintiff added a claim for fraudulent and deceptive trade practice based upon UPS's use of outlet centers as an originating source of shipping income.
4. Despite the fact that the majority of relevant cases cited by UPS include summary judgment jurisprudence, UPS now claims that the Plaintiff cannot avert the scope of Carmack preclusion through "artful pleading." Whether artfully stated or not, none of the claims are precluded because the allegations contained in the complaint are beyond the scope of Carmack preemption.
5. Carmack was meant to unify liabilities among multiple common carriers—it was not meant to protect those who deny any liability to a set of customers who drop their packages at outlets instead of with carriers. UPS refuses to recognize the Plaintiff, or any customer of an "outlet" such as "PakMail" or the "UPS Store," as a "shipper of record." Thus, it cannot claim Carmack as a defense to any claim such a customer might raise against it.
6. In addition, even if she were the shipper of record, Plaintiff's original claims are not precluded because Carmack does not preempt claims arising from intentional misconduct amounting to conspiracy, conversion, or misappropriation of identity. Proof of those acts takes a claim outside of Carmack—therefore, as UPS has heretofore acknowledged, the

Carmack defense cannot preclude the present allegations unless presented in a summary judgment setting.

**THE DECEPTIVE SCHEME ALLEGED TAKES ALL CLAIMS OUTSIDE CARMACK**

7. In the first footnote of its motion, UPS explains the Carmack Amendment as follows:  
“the Carmack Act preempts a shipper's common law and state statutory claims for damage or loss of goods moving in interstate commerce through a common carrier.”  
While this is a fair assessment of the general scope of the amendment, it eclipses the exceptions that are clearly stated in the case law it cites.
8. First, the amendment has a narrow scope: it applies to claims made by shippers. Ivana Vidovic Mlinar (herein after Vidovic), as clearly alleged in the deceptive practice claim and as stated by UPS’s corporate representative, was not a shipper and so UPS would not deal with her lost package claim.<sup>1</sup>
9. Carmack prohibits carriers from restricting their liability in any manner other than those contemplated by the statute.<sup>2</sup> The statute requires connecting carriers to share liability among each other. See *Missouri, K. & T. R. Co. v. Ward*, 244 U.S. 383, 387-388 (U.S. 1917) stating that the purpose of Carmack was to create a unity of liability amongst several lines of carriers in order to “relieve shippers of the difficult, and often impossible, task, of determining on which of the several connecting lines the damage occurred. For the purpose of fixing the liability, the several carriers must be treated, not as independent contracting parties, but as one system.”

---

<sup>1</sup> See Second Amended Complaint, Exhibit A, ¶ 53 and Deposition of Brian Konesko, February 4, 2011, Exhibit B, p.45-46, l.16 –2. and p. 52-53, l. 11-9.

<sup>2</sup> 49 USCS § 11706.(a) and (c)

10. UPS has corrupted this system by inducing customers to take their goods to outlets, such as Pak Mail and the UPS Store. It then treats the outlet as a separate contracting party. Via 1-800-PICK UPS, UPS first directs customers to these outlets. Yet, if a customer ships the package through the outlet location, UPS will refuse any privity or liability if the goods are lost, stolen or damaged.

11. Carmack liability expressly includes only the liability created by a bill of lading. Carmack does not consider the eventuality that the first entity receiving the package from the true owner will be an outlet location. In fact, since the originating outlet is not an interstate carrier, the authority under which Carmack was created is obviated. See Atlantic C. L. R. Co. v. Riverside Mills, 219 U.S. 186, 205 (U.S. 1911):

If it is to be assumed that the ultimate power exerted by Congress is that of compelling cooperation by connecting lines of independent carriers for purposes of interstate transportation, the power is still not beyond the regulating power of Congress, since without merging identity of separate lines or operation it stops with the requirement of oneness of charge, continuity of transportation and primary liability of the receiving carrier to the shipper, with the right of reimbursement from the guilty agency in the route.

**THE ALLEGED INTENTIONAL TORTS ARE OUTSIDE OF CARMACK**

12. Secondly, even if a claim were to be made by a shipper who operates a direct account with UPS, Carmack preclusion will not apply if there is evidence that the loss was the result of a willful scheme of conversion (as opposed to a comedy of errors) or if the carrier converted the goods and stood to make a personal profit (as opposed to conversion by way of negligent supervision.) See Aircraft Instrument Radio Co.v. United Parcel Service Inc., 117 F.Supp. 2d 1032, (D. Kan. 2000), which is cited by UPS at footnote four.

13. Furthermore, the claim for misappropriation of identity is clearly divorced from any conduct arising by virtue of the shipping process.<sup>3</sup> The co-conspirator is not a carrier. Carmack preemption includes only the actual loss or injury to the property caused by—“(1) the receiving rail carrier; (2) the delivering rail carrier; or (3) another rail carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading.” Because the damages complained of herein were not caused by UPS alone but through a conspiracy with its overgoods vendor, the statute does not apply.<sup>4</sup>

#### **The Present Allegations**

14. The Plaintiff alleges that UPS has engaged in a fraudulent and deceptive trade practice through which they encourage customers of third party vendors, such as Pak Mail, into the false belief that they are shipping packages through UPS. This belief is nurtured by many facts: The outlet is listed in UPS’s directory; The outlet serves as a drop off location for direct account holders; and, The outlet’s customers are issued UPS tracking numbers. Customers believe that if the package becomes lost or damaged, that they can call on UPS to locate or remedy the situation by citing the UPS shipping number.<sup>5</sup>

15. Vidovic alleges that she was led to believe that she was shipping a package containing two paintings through UPS. Instead, UPS maintains that Pak Mail shipped the paintings.

---

<sup>3</sup> Second Amended Complaint, attached herein as Exhibit A, ¶¶ 22-26, 42-48

<sup>4</sup> **49 USCS § 11706** (b.)

<sup>5</sup> Second Amended Complaint, attached herein as Exhibit A, ¶53.

16. The paintings were clearly labeled with Vidovik's name and dimensions on both the front and back.<sup>6</sup> They were to be sent to the Novak Gallery in New York.
17. However, the package arrived empty. Importantly, the Plaintiff alleges that "the duct tape on the cover of one side of the PVC tube had been sliced and the painting canvases had been removed." Further, she alleges that UPS deliverymen acknowledged that the package was sliced open and the paintings had been removed prior to their receipt of the package from the New York distribution hub.<sup>7</sup>
18. Vidovik frantically called UPS. UPS refused to attempt to locate the package and told her to contact Pak Mail.<sup>8</sup>
19. Vidovik filed a claim with Pak Mail, which included a detailed claim of the missing paintings including appraisals of the paintings and similar works as well as pictures of the images and a description of the label.<sup>9</sup>
20. UPS never responded to the claim made by Pak Mail and there is no record of any investigation at UPS.
21. Plaintiff alleges that she later learned that UPS and Recovery Management sold her painting by auctioning it off and advertising her name, all without her consent. She learned this after the purchaser of her painting, Aaron Anderson, located her by utilizing the same information that was available to UPS and to Recovery Management.<sup>10</sup>
22. After researching around the art community, Vidovik learned that UPS has removed other artworks from their packaging and sent the artwork to Recovery Management, its

---

<sup>6</sup> Second Amended Complaint, attached herein as Exhibit A,, ¶¶ 7-9.

<sup>7</sup> Second Amended Complaint, attached herein as Exhibit A,, ¶¶ 10-13

<sup>8</sup> Second Amended Complaint, attached herein as Exhibit A, ¶¶ 13-14.

<sup>9</sup> Second Amended Complaint, attached herein as Exhibit A, ¶¶ 15-16.

<sup>10</sup> Second Amended Complaint, attached herein as Exhibit A, ¶¶ 17-18.

overgoods servicer and wholesale buyer. Recovery Management holds it until the limitations of Carmack (nine months) has expired. Recovery Management then prices and sells the artwork using the same information to identify the good that could have identified the package if the claim process for outlet customers were to work as it is ostensibly presented to work.<sup>11</sup>

23. However, since UPS refuses to catalogue the identity of an outlet customer, there is a guarantee that a certain percentage of lost goods which will never be found. The overgoods seller will reap the benefit—securing UPS a cheap and illegitimate means to pretend its overgoods are being searched before being sold.

24. In addition to the conspiracy and conversion claims based on this set of facts, Plaintiff alleges claims for deceptive trade practice and misappropriation of her likeness. (Florida statutes protect a person's name as part of her likeness.)<sup>12</sup>

**Discovery Has Revealed The Allegations of Conspiracy to be Well Founded**

25. Through discovery, Plaintiff has confirmed the reason for UPS's refusal to investigate her lost paintings. According to UPS, Pak Mail is the shipper of record—thus UPS does not take calls from customers of outlet-originated shipping nor will it accept any liability for the shipping loss or damage to the party's property.<sup>13</sup>

26. In fact, the fine print of the UPS-Outlet contract states that the outlet customers are not in fact shippers of record and that even though UPS will provide them a tracking number, UPS will not actually respond to the customer if they place a call about the package or

---

<sup>11</sup> Second Amended Complaint, attached herein as Exhibit A, ¶¶ 18-21.

<sup>12</sup> Second Amended Complaint, attached herein as Exhibit A, Count IV.

<sup>13</sup> Deposition Excerpts of Brian Konesko, February 4, 2011, Exhibit B, p.45-46, 1.16 –2. and p. 52-53, 1. 11-9.

- the tracking number.<sup>14</sup> The contract forbids the outlet from sharing the customer's name and address as a sending address. The customer never sees this contract. This same limitation is included in the Tariffs attached to UPS's motion to Dismiss as Exhibit 1.<sup>15</sup>
27. While the fine print of the contracts and tariffs include this denial of liability, UPS's contract with the outlet centers include provisions that would lead a customer to believe that he or she was in fact contracting with UPS. For example, the contract requires outlets to maintain UPS as its preferred carrier, to meet a certain UPS volume quota, and to advertize itself as a "UPS Authorized Shipping Outlet."
28. UPS also allows direct shippers to direct self-addressed return envelopes and packaging to those same outlets for drop off.<sup>16</sup>
29. In fact, since 2003, Vidovoc had been working under an annual contract with a separate gallery in New Jersey, the Lavon Art Gallery. Plaintiff routinely sent her artwork to this gallery and received prints for signature in return.<sup>17</sup> The prints and monthly original paintings were sent to the gallery under Lavon's direct shipping account through which Plaintiff was directed to drop the packaging at Pak Mail.
30. She was never informed that if she were to ship at Pak Mail on her own, rather than through a direct account such as the one used by Lavon, that her paintings would not be traceable by her name if lost. In fact, the provision of a separate UPS tracking number on her Pak Mail receipt implied the exact opposite.

---

<sup>14</sup> See UPS Authorized Shipping Outlet Agreement, provision 5, UPS114-115, attached herein as Exhibit C and allegations in Second Amended Complaint, attached herein as Exhibit A, ¶53.

<sup>15</sup> See UPS Tariff 1090, attached as Exhibit 1 to UPS's Motion to Dismiss and attached herein as Exhibit D.

<sup>16</sup> Deposition Excerpts of Brian Konesko, February 4, 2011, Exhibit B, p. 77-78, l. 8-5 and See UPS Authorized Shipping Outlet Agreement, provision 12, UPS114-115, attached herein as Exhibit C.

<sup>17</sup> Vidovic Lavon Gallery Contract, VIDOVIC000082-84 attached herein as Exhibit E; and, Lavon Direct Account Documents, UPS 1512-19, attached as Exhibit F.

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000262

Ivana Mlinar v. UPS, et al

Case No.: 50 2008 CA 036246XXXXMB AH

Motion to Continue Trial

Page 9 of 19

31. UPS has not produced a record of any attempt to locate the package at UPS or at Recovery Management. UPS has stated that it would not be able to locate records older than two years, yet it has produced records of the Lavon account opening in 2004 as well as the World Ship record detailing that Pak Mail shipped Vidovik's paintings to the Novak gallery.<sup>18</sup>

32. Prior to 1996, UPS ran its own overgoods search division in Atlanta. (An overgood is a package that has become separated from its packaging.) At that time UPS, would attempt to locate the shipper of an overgood found in the UPS system by comparing any personal information on the package with the names of shippers filing package claims. If the shipper could not be found, UPS sold the good to one of two third parties, National Priority Sales (NPS) and Recovery Management. All goods (or bins of combinable goods such as loose screws) would be bought for a flat discount fee that was always around \$20.00. The goods for each vendor were not selected by UPS or the retailer; instead they simply alternated freight truck deliveries.<sup>19</sup>

33. In 1998, UPS offered Recovery Management the option to become the overgoods servicer as well as a buyer. Now the seller would be responsible for finding UPS shippers. This is a clear conflict of interest: Each item that is matched to a shipper obviates the seller's chance to sell the item which it could otherwise buy at a wholesale

---

<sup>18</sup> Lavon Direct Account Documents, UPS 1512-19, attached as Exhibit F.

<sup>19</sup> See Deposition Excerpts of Michelle Faimon, November 2, 2011, pp. 26-27, l. 23-8, Attached Herein as Exhibit G.

rate. Unbelievably, there was no new consideration offered for this mammoth and counter-productive task except the “chance to sell more product.”<sup>20</sup>

34. Discovery in the case has also revealed that works of art and other high valuable collectibles are to be kept aside for review as a possible consignment good-whereby UPS would get 65% of the sale of the painting or other such good.<sup>21</sup>

35. In addition, discovery has revealed that any search and cataloging done by Recovery Management is loaded into a system that is accessed by UPS who searches the system against the names of shippers claiming lost packages. No outlet shipper’s package could be found this way.

36. Vidovic’s painting was received by Recovery Management. In 2007, it was priced for sale. Recovery Management utilized Lavon Art Gallery’s website to value the painting; the website had been offering similar sized oil paintings for over \$7,000.00 and a print (a giclee) of the prior version of Advice for over \$2,000. Rather than call the artist or the gallery selling her work, Recovery Management placed the item for sale in its boutique section, a section reserved for high value art and collectibles where it was sold by using the artist’s name.<sup>22</sup>

#### **THE VIDOVIC CASE AND PRIOR UPS’S CARMACK PRECEDENT**

---

<sup>20</sup> See Deposition Excerpts of Michelle Faimon, November 2, 2011, pp. 18-19, l. 18-10. See also Deposition Excerpts of Louis D. Pac p. 35-38, attached herein as Exhibit H. stating that the negotiation was to get a credit of their expenses, but that the credit did not cover the expenses. He also testified that the compensation was the ability to have greater portion of goods because other vendors were dropped, but there is no evidence of any other vendor prior to 1996 besides the two still operating today.

<sup>21</sup> See Agreement for Overgoods Management and for the Purchase and Sale of Salvaged Goods and Consignment Sales, UPS000196-209, attached herein as Exhibit I, particularly Exhibit C to the Agreement, UPS207-209

<sup>22</sup> See Deposition Excerpts of Elizabeth Simons, November 2, 2011 attached herein as Exhibit J.

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000264

Ivana Mlinar v. UPS, et al

Case No.: 50 2008 CA 036246XXXXMB AH

Motion to Continue Trial

Page 11 of 19

37. As admitted by UPS's motion, *Aircraft Instrument Radio Co.v. United Parcel Service Inc.*, 117 F.Supp. 2d 1032, (D. Kan. 2000) was a case that included many similar factual allegations to those alleged in the present case. However, that case and the present situation also include two major differences: First, *Aircraft* involved a claim made by a shipper (Vidovic is not the shipper of record in the present set of facts). Second, the *Aircraft* court reviewed the allegations at the close of discovery pursuant to a motion for summary judgment; it dismissed the claims based upon based on negligence under Carmack preclusion. (None of Vidovic' claims are based in negligence.) The court then determined that there was no evidence to support the conversion claim. *Id.* at 1037.
38. The *Aircraft* plaintiff attempted to ship an airplane part, worth thousands of dollars, to a customer. The part became separated from its packaging. In both *Aircraft* and the present case, the claimant's property was "lost in transit" while the packaging arrived empty at the intended destination. *Aircraft*, a direct customer of UPS, alerted both UPS and the FBI. Although the item was never located by overgoods, correspondence regarding the claim was maintained in the desk of the overgoods manager, Michelle Faimon.
39. As in this case, discovery revealed that the airplane part was routed to a UPS overgoods wholesaler. However, the wholesaler in that case was NPS, not Recovery Management. NPS bought the part for around twenty dollars and then sold it for less than full worth to the customer who was the original intended recipient.
40. The first distinction is obvious. *Aircraft* shipped the part through UPS under a direct bill of lading. That is not the case here. UPS has insisted that Vidovic was not the shipper of

record and so the company would not engage in any communications with Vidovic about her lost painting. There is no record of any attempt to locate the package at UPS or at Recovery Management. Even if there were a record of the painting as an overgood, UPS would never be able to match it with Vidovic because they refused to record her name as a shipper or as a claimant.

41. The second distinction is less obvious, but more telling. There was no way *Aircraft* could ever have maintained a conversion claim. Although the company made a nominal allegation about conversion, they never alleged facts that would support the claim.

42. First, *Aircraft* did not allege that there was any purposeful destruction of the packaging. Vidovik alleges that the package was purposely sliced and the contents deliberately removed.

43. Second, *Aircraft* did not name the vendor as a co-defendant or allege conspiracy. *Aircraft's* airplane part was sold by NPS. Vidovic's painting was sold by Recovery Management. Recovery Management is not only an overgoods wholesaler but is also a "vendor" under contract to provide UPS the mammoth service of overgoods management.

44. Thus, the entire *Aircraft* conversion claim was lacking evidence that UPS meant to convert the good because there was no evidence of purpose. As admitted by UPS's motion: "the (Kansas District) court explained that despite the plaintiff's allegations, nothing suggests that this was anything other than a case of 'the right hand at UPS not knowing what the left hand was doing.'" See UPS's Motion, footnote 4, citing *Aircraft Instrument Radio Co.v. UPS*, at 1037.

45. In this case, the Plaintiff alleges that the loss of the painting was by design. UPS meant to take the painting from its packaging. UPS meant to get the painting to Recovery Management. There is simply no other explanation for slicing the tape and removing the paintings. If it were by a rogue UPS employee, the paintings would not be sold by UPS's overgoods vendor.
46. Plaintiff then alleges a conspiracy against both UPS and the wholesaler that includes UPS's avoidance of the entire costs for managing overgoods and the chance of a consignment based profit. Plaintiff has discovered evidence demonstrating the propensity for profit.
47. In other words, UPS (the right hand) clearly knows that Recovery Management (the left hand) is averting goods. UPS's policies are designed to help Recovery Management to obtain product that will make its efforts worth the while. Tellingly, it was only after all the evidence was finally produced that UPS sought to dismiss all of the claims alleged against it by inaccurately arguing that the Carmack Amendment precludes the claims regardless of the allegations upon which they are based.

**REVIEW OF UPS'S CITED CASELAW**

48. None of the cases cited by UPS stand for the proposition that the present claims should be dismissed; however, in a cursory footnote, UPS claims that "every United States Court of Appeals (including the Eleventh Circuit) that has considered the issue has concluded that the Act preempts a shipper's common law and state statutory claims for damage or loss of goods moving in interstate commerce through a common carrier." It then lists a series of

cases. Yet, none of these cases actually consider the present issue or the allegations present in this case. Each case is assessed below.

49. In *Intech, Inc. v. Consol. Freightways, Inc.*, 836 F.2d 672, 677 (1st Cir. 1987), the Court ruled for summary judgment in favor of the carrier. *Intech*, the recognized shipper, neglected the nine-month deadline Carmack affords shippers who seek to file a claim against the carrier. *Intech* then failed to demonstrate that the delay was excused by any misconduct on part of the carrier. *Intech's* attempt to sue for the damages "incidental to the company's refusal to unload the cargo in the yard" were precluded because Carmack applied to the damages admittedly incidental to the company's shipping conduct. There was no allegation or evidence of the intentional torts alleged in this case.

50. In *N. Am. Phillips Corp. v. Emery Air Freight Corp.*, 579 F.2d 229, 234 (2d Cir. 1978) *North American Phillips* (Norelco) retained *Emery Air Freight* to ship 1250 cartons of electric razors from a warehouse in Nevada to *Norelco's* Long Island plant. Because *Emery* had no facilities or personnel in Nevada, it used Parcel Delivery Service of Reno, Nevada, as its agent." The plaintiff argued that Carmack should not apply because the bill of lading, for airfreight, was not covered by Carmack, which expressly considers rail and not air carriage. *Id.* at 231. The Circuit court ruled that all interstate carriers were covered by Carmack. Again, the Circuit court states the purpose of Carmack and it does not include the present scenario: "Congress has created a broad, comprehensive scheme covering the interstate shipment of freight, aimed at preventing preferential treatment among shippers and establishing national equality of rates and services." *Id.* UPS's

arms length treatment of goods originating from its partnered outlets completely undermines that purpose.

51. In *Shao v. Link Cargo (Taiwan) Ltd.*, 986 F.2d 700, 706 (4th Cir. 1993), “Ting-Hwa Shao contracted with Link Cargo (Taiwan) Ltd. and Abacus Transports and Forwarder, Ltd., in Taipei, Taiwan, to have his personal belongings shipped from Taiwan to Baltimore, Maryland. The goods were forwarded, inadvertently, to a warehouse in Miami, Florida. A fire destroyed the warehouse and Shao's goods. Over two years later, Shao filed suit in the District of Maryland to recover the damages, alleging negligence and breach of contract.” *Id.* Not only was that plaintiff in privity with the carrier, his claims were based on the negligent forwarding of the package and not on intentional misconduct. They would not incorporate the exceptions as discussed by *Aircraft Instrument Radio Co.v. United Parcel Service Inc.*, 117 F.Supp. 2d 1032, (D. Kan. 2000) and were dismissed for failure to file under Carmack unless the plaintiff could prove that the bill of lading did not originate in the U.S.

52. In *W. D. Lawson & Co. v. Penn Cent. Co.*, 456 F.2d 419, 421 (6th Cir. 1972); the Plaintiff was again the shipper. It sued both connecting carriers for the damage and loss of its entire shipment of cotton, destroyed by a fire in one carrier's holding yard. Again, the facts are completely inapposite. Lawson was a direct shipper, the damages were the loss of the goods to in shipment, and the only liability claimed was for negligence.

53. In *Hopper Furs, Inc. v. Emery Air Freight Corp.*, 749 F.2d 1261, 1264 (8th Cir. 1984), the Circuit court's initial summary of facts distinguishes the case and the liability the claimant alleged: “This case deals with a shipment of furs, owned by appellee, which was

lost by appellant during shipment. On March 30, 1982, appellant picked up a shipment of furs from appellee's chief of security, who filled in certain items on the air bill." Again these facts and the negligence claim raised by the furrier are completely inapposite to the present allegations and the claims of conspiracy, conversion, and misappropriation of identity and fraudulent and deceptive trade practice that are alleged by Vidovic.

54. In *Hughes Aircraft Co. v. N. Am. Van Lines, Inc.* 970 F.2d 609, 613 (9th Cir. 1992) the claims did not include claims of conspiracy, conversion, misappropriation or fraud. Also, the plaintiff was in direct privity with a carrier. The shipper's claims of negligence and breach of contract were preempted by Carmack but only after the carrier satisfied the following requirements:

Before a carrier's attempt to limit its liability will be effective, the carrier must (1) maintain a tariff in compliance with the requirements of the Interstate Commerce Commission;<sup>2</sup> (2) give the shipper a reasonable opportunity to choose between two or more levels of liability; (3) obtain the shipper's agreement as to his choice of carrier liability limit;<sup>3</sup> and (4) issue a bill of lading prior to moving the shipment that reflects any such agreement. *Rohner Gehrig Co., Inc. v. Tri-State Motor Transit*, 950 F.2d 1079, 1081 (5th Cir. 1992) (en banc); *Hughes v. United Van Lines, Inc.*, 829 F.2d 1407, 1415 (7th Cir. 1987), *cert. denied*, 485 U.S. 913, 99 L. Ed. 2d 248, 108 S. Ct. 1068 (1988). The carrier has the burden of proving that it has complied with these requirements. *Carmana Designs, Inc., v. North American Van Lines, Inc.*, 943 F.2d 316, 319 (3d Cir. 1991); *Flying Tiger Line v. Pinto Trucking Serv.*, 517 F. Supp. 1108, 1112 (E.D. Pa. 1981), that it *Underwriters at Lloyds' v. N. Am. Van Lines, Inc* 890 F.2d 1112, 1121 (10th Cir. 1989)

55. In the present case, the tariffs that are required by Carmack do not exist. UPS attached tariffs to its Motion; these tariffs expressly deny the application of the tariffs to customers of outlets originators, such as the Plaintiff.

56. In *Underwriters at Lloyds' v. N. Am. Van Lines, Inc* 890 F.2d 1112, 1121 (10th Cir. 1989), *Underwriters* was liable for any damages to furnishings damaged by a family's hired

moving company. As insurer, *Underwriters* filed a claim based on subrogation rights. “(Its) litigation strategy for avoiding the agreed upon limitation of liability in the bill of lading was to plead and to prove common law negligence on the part of North American. (*Underwriters*) reasoned that the bill of lading, being a contract, served only to limit damages in contract actions for an alleged breach of North American's obligations specified in the bill of lading, and that a cause of action in tort is completely separate from an action on the bill of lading itself.” *Id.* at 1114. The Tenth Circuit recognized that its prior jurisprudence excepting claims of negligence from the scope of Carmack preemption was in error. Again, the limited holding does not apply to the present allegations: “The Carmack Amendment preempts state common law remedies against common carriers for negligent loss or damage to goods shipped under a lawful bill of lading.” *Id.* at 1120.

57. Plaintiff does not allege negligence. Her claims, and the factual allegations pled in support of those claims, succinctly state claims for conversion, conspiracy, and misappropriation. These claims are not precluded unless the claimant fails to demonstrate that the conduct was indeed intentional. In addition to the evidence of purposeful misconduct, the Plaintiff has alleged facts (and discovered evidence) supporting a claim for deceptive trade practices. Outlet customers are not shippers and their claims are beyond the scope of Carmack.

58. If the allegations of the complaint are accepted as true, each of the Defendant's arguments for dismissal fail. There is simply no authority supporting the dismissal of the

**MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000271**

Ivana Mlinar v. UPS, et al

Case No.: 50 2008 CA 036246XXXXMB AH

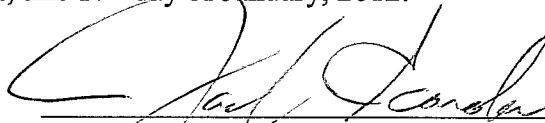
Motion to Continue Trial

Page 18 of 19

claims in the pleading stage. In this case, discovery has demonstrated the reasonableness of those allegations.

WHEREFORE, Plaintiffs' request the Court enter an order denying Defendant UPS's Motion to Dismiss.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all counsel on the attached list, this 17<sup>th</sup> day of January, 2012.



Jack Scarola, (Florida Bar No.: 169440)  
jsx@searcylaw.com

Searcy Denney Scarola Barnhart & Shipley, P.A.

2139 Palm Beach Lakes Boulevard

West Palm Beach, Florida 33409

Phone: (561) 686-6300

Fax: (561) 383-9451

Attorney for Plaintiff

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000272

Ivana Mlinar v. UPS, et al

Case No.: 50 2008 CA 036246XXXXMB AH

Motion to Continue Trial

Page 19 of 19

## COUNSEL LIST

Melissa A. Davis, Esquire  
Angela Adams, Esquire  
Alston & Bird  
1201 West Peach Street, NW  
Atlanta, GA 30309  
Phone: (404)-881-7148  
Fax: (404)-253-8524  
Attorneys for United Parcel Service Inc.

Jeffrey Blaker, Esquire  
Conroy, Simberg, Ganon, Krevans, Abel,  
Lurvey, Morrow & Schefer, P.A.  
1801 Centre Park Drive East, Suite 200  
West Palm Beach, FL 33401  
Phone: (561)-697-8088  
Fax: (561)-697-8664  
Attorneys for Recovery Management  
Corporation d/b/a Cargo Largo

David R. Gutwein, Esquire  
Hamilton, Miller & Birthisel, LLP  
150 SE 2nd Avenue, Suite 1200  
Miami, FL 33131  
Phone: (305)-379-3686  
Fax: (305)-379-3690  
Attorneys for United Parcel Service Inc.

Shannon M. Mahoney, Esquire  
Law Offices of Shannon M. Mahoney, P.A.  
315 11th Street  
West Palm Beach, FL 33401  
Phone: (561)-659-4414  
Fax: (561)-659-6991  
Attorneys for Ivana Vidovic Mlinar

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50 2008 CA 036246XXXXMB  
AH

IVANA VIDOVIC MLINAR,

Plaintiff,

vs.

UNITED PARCEL SERVICE INC., PAK  
MAIL OF WELLINGTON, INC.,  
RECOVERY MANAGEMENT CORP. d/b/a  
CARGO LARGO and AARON ANDERSON,

Defendant,

---

**SECOND AMENDED COMPLAINT**

Plaintiff IVANA VIDOVIC MLINAR, a Florida Resident, files this Second Amended Complaint<sup>1</sup> against Defendants, UNITED PARCEL SERVICE INC., PAK MAIL OF WELLINGTON, INC., RECOVERY MANAGEMENT CORP., and AARON ANDERSON, and alleges:

**JURISDICTIONAL ALLEGATIONS**

1. This is an action for damages that are in an amount in excess of \$15,000.00.
2. Plaintiff IVANA VIDOVIC MLINAR, (also known professionally as Ivana Vidovic; hereinafter, "VIDOVIC") is a resident of Palm Beach County Florida. VIDOVIC'S husband is Frane Mlinar (hereinafter, "Frane") (hereinafter, VIDOVIC and Frane are collectively referenced as "the Mlinars").

---

<sup>1</sup> Plaintiffs' Amended Complaint was filed in 2009 changing the corporate names only. Except for the allegations raised in Count IV against Defendant UPS, page 15, and the additional fact noted in paragraph 26a, this Second Amended Complaint is identical to the prior complaint.

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000274

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 2 of 19

3. PAK MAIL OF WELLINGTON, INC. (hereinafter, "PAK MAIL") is a Florida Corporation with a principal address of 13833 Wellington Trace, Suite E4, Wellington, Palm Beach County, Florida, 33414. PAK MAIL'S Registered Agent for Service of Process is Linda A. Ramos, who may be served at PAK MAIL'S address.

4. UNITED PARCEL SERVICE INC. (hereinafter, "UPS") is registered with the Florida Department of State as a foreign corporation, with a principal address of 55 Glenparkway, NE Atlanta, Georgia, 30328. The Florida Registered Agent for UPS is Corporation Service Company, 1201 Hays Street, Tallahassee, Florida, 32301-2525. This Court has personal jurisdiction over UPS as it has committed the following acts: registered as a foreign corporation doing business in Florida, conducted regular business in Florida through vendors, franchisees, and wholly owned retail outlets, and maintained a regional headquarters in Miami, Florida,

5. RECOVERY MANAGEMENT CORP., d/b/a/ CARGO LARGO (hereinafter, "CARGO LARGO") is a Limited Liability Company domiciled in Missouri; it is referred to by UPS as "overgoods." The Registered Agent for CARGO LARGO is Jennifer Al Bedford, 12502 Manchester Ave., Grandview, Missouri, 64030. CARGO LARGO receives overstock and unclaimed goods from various locations including Florida. CARGO LARGO owns and operates surplus and salvage stores including the Internet based auction house known as "Cargo Largo," which advertises and sells, overstock and lost goods to various locations including Florida.

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 3 of 19

6. Aaron Anderson (hereinafter, "ANDERSON") is an individual living in Kansas City, Missouri who has solicited Florida artists and art buyers in Florida, including VIDOVIC, for the buying and selling of art in Florida.

**ALLEGED FACTS OF THE CASE**

**CONTRACT for BAILMENT**  
**UPS to ship Package to New York**

7. On the evening of November 28, 2005, Frane, acting at VIDOVIC'S direction and for her benefit, contracted with PAK MAIL to ship two (2) paintings via UPS to New York. The paintings, entitled "Advice" and "The Messenger" were created and owned by VIDOVIC.

8. Frane rolled and packaged the painting canvases inside of a fifty-one (51) inch long and four (4) inch diameter PVC pipe. Each end of the pipe was closed with a tightly fitting PVC pipe cap and further secured with silver duct tape. This is a customary method of shipping original paintings.

9. The paintings were to be shipped to New York to Mario Novak's (hereinafter, "Novak") residence at 129 Bermuda Street, Atlantic Beach, New York, 11509. The assigned UPS tracking number provided by PAK MAIL was 1Z0XW5271244846234. Since the UPS truck was at PAK MAIL while Frane was there to ship the paintings, he observed the package being loaded on the UPS truck.

**PACKAGE ARRIVES EMPTY**  
**Paintings Removed Before Arrival and UPS refuses to act**

10. VIDOVIC had arranged to exhibit and offer the paintings for sale at the Mario Novak Gallery, owned by Novak. The Mlinars flew to New York for the exhibit and arrived

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000276

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 4 of 19

on the same day that the paintings were scheduled to arrive. They planned to stay at Novak's residence. Novak met the Mlinars at the airport while his fiancée, Rachel Koenig (hereinafter, "Koenig"), remained at Novak's residence to accept the paintings.

11. While Novak and the Mlinars were driving from the airport to Novak's house, Novak received a telephone call from Koenig reporting that the container had been delivered; however, the duct tape on the cover of one side of the PVC tube had been sliced and the painting canvases had been removed.

12. Novak and the Mlinars arrived at Novak's house a short time after receiving Koenig's telephone call. They were able to locate the UPS truck as it continued to make deliveries in the neighborhood. When they questioned the two UPS deliverymen about the opened package and missing paintings, both advised that the package had already been opened when they received it. The UPS deliverymen stated that they delivered the package in exactly the same condition it had been when they themselves received it before starting their route.

13. Frantic, the Mlinars immediately called UPS to report the missing paintings and initiate an investigation. They explained the totality of the circumstances to UPS: (1) Frane witnessed the package being placed into UPS custody from PAK MAIL; (2) the empty package arrived at the intended destination; (3) Koenig received the empty package directly from a UPS delivery man when it was delivered to the intended destination; and (4) the UPS deliverymen acknowledged to the Mlinars and Novak that the package was sliced open and the paintings had been removed prior to their receipt of the package.

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000277

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 5 of 19

14. UPS insisted that it would do nothing about the missing paintings until a report was filed through PAK MAIL of Wellington.

15. When the Mlinars arrived home two days later, they reported the missing paintings to Roly Ramos (hereinafter, "Ramos"), the proprietor of PAK MAIL of Wellington. VIDOVIC provided Ramos with the PAK MAIL shipping receipt, pictures of both "Advice" and "The Messenger," and a copy of an appraisal reflecting that "Advice," alone, had been appraised at \$20,000. They also advised PAK MAIL and UPS that the paintings were labeled on the back with the identity of the artist and her address.

16. Ramos advised that he filed the claim with the UPS Investigations Department. Although VIDOVIC checked in with Ramos frequently, UPS never responded to the claim. Approximately eight (8) months later, Ramos advised VIDOVIC that she was entitled to \$100 for the missing package. As a result of the botched delivery, Ramos issued the Mlinars \$100.00 in credit for free future shipping. VIDOVIC was deeply distraught over the loss of the paintings and the missed opportunities and exposure. Since the identity of the owner of the goods would have been readily identifiable had the paintings remained within UPS control, VIDOVIC assumed that the paintings had to have been stolen and immediately removed from UPS control. They never imagined that the company, after having been placed on notice of the loss, would have kept and sold off the contents of a package while the packaging was delivered to its destination.

## CONVERSION

### Rifling through Packages and Sending Contents to Overgoods

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000278

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 6 of 19

17. Approximately two years later, VIDOVIC received a shocking telephone call from ANDERSON stating that he had just acquired "Advice". While somewhat relieved to know the location of "Advice", VIDOVIC was appalled once she became aware of the circumstances under which ANDERSON obtained it: ANDERSON purchased "Advice" from CARGO LARGO who had received the painting from UPS.

18. VIDOVIC was instantly angered as she realized the scam to which she had fallen victim: If the paintings were ever "lost," their packaging would never have arrived at its proper destination. If the paintings were stolen by a rogue UPS employee or even by a trespasser, they should not have ended up at UPS' lost goods contractor's warehouse and listed for auction. Rather than transfer the goods as they were obliged to do, UPS, without consent, allowed the package to be infiltrated, its contents removed and delivered to its servicer for lost goods.

19. Upon information and belief, UPS selectively located the contents based on their nature, probable worth, and lack of insurance. UPS then sent the paintings to CARGO LARGO for some as of yet undiscovered consideration exceeding the \$100.00 liability coverage provided for all shipments. Upon information and belief, UPS utilized the information on the back of the painting including VIDOVIC'S name to catalogue, sell and/or distribute the item to CARGO LARGO. In any event certain things are clear: UPS allowed the package to be infiltrated and the paintings removed; UPS allowed an empty package to arrive at the proper destination; UPS never performed a diligent search of its lost goods although it utilized the very same information and effort a search would have required to redistribute the package to CARGO LARGO; UPS

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 7 of 19

allowed the bare goods from within the package to be sent to overgoods for sale; UPS directly benefited by the infiltration.

20. VIDOVIC asked ANDERSON, the purchaser of her painting from CARGO LARGO, how he was able to locate her. He replied that he “Google” searched her name as it appeared on the label printed on the back of the painting and supplied on the CARGO LARGO invoice. He was readily able to find her contact information on the Internet. VIDOVIC was enraged to learn that ANDERSON had handily contacted her using only the painting label information - information that was at all times available to UPS even after the paintings were stripped of their packaging and transferred from UPS to CARGO LARGO as a “lost good.”

21. VIDOVIC inquired whether “The Messenger” was also at the CARGO LARGO auction. ANDERSON replied that “The Messenger” was auctioned in the same lot; however, he did not know the identity of the purchaser.

**MISAPPROPRIATION of GOODS AND IDENTITY**  
**Exploitation of the Artist**

22. Significantly, the auctioneer at CARGO LARGO was sure to inform the prospective buyers that the paintings were original Ivana Vidovic artwork that had come to CARGO LARGO from UPS’S lost goods. In fact, CARGO LARGO provided ANDERSON with an acknowledgement of sale, identifying the painting and artist as “the original painting on canvas, ‘Advice,’ by Ivana Vidovic.”

23. The auction for “Advice” started at \$1,400, but ANDERSON was able to purchase the painting for \$1,000. During the telephone conversation, ANDERSON lauded VIDOVIC’S talent. He then asked the value of “Advice.” He boldly explained the he intended

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 8 of 19

to place the painting for sale on his eBay web site. VIDOVIC explained that “Advice” had been appraised at \$20,000. ANDERSON was overjoyed to learn the appraisal value and advised that he would use it as the starting eBay bid. ANDERSON even asked VIDOVIC whether she might be interested in purchasing the painting from him; she declined his offer. Alternatively, ANDERSON asked if VIDOVIC might introduce him to art dealers in the Palm Beach Community where potential buyers might be more familiar with VIDOVIC’S work; she declined this request as well.

24. ANDERSON continued to ask VIDOVIC questions regarding her history as an artist and the history of the painting. Soon thereafter, when ANDERSON did, in fact, list “Advice” for sale on eBay, he included the details of his conversation with VIDOVIC and even offered to personally introduce the potential buyer to VIDOVIC. He, like UPS and CARGO LARGO, knowingly used the identity of the artist in a commercial message to obtain a sale.

25. Over the next couple of weeks, ANDERSON continued to contact VIDOVIC to inquire whether she might reconsider his offer to buy the painting or introduce him to local art dealers in Palm Beach. Interested in maintaining communication, VIDOVIC demurred. ANDERSON also questioned the value of “The Messenger”. VIDOVIC advised that the value was approximately \$10,000. Soon thereafter, ANDERSON acquired “The Messenger”.

26. VIDOVIC has recently learned that ANDERSON has placed “Advice” and “The Messenger” for sale in two separate listings on craigslist. Even more insulting, a third listing on craigslist offers both “Advice” and “The Messenger” for the exchange of a late model Mercedes. ANDERSON’S ad reads as follows:

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 9 of 19

**I have two stunningly beautiful originals by the one and only Floridian listed painter, Ivana Mlinar. 2001 "Advice" and 2005 "The Messenger". Her works are appraised at \$30,000 for the two canvases, in hand, and you will have direct contact with the artist herself...introduced by me to the new owner. I will trade both of these paintings for a late model Mercedes Benz in superb condition. No high miles, no restoration project, I'm talking about a really nice Mercedes. If you love Ivana's work, you will have to own these two originals. Interested? This is a serious deal for a serious collector looking to upgrade their collection. If the Mercedes just sits in the garage, why not explore the possibility. Have another high-end automobile or classic that's not a Mercedes? I'll listen. Call . . . .**

**WILLFUL and MALICIOUS CONDUCT**  
**Victims of a Larger Scheme**

26a. VIDOVIC has recovered her paintings from Aaron Anderson. The paintings, reputation of the artists and her career remain damaged.

27. ANDERSON explained to VIDOVIC that he regularly purchased unclaimed or recovered luxury merchandise from transportation giants, like UPS, through CARGO LARGO. He further explained that he was considered a "senior buyer" with CARGO LARGO; therefore, he is given the first right of purchase in the fine art category. He further noted that many times he contacts the original artists and they state a scenario similar to the VIDOVIC'S. Indeed, other artists who had thought that an item of their work was somehow lost, destroyed or perhaps, stolen by a rogue worker during UPS delivery, finally discovered that it was eventually sold as an UPS lost item.

28. In fact, UPS employees report on certain internet blogs that they routinely catalogue contents according to eBay and CARGO LARGO categories as they are removed from bins of lost, misplaced, or stolen goods. The goods are described, packaged, and shipped to these purveyors for as of yet undisclosed consideration.

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 10 of 19

29. Upon information and belief, UPS does not remove the contents from every box it searches; instead, some packages arrive at certain end points with the packaging sliced open and the goods remaining. Tellingly, these items would not garner more than the \$100.00 insured loss limit automatically applicable to all packages.

30. Upon information and belief, UPS selectively locates certain contents based on their nature, probable worth, and lack of insurance. UPS then sends them to CARGO LARGO for some as of yet undiscovered consideration exceeding the company's \$100.00 per loss liability coverage.

### **CLAIMS**

#### **COUNT I**

##### **Conversion**

##### **(UPS, Recovery Management)**

31. Facts alleged in paragraphs 1-30 are incorporated as if fully set out herein.

32. UPS, CARGO LARGO, and PAK MAIL as noted above, have engaged in a fleecing operation whereby certain articles whose value is deemed to be above that of the insured liability (including VIDOVIC'S paintings) are removed from the packaging and subsequently sold at auction as goods that were undeliverable or otherwise lost in transit. In reality, the shipping and management of these goods (including VIDOVIC'S paintings) is not the purpose of their acts or the intentions upon the receipt of certain property.

33. UPS, PAK MAIL and CARGO LARGO intended to convert VIDOVIC'S property once it was received at PAK MAIL and at all times afterwards.

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 11 of 19

34. Such conversion directly and proximately caused damages to VIDOVIC including the loss of the property and the lost opportunities alleged in paragraphs 10-16, as well as any prejudgment interest awardable from the date of loss.

WHEREFORE, the Plaintiff, VIDOVIC, demands judgment against the Defendants UPS CARGO LARGO, and PAK MAIL for compensatory damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court may deem appropriate under the circumstances. Plaintiff, VIDOVIC, further demands a trial by jury.

**COUNT II**

**Profiting by Criminal Activity**  
**(UPS, CARGO LARGO, PAK MAIL)**

35. Facts alleged in paragraphs 1-30 are incorporated as if fully set out herein.

36. Defendants UPS, CARGO LARGO, and PAK MAIL have systematically taken artwork as a shipper of goods. They have relied upon certain legal protections that are afforded by Federal Law to limit liabilities for these works at the insured amount. It is not coincidence that VIDOVIC, through ANDERSON, discovered the paintings just after the two year limitation to bring a negligence action afforded under the Federal Carmack Amendment expired. (The Carmack Amendment provides a uniform cause of action for the clients of interstate shipping companies whose property was lost or destroyed through the negligence of the shipper. Carmack is a non-exclusive Federal statute which would preempt causes of action based on the negligence of the carrier; it limits damages to the replacement or bartered for insurance value but provides strict liability for loss or damage.)

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 12 of 19

37. In this scheme, the Defendants UPS, CARGO LARGO, and PAK MAIL have engaged in obtaining property by falsely impersonating and/or representing themselves as part of a shipping enterprise rather than a fencing organization and have thus systematically violated F.S. §817.02.

38. The course of conduct described above includes "criminal acts" as defined by F.S. §772.102 (2), which lists False Pretenses/Fraud including F.S. §817.02: "Obtaining property by false personation" as a criminal act satisfying the statutory predicate for Florida RICO recovery. The activity is a pattern of similar acts as it did not stem out of one single contractor transaction against one or more related persons.<sup>2</sup>

39. The UPS, CARGO LARGO, and PAK MAIL Defendants' engagement in this pattern of activity has caused them to be liable to VIDOVIC for three-fold the damages of any resulting injuries to the Plaintiff. These Defendants are also liable for the attorney fees and appellate costs of any claims made for relief of these injuries.<sup>3</sup>

---

<sup>2</sup> F.S. 772.104 (4): "Pattern of criminal activity" means engaging in at least two incidents of criminal activity that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents; provided that the last of such incidents occurred within 5 years after a prior incident of criminal activity. For the purposes of this chapter, the term "pattern of criminal activity" shall not include two or more incidents of fraudulent conduct arising out of a single contract or transaction against one or more related persons.

<sup>3</sup> F.S. § 772.104. **Civil cause of action:** (1) Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts.

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000285

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 13 of 19

40. Such systematic criminal activity directly and proximately caused damages to VIDOVIC including the loss of the property and the lost opportunities alleged in paragraphs 10-16, as well as any prejudgment interest awardable from the date of loss.

41. In addition, the activity included a public auction of VIDOVIC'S work, including the use of her name without consent. That activity further resulted in the continued misuse of her identity on the World Wide Web through venues such as craigslist, eBay and CARGO LARGO'S website. This has caused injury to the reputation of VIDOVIC who sells works exclusively through reputable art galleries. The unauthorized marketing of works of art attributed to VIDOVIC exposes VIDOVIC to claims that she is in violation of exclusivity contracts she has with these venerable galleries. In addition, the manner of marketing has directly and proximately caused injury to the goodwill associated with the VIDOVIC'S name.

WHEREFORE, the Plaintiff, VIDOVIC, demands judgment against the Defendants UPS, CARGO LARGO, and PAK MAIL for compensatory, pre-judgment and post-judgment interest, treble damages and attorney fees allowed by statute as described above, and costs. Plaintiff, VIDOVIC, further demands a jury trial.

**COUNT III**  
**UNAUTHORIZED PUBLICATION OF NAME OR LIKENESS:**  
**F.S. § 540.08**  
**UPS, Recovery Management, ANDERSON**

42. Facts alleged in Paragraphs 1-30 and 41 are incorporated as if fully set out herein.

43. Defendants UPS, CARGO LARGO, and ANDERSON each, individually, and in conspiracy used VIDOVIC'S name and likeness (her artistic signature) in connection with the resale, advertisement and other distribution of artistic productions (the paintings) where

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000286

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 14 of 19

VIDOVIC had not consented to the use of her name and likeness in connection with the initial sale or distribution thereof. UPS and CARGO LARGO ultimately published that name in an auction sale and sold the goods wrongfully appropriated.

44. UPS, CARGO LARGO, and ANDERSON knew that VIDOVIC had not consented to the initial distribution as the painting itself was wrongfully converted.

45. Because the contents slip of the bill of lading detailed that the contents of the package included artwork, UPS and CARGO LARGO targeted VIDOVIC'S package with the specific intent of reselling her art product and commercially utilizing her name. Further, because the packages were sent without additional insurance, UPS and CARGO LARGO determined that the artist would likely be unable or disinclined to pursue any remedy for the injuries sustained.

46. ANDERSON procured the painting with the intent to misappropriate the artist's name although he knew or reasonably should have known that the painting had been misappropriated from the artist. Furthermore, after he ascertained the theft to be certain, he continued to utilize her name in order to sell her paintings.

47. UPS, CARGO LARGO, and ANDERSON therefore violated the protections afforded by Fla. Stat. §540.08.

48. Such misappropriation directly and proximately caused VIDOVIC damages appropriately remedied by §540.08 including the loss of a reasonable royalty, compensatory damages (such as the loss of currency associated with her name as described in paragraph 41), and the punitive or exemplary damages provided by the statute.

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 15 of 19

WHEREFORE, Plaintiff, VIDOVIC, demands judgment against the Defendants UPS, CARGO LARGO, and ANDERSON for compensatory damages, pre-judgment and post-judgment interest, costs, and such other and further relief as the Court may deem appropriate under the circumstances. Plaintiff, VIDOVIC, further demands a trial by jury.

**COUNT IV**

**Florida's Deceptive and Unfair Trade Practices Act, F.S. Chapter 501, Part II**

49. Plaintiff re-alleges and incorporates Paragraphs 1 through 30, 40 and 48 of this Complaint as if fully set forth herein and further alleges as follows:

50. Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. '501.201, et seq. ("FDUTPA"), prohibits "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce." § 501.204, Fla. Stat.

51. The stated purpose of FDUTPA is to protect consumers from "those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." § 501.202, Fla. Stat.

52. Defendant has engaged in, and continues to engage in, the conduct of trade and/or commerce in the State of Florida.

53. The policies, acts and practices alleged herein were intended to result and did result in the payment of UPS rates under false pretenses and through misleading billing practices. Specifically:

- a. UPS enters into agreements with third-party retailers and UPS store retail outlets.

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000288

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 16 of 19

- b. The agreements require the outlets to feature UPS as its preferred shipper.
- c. UPS advertises its reliability nationally.
- d. UPS provides identification and locations of third-party retailers and UPS retail store outlets directly to consumers via its 1-800-PICK-UPS telephone service and web-sites.
- e. UPS allows the third-party retailers and the UPS store outlets to issue a UPS tracking number to the consumer.
- f. Most third-party outlet forms allow consumers to fill out shipper return address information.
- g. Unbeknownst to the consumer, the same third-party agreements that require the retailer to feature UPS as a preferred carrier prohibit the retailer from listing the consumer's information on the package.
- h. UPS requires third-party retailers and the UPS store to use "WorldShip" a trademarked UPS electronic database that stores shipping label information which includes only the retailers name as the "shipper of record," the location for delivery, the recipient "the consignee," shape of the package, and the class and rate for delivery (for example, UPS ground.) Retailers are prohibited from entering the consumers information.
- i. Other shippers, such as the U.S. Mail, have utilized return addresses for decades.
- j. The denial of any liability to third-party consumers and the self-declared definition of the retailer as the "shipper of record" is disclaimed to the public only by tariffs which are available on-line.
- k. The tariffs are styled as though they have the force and protection of law and imply that UPS's conduct has been sanctioned by some government agency.
- l. Consumers are only referred to the tariffs when a package is lost or damaged at which time UPS refuses to deal with consumers of third-party vendors; consumers call UPS based on the provided tracking number information.
- m. UPS has contracted with an over-goods servicer (Cargo Largo) to codify the contents of undeliverable packages based on personal information that may be found therein.
- n. Since UPS does not record consumer's personal information or identification, over-goods cannot possibly be returned to a consumer or to their associated

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000289

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 17 of 19

tracking number. In fact, the tracking number is completely unassociated with the consumer.

- o. Cargo Largo then buys the unresolved over-goods from UPS and/or sells them on a consignment basis.
- p. In any one year, UPS makes more money from Cargo Largo's payment for goods than it has paid to the over-goods servicer for its efforts to find packages for UPS consumers over the last 8 years.
- q. In fact, the only payment UPS makes to Cargo Largo as a servicer of lost goods is bonuses that are paid based on percentages of found items, so called "voids" of sale.

54. Plaintiff was charged an unfair and deceptive rate because she thought her package was being shipped by her through UPS and that she would be able to track the package through UPS. Plaintiff entrusted UPS with her paintings based on that representation.

55. Instead of paying for the infrastructure to support the service that it has deceptively represented to the public as available through thousands of third-party and UPS stores, UPS hands over unclaimed goods to a separate company—a conveyance for which it makes money. Based upon its refusal to accept consumer information, UPS is virtually guaranteed that it will never pay nearly as much to that servicer as it receives from the servicer.

56. Defendant's conduct of charging these fees to Plaintiff violates FDUTPA. UPS's acceptance of goods for shipment from third party servicers under such limitations violates FDUPA.

57. Plaintiff sustained damages as a direct and proximate result of Defendant's unfair and unconscionable practices as alleged in paragraphs 40 and 48 above. Section 501.211(2),

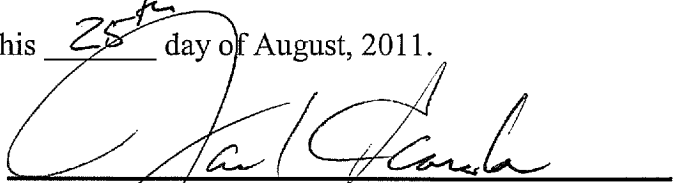
MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000290

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 18 of 19

Florida Statutes, provides Plaintiff and the Class members a private right of action against Defendant and entitles them to recover their actual damages, plus attorney fees and costs.

**WHEREFORE**, Plaintiff demands judgment against Defendant for compensatory damages, pre and post judgment interest, attorney fees, injunctive and declaratory relief, costs incurred in bringing this action, and any other relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to all counsel on the attached list, this 25<sup>th</sup> day of August, 2011.



JACK SCAROLA  
Florida Bar No.: 169440  
Searcy Denney Scarola Barnhart & Shipley, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
Phone: (561) 686-6300  
Fax: (561) 684-5816  
Attorneys for Plaintiff

And

---

SHANNON MAHONEY  
Florida Bar No.: 0194948  
Law Offices of Shannon M. Mahoney, P.A.  
315 11<sup>th</sup> Street  
West Palm Beach, FL 33401  
Phone: (561) 659-4414  
Fax: (561) 659-6991  
Attorney for Plaintiff

Ivana Mlinar v. UPS, et al  
Case No.: 50 2008 CA 036246XXXXMB AH  
Second Amended Complaint  
Page 19 of 19

**COUNSEL LIST**

Ms. Shannon M. Mahoney, Esquire  
Law Offices of Shannon M. Mahoney, P.A.  
Attorney For: Ivana Mlinar  
315 11th Street  
West Palm Beach, FL 33401  
Phone: (561) 659-4414  
Fax: (561) 659-6991

David R. Gutwein, Esquire  
Hamilton, Miller & Birthisel, LLP  
Attorney For: United Parcel Service Inc.  
150 SE 2nd Avenue, Suite 1200  
Miami, FL 33131  
Phone: (305) 379-3686  
Fax: (305) 379-3690

Ms. Angela Adams, Esquire  
Alston & Bird, LLP  
Attorney For: United Parcel Service Inc.  
1201 W. Peachtree Street NW  
Atlanta, GA 30309  
Phone: (404) 881-7000  
Fax: (404) 253-8434

Robert J. Mayer, Esquire  
Conroy, Simberg, Gannon, Krevans, Abel,  
Lurvey, Morrow & Schefer, P.A.  
Attorney For: Recovery Management  
Corporation d/b/a Cargo Largo  
1801 Centre Park Drive East, Suite 200  
West Palm Beach, FL 33401  
Phone: (561) 697-8088  
Fax: (561) 697-8664

|    |                                                     |    |                                        |
|----|-----------------------------------------------------|----|----------------------------------------|
| 1  | IN THE CIRCUIT COURT OF THE                         | 1  | APPEARANCES (CONT.)                    |
| 2  | FIFTEENTH JUDICIAL CIRCUIT                          | 2  |                                        |
| 3  | IN AND FOR PALM BEACH COUNTY, FLORIDA               | 3  | FOR THE DEFENDANT, RECOVERY MANAGEMENT |
| 4  |                                                     | 4  | CORP. d/b/a CARGO LARGO:               |
| 5  | IVANA VIDOVIC MLINAR,                               | 5  | MICHAEL R. MORLEY, ESQUIRE             |
| 6  | PLAINTIFF,                                          | 6  | CONROY, SIMBERG, GANNON, KREVANS,      |
| 7  | V.                                                  | 7  | ABEL, LURVEY, MORROW & SCHEFER, PA     |
| 8  | CASE NO. 50 2008 CA 036246XXXXMB                    | 8  | 1801 Centre Park Drive East            |
| 9  | DIVISION AH                                         | 9  | Suite 200                              |
| 10 | UNITED PARCEL SERVICE INC., et al.,                 | 10 | WEST PALM BEACH, FLORIDA 33401         |
| 11 | DEFENDANT(s).                                       | 11 | [VIA VIDEOCONFERENCE]                  |
| 12 |                                                     | 12 |                                        |
| 13 |                                                     | 13 | VIDEOGRAPHER:                          |
| 14 | VIDEO VIDEOCONFERENCE DEPOSITION FOR THE PLAINTIFF, | 14 | JOHNBEN LACY                           |
| 15 | IVANA VIDOVIC MLINAR:                               | 15 |                                        |
| 16 | VOLUME 1                                            | 16 |                                        |
| 17 | CONFIDENTIAL                                        | 17 |                                        |
| 18 |                                                     | 18 |                                        |
| 19 | The Video Videoconference Deposition                | 19 |                                        |
| 20 | of Brian Anthony Konesko, taken in the              | 20 |                                        |
| 21 | above-styled matter at Court Reporting Services,    | 21 |                                        |
| 22 | Inc., 6013 Brownsboro Park Boulevard, Suite A,      | 22 |                                        |
| 23 | Louisville, Kentucky, on the 4th day of February,   | 23 |                                        |
| 24 | 2011, beginning at 10:04 a.m.                       | 24 |                                        |
| 25 |                                                     | 25 |                                        |
| 1  | APPEARANCES                                         | 1  | INDEX TO EXAMINATION                   |
| 2  |                                                     | 2  |                                        |
| 3  | FOR THE PLAINTIFF, IVANA VIDOVIC MLINAR:            | 3  | PAGE                                   |
| 4  | JACK SCAROLA, ESQUIRE                               | 4  | EXAMINATION BY MS. HATFIELD ..... 6    |
| 5  | MARA HATFIELD, ESQUIRE                              | 5  | EXAMINATION BY MR. MORLEY ..... 159    |
| 6  | SEARCY, DENNEY, SCAROLA,                            | 6  | EXAMINATION BY MS. HATFIELD ..... 185  |
| 7  | BARNHART & SHIPLEY, PA                              | 7  |                                        |
| 8  | 2139 Palm Beach Lakes Boulevard                     | 8  |                                        |
| 9  | WEST PALM BEACH, FLORIDA 33409                      | 9  | INDEX TO EXHIBITS                      |
| 10 | [VIA VIDEOCONFERENCE]                               | 10 |                                        |
| 11 |                                                     | 11 | PAGE                                   |
| 12 | SHANNON M. MAHONEY, ESQUIRE                         | 12 | EXHIBIT A ..... 87                     |
| 13 | LAW OFFICES OF SHANNON M. MAHONEY, PA               | 13 | EXHIBIT B ..... 88                     |
| 14 | 315 11th Street                                     | 14 | EXHIBIT C ..... 88                     |
| 15 | WEST PALM BEACH, FLORIDA 33401                      | 15 | EXHIBIT D ..... 88                     |
| 16 |                                                     | 16 | EXHIBIT E ..... 92                     |
| 17 | FOR THE DEFENDANT, UNITED PARCEL SERVICE,           | 17 | EXHIBIT F ..... 93/94                  |
| 18 | INC.:                                               | 18 | EXHIBIT G ..... 107                    |
| 19 | ANGELA ADAMS, ESQUIRE                               | 19 | EXHIBIT H ..... 107                    |
| 20 | ALSTON & BAIRD, LLP                                 | 20 |                                        |
| 21 | 1201 West Peachtree Street                          | 21 |                                        |
| 22 | One Atlantic Center                                 | 22 |                                        |
| 23 | ATLANTA, GEORGIA 30309                              | 23 |                                        |
| 24 |                                                     | 24 |                                        |
| 25 |                                                     | 25 |                                        |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">45</p> <p>1 liability to the Third-Party Retailer is subject to</p> <p>2 the limitations set forth in the applicable UPS</p> <p>3 Tariff or UPS Rate and Service Guide."</p> <p>4 So basically, my understanding is that this</p> <p>5 tariff and service guide is an agreement or a</p> <p>6 limitation of terms between UPS and the</p> <p>7 third-party retailer. It is not really an agreement</p> <p>8 or a limitation of terms between UPS and the</p> <p>9 customer of the third-party retailer, such as Ivana</p> <p>10 Vidovic.</p> <p>11 MS. ADAMS: Objection.</p> <p>12 BY MS. HATFIELD:</p> <p>13 Q. Would that be correct?</p> <p>14 MS. ADAMS: You can answer. You can</p> <p>15 answer the question.</p> <p>16 A. Okay. The -- the -- well, the person</p> <p>17 that -- that has this account that shipped the</p> <p>18 package is the shipper of record. It -- they would</p> <p>19 be the person that we would deal with.</p> <p>20 They -- I -- I don't know that I know all of the</p> <p>21 inner workings of it to answer what your question</p> <p>22 is, but from -- from our standpoint, the -- the third</p> <p>23 party in this case or the outlet that has the</p> <p>24 account that the person walked into to ship the</p> <p>25 package is the shipper of record. All of our</p> | <p style="text-align: right;">47</p> <p>1 BY MS. HATFIELD:</p> <p>2 Q. I just have a few questions on this</p> <p>3 document. The first thing I'd like to look at is --</p> <p>4 oh, do you know what? I decided this morning that</p> <p>5 I -- I don't -- the one question I had on this, I</p> <p>6 don't want to ask anymore</p> <p>7 A. Okay.</p> <p>8 Q. It's just -- it's a -- it's redundant. We</p> <p>9 don't need to -- it so we're going to skip over that</p> <p>10 document.</p> <p>11 The next document I would like to look at is</p> <p>12 UPS114 through UPS115, the UPS Authorized</p> <p>13 Shipping Outlet Agreement, the tube [phonetic]</p> <p>14 document.</p> <p>15 The first item I'd like to look at is Item</p> <p>16 Number 3 that says, "You agree that UPS will be</p> <p>17 your preferred and recommended carrier of choice</p> <p>18 for all small package, Ground, air, and</p> <p>19 International shipments."</p> <p>20 Well, actually, you know what? I'm sorry.</p> <p>21 Before we even get into that, I guess I should talk</p> <p>22 about what the document itself is. This document</p> <p>23 looks to be an agreement between UPS and those</p> <p>24 third-party retailers that we were just talking</p> <p>25 about.</p> |
| <p style="text-align: right;">46</p> <p>1 dealings and transactions would be through --</p> <p>2 through that third party.</p> <p>3 BY MS. HATFIELD:</p> <p>4 Q. Okay. Thank you. Do you have anything</p> <p>5 to do with the writing or authorship of the general</p> <p>6 tariff, the document we just reviewed?</p> <p>7 A. At -- at times I do sit in on meetings</p> <p>8 where we talk about the tariffs. I -- I believe the</p> <p>9 last time I did -- probably the first time would be</p> <p>10 sometime in 2009, and the last one would probably</p> <p>11 have been mid year last year.</p> <p>12 Q. Thank you. Okay. The next document I</p> <p>13 wanted to look at is UPS Rate and Service Guide,</p> <p>14 Retail Rates. This is a document Bate-numbered</p> <p>15 UPS30 --</p> <p>16 A. Okay.</p> <p>17 Q. -- through UPS113?</p> <p>18 THE VIDEOGRAPHER: You have about</p> <p>19 five minutes left on the tape.</p> <p>20 MS. HATFIELD: Okay.</p> <p>21 BY MS. HATFIELD:</p> <p>22 Q. Did you need a break at this point, sir?</p> <p>23 A. No, I'm fine.</p> <p>24 Q. Okay.</p> <p>25 MS. ADAMS: He's okay.</p>                                                                                                                                                                                                          | <p style="text-align: right;">48</p> <p>1 MS. ADAMS: I'm --</p> <p>2 BY MS. HATFIELD:</p> <p>3 Q. Would you agree?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And this document itself is a form</p> <p>6 document in that the second page, 115, is not</p> <p>7 signed by anybody. So it's assumedly, then,</p> <p>8 offered by UPS as a representation of such</p> <p>9 agreements and not necessarily the agreement</p> <p>10 between Pak Mail, the third-party retailer in this</p> <p>11 case, and UPS.</p> <p>12 MS. ADAMS: Objection. Question?</p> <p>13 BY MS. HATFIELD:</p> <p>14 Q. Okay. Is this the agreement between Pak</p> <p>15 Mail and UPS, or is this an example of what the</p> <p>16 agreement between UPS and Pak Mail most likely</p> <p>17 looks like?</p> <p>18 A. No, it's not a -- a copy of the actual</p> <p>19 agreement with Pak Mail.</p> <p>20 MS. ADAMS: Object. . .</p> <p>21 THE REPORTER: Did you say</p> <p>22 "objection" --</p> <p>23 MS. ADAMS: Oh, yes.</p> <p>24 THE REPORTER: -- just then?</p> <p>25 MS. ADAMS: Yes.</p>                                                                                                                                                                                                          |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">49</p> <p>1 THE REPORTER: Okay. I just wanted --</p> <p>2 MS. ADAMS: I'm sorry.</p> <p>3 THE REPORTER: -- to make sure. Thank</p> <p>4 you.</p> <p>5 A. And it's dated 2005. So it -- it -- I -- I</p> <p>6 don't have any experience in this -- this actual</p> <p>7 area as far as signing these, but it looks like it</p> <p>8 would be the form that would be in use at that</p> <p>9 time.</p> <p>10 BY MS. HATFIELD:</p> <p>11 Q. Okay. Would you expect that UPS would</p> <p>12 still have a record of the copy of its agreement</p> <p>13 with all third-party retailers that it's currently</p> <p>14 engaged with?</p> <p>15 A. That they're currently engaged with --</p> <p>16 Q. Yes.</p> <p>17 A. -- or -- I -- I don't know. I -- I would</p> <p>18 have to -- to ask. I -- I don't know what that --</p> <p>19 Q. That's fair.</p> <p>20 A. -- what that process is.</p> <p>21 Q. No, "I don't know" is -- is a great answer</p> <p>22 if you don't know.</p> <p>23 Okay. Now we'll get back to the actual things</p> <p>24 I just wanted to note in the document. Number 3</p> <p>25 says that, "You agree that UPS will be your</p>                                                                         | <p style="text-align: right;">51</p> <p>1 THE VIDEOGRAPHER: -- videotape.</p> <p>2 MS. HATFIELD: Okay.</p> <p>3 THE VIDEOGRAPHER: The time is 11:03</p> <p>4 a.m. End of Tape 1.</p> <p>5 [WHEREUPON, a brief recess is taken.]</p> <p>6 THE VIDEOGRAPHER: The time is 11:05</p> <p>7 a.m. Beginning of Tape 2 in the videotape</p> <p>8 deposition of Brian Konesko.</p> <p>9 MS. HATFIELD: Okay. Thank you.</p> <p>10 BY MS. HATFIELD:</p> <p>11 Q. We were discussing Item Number 3, that</p> <p>12 UPS will be the preferred and recommended carrier</p> <p>13 of choice for all small package, Ground, air, and</p> <p>14 International shipments at these third-party</p> <p>15 outlets. Would you -- would you think it's -- is it</p> <p>16 fair to state that if I walk into a store and UPS is</p> <p>17 the preferred carrier, then, as a customer, I in</p> <p>18 some way feel I'm negotiating with UPS and not</p> <p>19 with the third-party retailer?</p> <p>20 A. I --</p> <p>21 MR. MORLEY: Form.</p> <p>22 A. -- no, I -- I wouldn't feel that. I mean --</p> <p>23 no.</p> <p>24 BY MS. HATFIELD:</p> <p>25 Q. All right. Item Number 5, at first it</p>                                                                                                                                                                                                                                                                     |
| <p style="text-align: right;">50</p> <p>1 preferred and recommended carrier of choice for</p> <p>2 all small package, Ground, air, and International</p> <p>3 shipments."</p> <p>4 Why do you think that is? If I -- if I walk into</p> <p>5 Pak Mail and there's several carriers available to</p> <p>6 me, but UPS wants to be the -- the primary</p> <p>7 recommended carrier, why do you think UPS wants</p> <p>8 that?</p> <p>9 A. To -- to get additional volume. I -- I --</p> <p>10 for example, in -- in my own case, when I -- as you</p> <p>11 can tell, I've been with United Parcel Service an</p> <p>12 awful long time. When I call someone, their --</p> <p>13 their preferred provider may be one of our</p> <p>14 competitors, but I still have the option to say that</p> <p>15 I will -- that I -- I want it shipped UPS if they want</p> <p>16 to send it to my house.</p> <p>17 And that would kind of be the same thing; is it</p> <p>18 may be the preferred, but they have the option --</p> <p>19 the customer still has the option to do -- they're --</p> <p>20 they're the customer.</p> <p>21 Q. Right.</p> <p>22 THE VIDEOGRAPHER: I need to switch</p> <p>23 the --</p> <p>24 BY MS. HATFIELD:</p> <p>25 Q. Would you --</p> | <p style="text-align: right;">52</p> <p>1 reiterates what we just read in the tariff, that "All</p> <p>2 delivery service [sic] provided by UPS pursuant to</p> <p>3 this Agreement are provided to you, and not to</p> <p>4 your customer. UPS will deal directly only with</p> <p>5 you in all matters concerning its delivery service</p> <p>6 provided to you under your shipper number,</p> <p>7 including but not limited to: Tracing requests,</p> <p>8 Claims and guarantees, C.O.D. preparation and</p> <p>9 remittance, Return of undeliverable packages and</p> <p>10 letters, Proper packaging and labeling."</p> <p>11 If Ivana Vidovic notices that the painting</p> <p>12 contents of the package she was shipping were</p> <p>13 not, in fact, in the shipment package when it</p> <p>14 arrived and a call is placed to UPS, because of</p> <p>15 this rule, would UPS engage in a discussion with</p> <p>16 Ivana Vidovic?</p> <p>17 A. If she called the 800-number and -- and</p> <p>18 talked with a person at that 800-number, we -- we</p> <p>19 would have a conversation with her; but the most</p> <p>20 likely result would be to return her back to the --</p> <p>21 the shipper of record to put in a formal request</p> <p>22 and -- and ask for information on that shipment.</p> <p>23 Q. And who would she direct that formal</p> <p>24 request to?</p> <p>25 A. I -- I -- I believe that was in the -- the</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">53</p> <p>1 documents I read, that they -- that she thought she</p> <p>2 had to talk with Pak Mail and -- and did that. I</p> <p>3 believe that was in the document.</p> <p>4 Q. And -- and your understanding, then, is</p> <p>5 that that's an accurate representation of what</p> <p>6 would happen. She would not speak to UPS or</p> <p>7 deliver any documents to UPS. She would deliver</p> <p>8 documents to Pak Mail.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Okay. The next sentence in that</p> <p>11 tariff that I wanted to look at was the -- the</p> <p>12 following paragraph after those bullet items. "You</p> <p>13 may provide your customers with your UPS</p> <p>14 tracking number [sic] for their shipment(s), and</p> <p>15 UPS may, at its discretion, respond directly to</p> <p>16 your customers if they submit such tracking</p> <p>17 requests to UPS. With the sole exception of</p> <p>18 tracking requests, if any, to which UPS in its</p> <p>19 discretion directs a response directly to your</p> <p>20 customer, UPS will not deal directly with your</p> <p>21 customer. Even if UPS responds directly to your</p> <p>22 customer regarding tracking requests, all claims</p> <p>23 for loss or damage or requests for money-back</p> <p>24 guarantees must be submitted to UPS by you" --</p> <p>25 meaning the third-party retailer -- "and not by your</p> | <p style="text-align: right;">55</p> <p>1 would track the package for them.</p> <p>2 But if there was a question or an issue with</p> <p>3 the shipment of that package, then, yes, they</p> <p>4 should -- it should go back to the -- the shipper of</p> <p>5 record.</p> <p>6 Q. Why is there that distinction? Why does</p> <p>7 UPS limit itself to not being able to talk to the</p> <p>8 customer who would, perhaps, know the most about</p> <p>9 the package that's lost or damaged?</p> <p>10 A. I -- I don't know that I would necessarily</p> <p>11 agree with that. In -- in most cases, it's because</p> <p>12 the opposite is true; is that the shipper knows if</p> <p>13 the item was actually shipped or what the details</p> <p>14 are of the package rather than the -- the person</p> <p>15 that's -- that's shipping or the person that's</p> <p>16 expecting the package. I -- I -- I don't know that</p> <p>17 that's necessarily correct.</p> <p>18 Q. Okay. Well, let's take, for example, this</p> <p>19 case, where a concealed tube, PVC tube, is</p> <p>20 brought to Pak Mail by the customer of the third</p> <p>21 party, by the customer of Pak Mail. And in that</p> <p>22 case, the third-party retailer has absolutely no</p> <p>23 opportunity to view the contents of the package.</p> <p>24 The outer packaging arrives in New York. The</p> <p>25 inside does not.</p> |
| <p style="text-align: right;">54</p> <p>1 customer."</p> <p>2 Is it fair to say, then, that UPS will track a</p> <p>3 package for a third-party [videoconference cuts</p> <p>4 out] entertain or engage --</p> <p>5 THE REPORTER: I'm sorry. We had --</p> <p>6 you froze there. The -- if you could start your</p> <p>7 question --</p> <p>8 MS. HATFIELD: Okay. Yeah, no</p> <p>9 problem. I'm -- if --</p> <p>10 THE REPORTER: [reads] Is it fair to say,</p> <p>11 then, that UPS -- and. . .</p> <p>12 BY MS. HATFIELD:</p> <p>13 Q. Is it fair -- that's okay. Is it fair to say,</p> <p>14 then, that UPS will do a tracking request but will</p> <p>15 not process a loss claim or a damage claim from a</p> <p>16 third-party customer directly?</p> <p>17 A. Yes. And -- and in a lot of cases with the</p> <p>18 Internet today, a lot of our customers will provide</p> <p>19 the tracking number so their customer can track</p> <p>20 the progress of the package to see, perhaps, when</p> <p>21 it's going to be delivered. You know, if they want</p> <p>22 to be home to get the package, they'll track the</p> <p>23 package -- or track the progress of the package to</p> <p>24 see where it's at. And if that person called our</p> <p>25 800-number and asked to track a package, we</p>                                                                                                                | <p style="text-align: right;">56</p> <p>1 Would you agree that the painter who put the</p> <p>2 paintings inside the tube has a better</p> <p>3 understanding of what's missing than the</p> <p>4 third-party retailer?</p> <p>5 MR. MORLEY: Form.</p> <p>6 A. As far as what they put in? Yes, I'd</p> <p>7 agree that they would have a better understanding</p> <p>8 of that.</p> <p>9 BY MS. HATFIELD:</p> <p>10 Q. Okay.</p> <p>11 MS. HATFIELD: Excuse me, Mike. Your</p> <p>12 objection to form, could I ask for clarification so I</p> <p>13 can correct?</p> <p>14 MR. MORLEY: Yeah. I -- I think you --</p> <p>15 you've assumed a lot of facts, and then there's a</p> <p>16 number of factual issues in there. Just if you</p> <p>17 could break it down, that -- that'll be -- I won't</p> <p>18 have an issue [phonetic].</p> <p>19 BY MS. HATFIELD:</p> <p>20 Q. In general, and in -- not necessarily in</p> <p>21 only this circumstance, would you agree that most</p> <p>22 people bring their packages to third-party retailers</p> <p>23 already wrapped?</p> <p>24 A. No, it -- it -- it depends. I mean, there</p> <p>25 are a lot of different types of shipments that go to</p>                                                                                                                                                                                                       |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">57</p> <p>1 third-party retailers. Some are personal; some --</p> <p>2 some may just be an item being shipped between</p> <p>3 people. There could be -- you -- you have people</p> <p>4 that run a business that use those rather than</p> <p>5 have their own shipping location. So it's a mix of</p> <p>6 all of them, so I -- I would say no.</p> <p>7 Q. Would you say that a fair amount of</p> <p>8 people who use third-party stores, or even the UPS</p> <p>9 Store, bring their packages to UPS wrapped or</p> <p>10 wrap them there?</p> <p>11 A. I -- I guess I'd need to define "fair." Yes,</p> <p>12 people do that. We offer that service -- or -- or --</p> <p>13 or a lot of third-parties [sic] retailers offer the</p> <p>14 service because they realize that some people are</p> <p>15 not -- that -- that don't do that on a regular basis,</p> <p>16 they would offer to pack it for them.</p> <p>17 But I -- I -- I really don't have any firsthand</p> <p>18 knowledge to chance a guess on what percentage</p> <p>19 that would be.</p> <p>20 Q. Okay. That's fair. Thank you. Would</p> <p>21 you say that most people pa -- shipping packages</p> <p>22 are more familiar with the contents of the shipment</p> <p>23 than the third-party retailer?</p> <p>24 A. A -- again, I -- I -- I -- it -- I don't know</p> <p>25 that I could answer. If they packed the package</p>                                | <p style="text-align: right;">59</p> <p>1 the person who has a -- a product they want to</p> <p>2 send to somebody else, and the whole reason they</p> <p>3 go and ship it to somebody is they want the</p> <p>4 product, which is X, to get to the person, are you</p> <p>5 saying that they don't have a better understanding</p> <p>6 of what they're shipping than the third party who's</p> <p>7 shipping it for them?</p> <p>8 A. I -- I guess what I'm saying is</p> <p>9 depending -- and -- and again, I can only use my</p> <p>10 own experience, is my daughter attends school out</p> <p>11 of state. We send her care packages, if you will,</p> <p>12 with cookies in them.</p> <p>13 The person at the third-party retailer knows</p> <p>14 that there's cookies in there because I told them</p> <p>15 that they were cookies. Do they know that they're</p> <p>16 chocolate chip or no bake or what type of cookies?</p> <p>17 No. That's -- that's not a part of that -- that</p> <p>18 issue.</p> <p>19 So if that's the level that you're asking about,</p> <p>20 then, yes, the -- the shipper would probably know</p> <p>21 more than the third party. But case-by-case basis</p> <p>22 would -- I guess, would depend on, again, if -- if</p> <p>23 I'm sending an iPod and the third-party retailer</p> <p>24 packed it for me, I -- I -- I think they have just as</p> <p>25 much knowledge of what that item is and how it</p> |
| <p style="text-align: right;">58</p> <p>1 for the customer, I would suspect they would be</p> <p>2 equally aware. In most cases, they're going to ask</p> <p>3 the customer what's inside the package.</p> <p>4 So I would suspect they would be equally</p> <p>5 aware, because they would have to determine if</p> <p>6 there -- I -- I would -- in most cases -- and I'll --</p> <p>7 I'll only use my own example using a third-party</p> <p>8 retailer to ship a package, because I have done</p> <p>9 that piece of it, typically, they ask me what the</p> <p>10 contents are. Typically they ask me what the value</p> <p>11 of the contents are. And they ask me how that</p> <p>12 package was packed to determine whether they</p> <p>13 feel it can safely transit.</p> <p>14 So short of some -- some other issue, I -- I</p> <p>15 would say that the retailer in most cases would</p> <p>16 probably have an equal knowledge.</p> <p>17 Q. I -- I agree with you that they would have</p> <p>18 some knowledge if they inquired. But I -- I think</p> <p>19 you're focusing more on the entire package and</p> <p>20 the contents together, and I'm really just asking</p> <p>21 about the contents of the package.</p> <p>22 So if I'm someone who bakes cookies for my</p> <p>23 son at college or I'm someone who painted a</p> <p>24 painting or I'm someone who packaged a gift of</p> <p>25 roller skates for my daughter, are you saying that</p> | <p style="text-align: right;">60</p> <p>1 operates as what the person is that brought it in to</p> <p>2 be shipped. It would be a case-by-case basis.</p> <p>3 Q. Okay. But would you agree that if the</p> <p>4 only cases you're concerned about are cases</p> <p>5 where you're looking for the contents of the</p> <p>6 package and not the packaging, that the best</p> <p>7 person to talk to about the contents of the</p> <p>8 package, since they can vary, would be the person</p> <p>9 who arranged for those contents to be shipped, the</p> <p>10 shipper of the contents?</p> <p>11 MS. ADAMS: Do you understand the</p> <p>12 question?</p> <p>13 THE WITNESS: I -- I guess --</p> <p>14 MS. ADAMS: Can you rephrase the</p> <p>15 question?</p> <p>16 THE WITNESS: Yeah.</p> <p>17 MS. ADAMS: Yeah. Can you --</p> <p>18 objection. Rephrase it.</p> <p>19 MS. HATFIELD: Sure. Sure.</p> <p>20 MS. ADAMS: Any time you don't</p> <p>21 understand, just ask.</p> <p>22 BY MS. HATFIELD:</p> <p>23 Q. Here. You know what? I'll -- I'll just --</p> <p>24 I'm going to backtrack a little bit.</p> <p>25 We understand that UPS deals directly with</p>                                                                                                                                                                                                                                                                                   |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">61</p> <p>1 the third-party shipper, the third-party retailer,<br/>2 and UPS does not deal directly with the actual<br/>3 customer shipping goods through a third-party<br/>4 retailer when those goods are lost or damaged; is<br/>5 that correct?<br/>6 A. Yes.<br/>7 Q. And when we have packages that are<br/>8 stripped of their contents, and the contents go one<br/>9 way and the package goes another way, UPS still<br/>10 wants to speak only with the third-party retailer<br/>11 and not the person who put the contents in the<br/>12 package.<br/>13 A. Yes.<br/>14 Q. Okay. Even if the person who<br/>15 packaged -- who -- the -- even if the third-party<br/>16 retailer has only seen the packaging and the<br/>17 packaging has got where it needs to go, and what<br/>18 we're looking for are the contents, UPS does not<br/>19 want to speak with the only person who knows<br/>20 about the contents.<br/>21 MS. ADAMS: Objection. You didn't ask a<br/>22 question.<br/>23 BY MS. HATFIELD:<br/>24 Q. Is it -- is it true that UPS does not want<br/>25 to speak with the customer even when the</p>                                                                                                                                                                                                                                    | <p style="text-align: right;">63</p> <p>1 A. I -- I don't have any firsthand knowledge<br/>2 on -- on how that was formed; no.<br/>3 Q. Okay.<br/>4 A. I -- I -- I --<br/>5 Q. Well, would you agree that by allowing<br/>6 third -- the customers of third-party retailers to<br/>7 use the tracing number, that UPS understands that<br/>8 part of the attractiveness of UPS has to do with<br/>9 timing and how fast a package can get there and<br/>10 how well it can be traced?<br/>11 A. Yes, the information on the movement of<br/>12 the package is often important to both the shipper<br/>13 of record and the receiver.<br/>14 Q. Okay. And -- and is that important<br/>15 because timing and speed are an issue in<br/>16 shipment?<br/>17 MS. ADAMS: Do you understand that<br/>18 question?<br/>19 THE WITNESS: [no audible response]<br/>20 MS. ADAMS: He -- can you rephrase the<br/>21 question?<br/>22 MS. HATFIELD: Sure.<br/>23 BY MS. HATFIELD:<br/>24 Q. Is knowing the whereabouts and the<br/>25 progress of the package important because one of</p>                                                                                               |
| <p style="text-align: right;">62</p> <p>1 customer is the only person who knows what the<br/>2 contents looked like, and the contents are the only<br/>3 thing that is missing?<br/>4 A. I -- I don't know that it's fair to say we<br/>5 would never talk to that customer. There are times<br/>6 that we might call for additional information if<br/>7 we -- but -- but typically, the -- the third party<br/>8 would be getting that information to submit it.<br/>9 Since they have to submit the -- the actual tracer<br/>10 or the search, they would be getting that<br/>11 information because they would need that for the<br/>12 description.<br/>13 And -- and again, you have me at a little<br/>14 disadvantage, because I don't know what was on<br/>15 the actual document at the time that the package<br/>16 was traced, so I don't know what was put in there.<br/>17 But the third party, typically, from what I've seen,<br/>18 would call their customer and say, "Give me the<br/>19 information on what the item is." And the -- the<br/>20 things that you're talking about would be collected<br/>21 by the third party and submitted as a part of that<br/>22 request for information on the shipment.<br/>23 Q. Okay. Well, do you know why UPS does<br/>24 not want to have contact with the customer of the<br/>25 third party? Why is this the general rule?</p> | <p style="text-align: right;">64</p> <p>1 the values preferred by UPS is speed and the<br/>2 ability to get a package from Point A to Point B in<br/>3 a certain amount of time?<br/>4 A. I -- I don't know that it's purely speed as<br/>5 much as -- because -- because, again, a customer<br/>6 may decide to use ground services and take three<br/>7 days or they may choose to ship it overnight. So I<br/>8 don't know that speed would be the -- the sole<br/>9 determiner.<br/>10 I guess it would be the -- they -- they -- they<br/>11 would be want to know the progress of the package<br/>12 if it's coming to them and -- and, again,<br/>13 anticipating when it might get there.<br/>14 Q. So they -- they do want to be able to<br/>15 anticipate when it might be some place.<br/>16 MS. ADAMS: Objection.<br/>17 A. I -- I -- I -- yeah.<br/>18 MS. ADAMS: Can you rephrase the<br/>19 question? You didn't ask a question.<br/>20 BY MS. HATFIELD:<br/>21 Q. They do want to be able to anticipate<br/>22 when the package might be some place?<br/>23 MS. ADAMS: Objection.<br/>24 MS. HATFIELD: To what?<br/>25 MS. ADAMS: The question. You didn't</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">65</p> <p>1 ask a question.</p> <p>2 BY MS. HATFIELD:</p> <p>3 Q. Isn't it true that they don't want to be</p> <p>4 able to anticipate when a package will arrive?</p> <p>5 A. Not -- not all customers. It -- it --</p> <p>6 different --</p> <p>7 Q. Okay. But -- I -- I understand that. But</p> <p>8 you provide a shipping -- a -- a tracing number so</p> <p>9 that a customer can be aware of where the</p> <p>10 package is and when it might get to its</p> <p>11 destination.</p> <p>12 A. Yes, if they'd like to track it, not --</p> <p>13 Q. Okay.</p> <p>14 A. Of the 15 million packages in the system</p> <p>15 today, most will not be tracked or a large</p> <p>16 percentage won't be tracked while they're in</p> <p>17 movement, but they have --</p> <p>18 Q. Okay.</p> <p>19 A. -- that option to.</p> <p>20 Q. Well, in the case of Ivana Vidovic, who</p> <p>21 has a painting she's shipping for a show which is</p> <p>22 going to be on a certain date, would you agree that</p> <p>23 it is important to a person in those circumstances</p> <p>24 to know whether the painting is going to be there</p> <p>25 on that date or not?</p>                                                  | <p style="text-align: right;">67</p> <p>1 that received --</p> <p>2 THE REPORTER: Thank you.</p> <p>3 THE WITNESS: -- the packaged.</p> <p>4 A. There are -- there are cases where -- for</p> <p>5 example, on a driver release, where we may -- the</p> <p>6 driver left the package at the location, that we may</p> <p>7 call the consignee and ask them if they did, in</p> <p>8 fact, receive the package so we can answer the</p> <p>9 inquiry.</p> <p>10 So it -- it kind of depends on the scenario as</p> <p>11 far as which of those -- I don't -- I don't think</p> <p>12 there's a blanket statement that I can make one</p> <p>13 way or the other because there -- there really are,</p> <p>14 you know, those unique shipments out there every</p> <p>15 day.</p> <p>16 Q. Right. But I'm -- I'm not really asking for</p> <p>17 a blanket statement about all situations. What I'm</p> <p>18 asking is: If there's a lost package and the person</p> <p>19 with the best knowledge about the package is the</p> <p>20 shipper, and UPS limits itself to speaking with the</p> <p>21 third-party retailer, you -- would you agree that</p> <p>22 UPS is allowing for a delay in communication?</p> <p>23 A. No.</p> <p>24 Q. Okay. Oh, wait. There's one more that I</p> <p>25 need to go over.</p>                                                                                                                                                      |
| <p style="text-align: right;">66</p> <p>1 A. I -- I would agree it could be. I don't</p> <p>2 know. Individual person -- it could be.</p> <p>3 Q. Okay. But you do provide shipping and</p> <p>4 tracing number because people do sometimes want</p> <p>5 to see where the package is and when it's going to</p> <p>6 get where it's going to be.</p> <p>7 A. The shipping and tracing number is --</p> <p>8 the -- the 1-800-PICK-UPS? When you --</p> <p>9 Q. Yeah, the -- the -- the tracing number</p> <p>10 that you provide.</p> <p>11 A. Right.</p> <p>12 Q. You know? That's okay. We already --</p> <p>13 we went over that, and -- and I got your answer on</p> <p>14 record for that.</p> <p>15 But my question, then, is: UPS is limited to</p> <p>16 speaking with a third-party retailer whom, as you</p> <p>17 have said, can get description information of a</p> <p>18 package from the customer. UPS is re -- would</p> <p>19 you say that UPS is relying on secondhand</p> <p>20 information?</p> <p>21 A. No. Again, there are times where we may</p> <p>22 contact the consignee to -- for example, in the</p> <p>23 case of a --</p> <p>24 THE REPORTER: I'm sorry. Contact?</p> <p>25 THE WITNESS: Consignee; the person</p> | <p style="text-align: right;">68</p> <p>1 Okay. Item 6, "With the sole exception of</p> <p>2 International shipments, all packages and letters"</p> <p>3 tended to you -- "tendered by you to UPS will bear</p> <p>4 your return address only and not that of your</p> <p>5 customer." Why is that?</p> <p>6 A. Because they are the shipper of record.</p> <p>7 And in -- in the case of a -- for example, in the</p> <p>8 case of a claim where a package is returned, the</p> <p>9 package -- or even in the case of a damage, if it's</p> <p>10 returned to the shipper, it would be returned back</p> <p>11 to them so that they would have it available to</p> <p>12 return it back to their customer because they are</p> <p>13 the shipper of record.</p> <p>14 Q. Okay. Well, if the return address had the</p> <p>15 actual address of the shipper, wouldn't it still get</p> <p>16 returned to the shipper?</p> <p>17 A. Yes, if the return ad -- right. It's</p> <p>18 intended to say the return should be back to the</p> <p>19 shipper of record because, in some cases, you --</p> <p>20 you -- rather than have an -- an address in another</p> <p>21 state, which would make it harder in the -- in the</p> <p>22 case of a loss to find that package that may have,</p> <p>23 in fact, actually been delivered. So we limit that</p> <p>24 back to the shipper of record so that we can</p> <p>25 control the tracing process to make sure we've</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">69</p> <p>1 done a check to find the package.</p> <p>2 Q. Okay. The second sentence says,</p> <p>3 "International packages and letters tendered by</p> <p>4 you to UPS should show your customer's telephone</p> <p>5 number and your customer's name and address as</p> <p>6 the return address on the . . shipping label." Why</p> <p>7 are international shipped -- why are international</p> <p>8 customers allowed to put their return address and</p> <p>9 information on the package but national shippers</p> <p>10 are not?</p> <p>11 A. I'll have to check the -- when -- when you</p> <p>12 say that they're not allowed to, there's actually a</p> <p>13 spot -- a -- a -- again, I'm just thinking about the</p> <p>14 labels currently in use. There is a spot on the</p> <p>15 label for the intended consignee's phone number</p> <p>16 to go on there to make it easier to contact the</p> <p>17 customer if, for example, we have a bad address at</p> <p>18 the delivery end, which really speaks to the</p> <p>19 international side of it.</p> <p>20 Because of some of the dynamics involved in</p> <p>21 going into another country, you have brokerage,</p> <p>22 you have customs, you have third-party bills, you</p> <p>23 have duties and custom fees, we actually maintain</p> <p>24 a [sic] exception group in our international</p> <p>25 operation to try to resolve those delivery issues on</p> | <p style="text-align: right;">71</p> <p>1 information can be on there.</p> <p>2 So there's a distinction between if I'm from</p> <p>3 Switzerland and I'm shipping a package by a</p> <p>4 third-party retailer, my return address goes on</p> <p>5 there. But if I'm from Florida and I'm shipping a</p> <p>6 package to New York, my return information does</p> <p>7 not go on there. Why? What -- what's the reason</p> <p>8 for the distinction?</p> <p>9 A. Well, I -- I -- I would have to -- I would</p> <p>10 have to consult with a subject-matter expert to</p> <p>11 get the -- the actual definition, but, again, a lot of</p> <p>12 that revolves around declarations and customs</p> <p>13 and -- and international laws. Different countries</p> <p>14 can have different requirements. I -- I would to</p> <p>15 have look at the specific issue.</p> <p>16 I don't deal with the international operation on</p> <p>17 a daily basis, but when I have, again, you have --</p> <p>18 for example, customs has the right to inspect and</p> <p>19 look at and determine who the -- who the end</p> <p>20 customer is. There -- there's -- there's several</p> <p>21 different rules internationally that you don't</p> <p>22 necessarily have on the domestic side.</p> <p>23 I -- I mean, from there, I'd -- I'd -- I'd have to</p> <p>24 ask a specific question to find out the -- the</p> <p>25 information. But I -- in general terms, that would</p> |
| <p style="text-align: right;">70</p> <p>1 the delivery side if we can't complete the delivery</p> <p>2 to get it to the intended customer rather than</p> <p>3 return it back.</p> <p>4 But again, it --</p> <p>5 Q. Okay. Well -- okay. I'm sorry. I -- I</p> <p>6 understand what you're saying. You're -- and</p> <p>7 you're saying two things. [Videoconference cuts</p> <p>8 out] what Number 6 says about national --</p> <p>9 THE REPORTER: I'm sorry. I think you</p> <p>10 cut out there for a minute. We had a pause --</p> <p>11 MS. HATFIELD: Okay.</p> <p>12 THE REPORTER: -- on this end. If. .</p> <p>13 MS. HATFIELD: Okay.</p> <p>14 BY MS. HATFIELD:</p> <p>15 Q. What you're saying about the -- the fact</p> <p>16 that even on domestic shipments the consignee's</p> <p>17 information is there in case you have a call for</p> <p>18 pick up, and I understand that. But 6 is actually</p> <p>19 talking about the fact that the shi -- the customer</p> <p>20 and the third-party retailer, not the consignee, but</p> <p>21 the -- the original shipper, not the third-party</p> <p>22 retailer, their information can't be on there. But</p> <p>23 in international packages, the customer of the</p> <p>24 third-party retailer, i.e., the original shipper, not</p> <p>25 the recipient but the original shipper, their</p>                                                                                                        | <p style="text-align: right;">72</p> <p>1 be why I feel there's a difference.</p> <p>2 Q. Okay. Would you think that there's any --</p> <p>3 are there any protections that you are aware of</p> <p>4 which -- which are afforded to UPS for domestic</p> <p>5 liability that they do not enjoy for international</p> <p>6 liability?</p> <p>7 A. None that I'm aware of; no.</p> <p>8 Q. I -- I have one other question about the --</p> <p>9 oh wait. No, no, no. We have to go there.</p> <p>10 Number 7, "No reference to United Parcel</p> <p>11 Service,' UPS' or any identifying information</p> <p>12 concerning UPS. . . should appear on any receipt</p> <p>13 given by you to your customer." How, then, do you</p> <p>14 put a tracking number on a receipt which you are</p> <p>15 allowed to give to the customer and which would</p> <p>16 lead the customer to call 1-800 UPS?</p> <p>17 A. I don't know. I -- I -- I -- I mean, the</p> <p>18 receipt is -- is usually preprinted. I -- I'm</p> <p>19 guessing that means that handwritten or giving</p> <p>20 them a -- a number of the local package center, a</p> <p>21 lot of our pick-up customers would have the</p> <p>22 number directly to our operating centers to -- to</p> <p>23 call in for, like, an extra pick up or if they had a</p> <p>24 special need that day. If you're a pick-up account,</p> <p>25 typically you would that number.</p>                                           |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">73</p> <p>1 That's not a general public number. The</p> <p>2 eight --</p> <p>3 Q. Okay.</p> <p>4 A. -- the 1-800-PICK-UPS is widely</p> <p>5 published, and I believe this is referring to those</p> <p>6 other numbers. But I -- again, I don't have</p> <p>7 firsthand knowledge of that.</p> <p>8 Q. Along the same vein, in Number 9 it says,</p> <p>9 UPS -- "United Parcel Service". . . should not</p> <p>10 appear in letters larger than your store or</p> <p>11 business name, [or] any signs, notices, or</p> <p>12 advertisements."</p> <p>13 A. I . . .</p> <p>14 Q. Would you say that that's because UPS is</p> <p>15 trying to protect themselves and make sure that</p> <p>16 the customers are aware that they are dealing with</p> <p>17 a third-party retailer and not with UPS's?</p> <p>18 A. I -- I -- I don't know. I -- I -- I mean, it's</p> <p>19 their -- it's their business. That would -- it would</p> <p>20 make sense that their -- they would advertise their</p> <p>21 business, not ours. But I -- I -- I don't have</p> <p>22 firsthand knowledge of that.</p> <p>23 Q. Okay. I had some more questions about</p> <p>24 that, but I'll leave that.</p> <p>25 All right. Number 11, "You agree to supply</p>                                                                                                                                                                                               | <p style="text-align: right;">75</p> <p>1 Q. Okay. And in fact, it lists some, but not</p> <p>2 all, package labeling as 1Z tracking number code,</p> <p>3 MaxiCode, postal bar code, UPS Routing Code, and</p> <p>4 appropriate service icon. However, based on</p> <p>5 those terms and based on what you've just</p> <p>6 explained, the electronic package level detail</p> <p>7 means -- it seems that UPS is requiring only that</p> <p>8 delivery-based information be put on the package</p> <p>9 and that UPS does not necessarily need to know</p> <p>10 and does not always know what the contents of a</p> <p>11 package might be; is that true?</p> <p>12 A. It --</p> <p>13 Q. Is there anything in --</p> <p>14 A. Which -- which bullet -- which bullet is it</p> <p>15 that you're locking at?</p> <p>16 Q. Number 11.</p> <p>17 A. Okay.</p> <p>18 Q. Would you -- is -- is it fair to say that</p> <p>19 Number 11 requires only delivery type of</p> <p>20 information and does not require knowledge of the</p> <p>21 contents of a package?</p> <p>22 A. Yes, because 11 is really directed</p> <p>23 towards how we move the package from Point A to</p> <p>24 Point B and doesn't really --</p> <p>25 Q. Okay.</p>                                                    |
| <p style="text-align: right;">74</p> <p>1 UPS with electronic package level detail and</p> <p>2 [package] labeling [in] a form acceptable to UPS."</p> <p>3 What is "electronic package level detail"?</p> <p>4 A. Package level detail is what allows the</p> <p>5 information to transmit into our tracking system,</p> <p>6 so that if the customer -- if the customer has a</p> <p>7 question about the shipment, that the shipment is</p> <p>8 actually in the system as a part of -- there's --</p> <p>9 there's several different scans that would take</p> <p>10 place on that package as it moves through.</p> <p>11 Typically, the first one would be that package</p> <p>12 level detail that is put in by the shipper of record</p> <p>13 that says here's the information on the package.</p> <p>14 Here's where it's going.</p> <p>15 It -- it also, in some cases, in -- in the --</p> <p>16 they're sometimes referred to as "smart packages,"</p> <p>17 where we use automation in different buildings.</p> <p>18 That package level detail allows us to sort a</p> <p>19 package through automation rather than through</p> <p>20 a -- a manual sort on -- on every package.</p> <p>21 So that package level detail, especially in the</p> <p>22 case of, for example, a next-day air package, is</p> <p>23 very important because it allows the package to</p> <p>24 flow straight through the building without going to</p> <p>25 an exception area.</p> | <p style="text-align: right;">76</p> <p>1 A. -- deal with the acceptance piece of it or</p> <p>2 the contents piece.</p> <p>3 Q. Okay. Thank you.</p> <p>4 A. M-hm.</p> <p>5 Q. The last line of that, "All packages</p> <p>6 tendered by you to UPS will be processed using a</p> <p>7 UPS OnLine or OnLine compatible shipping</p> <p>8 system," is that UPS OnLine or OnLine-compatible</p> <p>9 shipping system the same as the UPS online</p> <p>10 system we were talking about before where you're</p> <p>11 limited to \$5,000 in value?</p> <p>12 A. No. No. The --</p> <p>13 Q. Okay.</p> <p>14 A. That just refers to the system in the</p> <p>15 store. In some cases -- and -- and again, I -- I</p> <p>16 don't deal with this all the time, but there may</p> <p>17 be -- they may go to a -- a -- a retailer. They may</p> <p>18 buy their -- their actual have software or their</p> <p>19 shipping system or however they're going to run</p> <p>20 their business, they may buy from a third party</p> <p>21 and not have a -- a UPS-authorized -- or a -- I</p> <p>22 guess a -- I -- I guess a -- a Maxi ship system</p> <p>23 or -- or something that we may install in a</p> <p>24 large-customer location to provide ease of -- of</p> <p>25 capturing that data.</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">77</p> <p>1 But if they're going to have a standalone<br/>2 system, it has to be compliant to pass that<br/>3 package level detail to our systems for sortation.<br/>4 Q. Okay. All right. And Number 12, the<br/>5 third-party retailer agrees and understands -- or<br/>6 I'm sorry. The third-party agrees ". . .to accept<br/>7 UPS Authorized Return Service. . .Air Shipping<br/>8 Document. . .Internet Ship. . .Regular Account<br/>9 drop-off letters and packages not being shipped<br/>10 under your UPS shipper number." So is my<br/>11 understanding, then -- well, you referred earlier to<br/>12 the fact that when people go to UPS.com and<br/>13 arrange for shipping individually by the Internet,<br/>14 they might bring their packages to a certain<br/>15 drop-off location. And that these third-party<br/>16 retailers -- is it -- is it true that these third-party<br/>17 retailers are agreeing to act as that sort of a -- a<br/>18 drop-off location?<br/>19 A. Yes.<br/>20 Q. So if I wanted to ship my package by<br/>21 bringing it to Pak Mail but I wanted to enjoy the<br/>22 protections and the ability to speak with UPS<br/>23 directly, I could go online, sign my package up,<br/>24 bring it to Pak Mail, and ship it; and if it gets lost,<br/>25 then I can speak with UPS directly?</p> | <p style="text-align: right;">79</p> <p>1 A. Yes. They're using --<br/>2 Q. Okay.<br/>3 A. -- they're using a service to ship a<br/>4 package.<br/>5 Q. Okay. One of the other originators that --<br/>6 that the third-party retailer is agreeing to accept<br/>7 packages for includes authorized return service<br/>8 and regular account drop-off letters. In this case,<br/>9 Ivana Vidovic was in the habit of shipping<br/>10 paintings by UPS to a gallery which had a UPS<br/>11 account. And she would bring those packages to<br/>12 Pak Mail, and they were shipped to that gallery. It<br/>13 was all paid for under that gallery's account.<br/>14 In that -- is -- is -- is this bullet point<br/>15 agreeing with that set up? If -- if there are<br/>16 customers out there that have an account and --<br/>17 you'll accept the packages that are being returned<br/>18 to that account holder?<br/>19 A. Yes. I'm -- I'm not aware, of course, of<br/>20 that particular set up or -- or if it-- but, for<br/>21 example, a -- I -- I may send you a -- a toner<br/>22 cartridge from an online store, and I'm going to<br/>23 pick up your old toner cartridge. So at the time<br/>24 that I send you the box with -- with your new toner<br/>25 cartridge, there is also a return label inside there.</p> |
| <p style="text-align: right;">78</p> <p>1 A. Yes, you would be the shipper of record.<br/>2 You would just be dropping it off at that<br/>3 alternative location. The account number, the<br/>4 billing, everything would be registered to you as<br/>5 shipper of record.<br/>6 Q. Okay. Well, do you think that the public<br/>7 is aware of that distinction?<br/>8 A. Well, yes. It's -- it's -- I mean, we -- we<br/>9 have the terms and conditions of service, and I -- I<br/>10 would suspect that -- that the person shipping is<br/>11 going to look through those to see what those --<br/>12 what those terms and conditions are. I -- I believe<br/>13 there's a check box in there that -- even online.<br/>14 I -- I -- again, I -- well, I'll rescind.<br/>15 I'll have to go back and check. I -- I am under<br/>16 the belief that there's a check off that says I've --<br/>17 I've read and understand those terms and<br/>18 conditions, but I'd have to verify that before I<br/>19 could say that. I -- I know it's listed in there and<br/>20 that they have access online to it.<br/>21 Q. But it's your belief that the average<br/>22 person walking into Pak Mail and selecting UPS for<br/>23 travel understands that if my package gets lost, I<br/>24 can't speak with UPS directly because I'm using<br/>25 Pak Mail.</p>            | <p style="text-align: right;">80</p> <p>1 Mortgage companies often do that with<br/>2 documents that -- send it to you and say, "You<br/>3 need to sign me a legal copy." Then you take<br/>4 that -- that new tracking label that is inside the<br/>5 package, you put that on the package, drop it off<br/>6 at one of those locations, and send it back. It's<br/>7 under their account number. They're the shipper<br/>8 of record, and all the transactions flow through<br/>9 them instead of the person that returned the<br/>10 package; yes.<br/>11 Q. Okay. In those instances, does the<br/>12 account holder, if the package winds up being<br/>13 missing or lost, have the ability to call UPS<br/>14 directly for -- and -- and converse with them about<br/>15 an investigation of a lost good?<br/>16 A. The shipper of record? The --<br/>17 Q. Yes.<br/>18 A. -- account -- the -- yes, they -- well, they<br/>19 would typically call the 1-800-PICK-UPS and -- and<br/>20 let them know that they had an inquiry.<br/>21 Q. All right. Well, I'm just going to get a<br/>22 little more specific about this for a moment<br/>23 because it also comes up later, so it -- it's not<br/>24 time -- it's time doubly well spent.<br/>25 In this case, Ivana Vidovic for some years had</p>                   |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">81</p> <p>1 an arrangement with Lavon Art Gallery, which is an<br/> 2 art gallery in New Jersey. And they agreed to<br/> 3 purchase a certain number of oil paintings from<br/> 4 her on a certain basis. And she -- she would<br/> 5 arrange to have those paintings shipped by Pak<br/> 6 Mail to the art gallery under the art gallery's<br/> 7 expense.<br/> 8 In addition, the art gallery would select<br/> 9 certain paintings to make prints of. They would<br/> 10 ship the prints back to have Ivana via their UPS<br/> 11 account. She would sign all of them, embellish<br/> 12 them in certain ways to add value to the print, and<br/> 13 send them back to Lavon by UPS via Pak Mail.<br/> 14 Does that sound like an operation that is<br/> 15 typical of UPS accounts?<br/> 16 A. I -- I would say it's not "typical," since<br/> 17 most of our customers are daily pick up --<br/> 18 traditional pick up and delivery customers. So I<br/> 19 wouldn't say it's typical, but it is something that<br/> 20 we would see, again, in -- in different variations.<br/> 21 Again, with the authorized return service,<br/> 22 some -- some may be, "I'll have you send it to me"<br/> 23 or "I'll send it to you and I'll give you a label to<br/> 24 send it back to me." Some may say --<br/> 25 Q. Right.</p> | <p style="text-align: right;">83</p> <p>1 take that same package and independently --<br/> 2 Q. Okay.<br/> 3 A. -- you -- you break the transaction with<br/> 4 the delivery and now independently I take it to a<br/> 5 different person to ship it, that person would be<br/> 6 the -- the party or the -- the owner of record of<br/> 7 that shipment.<br/> 8 Q. Thank you. Okay.<br/> 9 MS. HATFIELD: All right. I'm about --<br/> 10 I'm a little more than halfway through the<br/> 11 materials that I wanted to go through. Actually,<br/> 12 there's a lot more paper left, but I don't have as<br/> 13 many notes in them. But the rest of the materials<br/> 14 that I wanted to go through really got into the<br/> 15 specifics of this case and the information that<br/> 16 Ivana Vidovic supplied and the information that<br/> 17 was on her paintings.<br/> 18 So I'm going to definitely be longer than<br/> 19 12:00.<br/> 20 MS. ADAMS: That's okay.<br/> 21 MS. HATFIELD: I'm expecting that I'll be<br/> 22 done in 45 minutes.<br/> 23 THE WITNESS: I'm fine.<br/> 24 MS. HATFIELD: Would you like to take a<br/> 25 break now?</p> |
| <p style="text-align: right;">82</p> <p>1 A. -- "I will send it to you, and go to a -- an<br/> 2 authorized outlet or -- or to the UPS center and<br/> 3 send the package back."<br/> 4 There's -- there's multiple variations of how<br/> 5 you could do that. The scenario you described is<br/> 6 one that -- that can happen and probably does<br/> 7 happen on a regular basis.<br/> 8 Q. Okay. Well, in -- in those situations<br/> 9 where I'm -- where I'm returning goods to a UPS<br/> 10 account holder, in those -- if those items got lost,<br/> 11 can I -- can I, who am returning the goods under<br/> 12 the ARS, speak with UPS about an investigation,<br/> 13 or is only the account holder? Who becomes the<br/> 14 shipper of record in that instance?<br/> 15 A. It would be the person that issued the<br/> 16 ARS. The authorized return typically -- in -- in the<br/> 17 scenario that you outlined, would typically be --<br/> 18 the art gallery would send the --<br/> 19 Q. Okay.<br/> 20 A. -- ARS. They would send the ARS to me.<br/> 21 It would be their shipper number imbedded in that<br/> 22 1Z. All that information indicates they're the<br/> 23 shipper of record. They're paying for the<br/> 24 shipment.<br/> 25 So yes, they -- they would be -- if -- if you</p>                                             | <p style="text-align: right;">84</p> <p>1 MS. ADAMS: Do you need a break -- oh,<br/> 2 you just --<br/> 3 THE WITNESS: Take a break.<br/> 4 MS. HATFIELD: -- and go and -- like, a<br/> 5 ten-minute break and then go through, or would<br/> 6 you like to take a lunch break and come back?<br/> 7 THE WITNESS: I -- I -- my preference<br/> 8 would be take a ten-minute break --<br/> 9 MS. ADAMS: A ten-minute break.<br/> 10 THE WITNESS: -- and go through --<br/> 11 MS. ADAMS: Yeah, let's take a<br/> 12 ten-minute break and then just hit it again from<br/> 13 there.<br/> 14 MS. HATFIELD: Okay.<br/> 15 MS. ADAMS: And then we can just eat<br/> 16 lunch. If you -- if you don't think that you're going<br/> 17 to be, like, after 1 or so, I think we can just hold<br/> 18 lunch off and eat lunch --<br/> 19 THE WITNESS: Yeah. I --<br/> 20 MS. ADAMS: -- after the deposition.<br/> 21 THE WITNESS: Yeah. I can adjust to<br/> 22 your --<br/> 23 MS. HATFIELD: No, I --<br/> 24 THE WITNESS: -- schedule. I've<br/> 25 blocked the day out.</p>                                                                                      |

## UPS Authorized Shipping Outlet Agreement

Authorized  
Shipping  
Outlet



We are pleased to designate your business as a nonexclusive UPS Authorized Shipping Outlet under the terms below:

1. As a UPS Authorized Shipping Outlet, you will receive the following benefits, subject to the terms of this Agreement:

- A. You will be permitted to advertise your status as an Authorized Shipping Outlet for UPS solely by use of the words "UPS Authorized Shipping Outlet." No other form of status advertising is permitted unless provided to you by UPS or with prior specific written permission from UPS.
- B. We will provide and license to you for display our UPS Authorized Shipping Outlet mark in advertising literature and signs furnished by us, and make available to you from time to time ongoing promotional support for UPS services at our discretion. This support may include UPS Authorized Shipping Outlet signage and materials as we determine necessary. You agree to use these materials in a manner consistent with instructions provided by UPS. You agree that any such materials provided to you by UPS remain the property of UPS and must be returned to UPS on request or upon termination of this Agreement by either party. You acknowledge that this Agreement does not confer upon you any right or authority to use any aspect of UPS's identity including, but not limited to, any UPS trademark, service mark, promotional material, advertising copy or other material, except as provided to you as part of this promotional support or by prior specific written permission from UPS.
- C. We will include your establishment in our Customer Service Telephone Center database available at 1-800-PICK-UPS® and the Locator shown at www.ups.com,® and notify customers of your address when they request locations where they can obtain UPS services in your local area, provided that you have been assigned a Tier Level, as described in Paragraph 13 of this Agreement, that includes these benefits. UPS reserves the right to determine in its sole and absolute discretion the sequence in which locations will be identified to customers. UPS disclaims any liability for incorrect or unavailable information or failure to provide information, and you agree to hold UPS harmless for any incorrect or unavailable information, failure to provide information, or any other reason arising from the notification of customers of locations where they can obtain UPS services.
- D. As of the effective date of this Agreement, we will provide you with discounts on the basic letter and package prices off the published UPS Rates Charts in effect at time of shipment, provided that, at the time of the shipment, you have been assigned a Tier Level, as described in Paragraph 13 of this Agreement, that provides this benefit. Discounts do not apply to additional and accessorial charges set forth in published UPS Tariffs, UPS Rate and Service Guides, and UPS Terms and Conditions of Service in effect at the time of shipment. All UPS pricing to you is confidential, and you agree not to disclose those prices unless disclosure is required by law. Terms and conditions of all UPS services shall be as provided in published UPS Tariffs, UPS Rate and Service Guides, and UPS Terms and Conditions of Service in effect at the time of shipment. Incentives will automatically be credited to your bill. However, missed or unpaid incentives under the program must be requested in writing within forty-five (45) days from the date of omission or they will be deemed waived.

2. You understand and agree that your continued status as a UPS Authorized Shipping Outlet depends on your:

Maintaining your primary business as providing packaging, shipping, and business services to the general public; meeting the minimum average weekly gross UPS revenue as defined in the Rewards Chart during each qualifying period; and being in strict compliance with all of the terms and conditions of this Agreement.

Qualifying periods are defined as Period 1 – December, January, February, March; Period 2 – April, May, June, July; and Period 3 – August, September, October, November of each calendar year.

You further understand and agree that UPS reserves the right in its sole and absolute discretion to make exceptions to these terms and conditions.

3. You agree that UPS will be your preferred and recommended carrier of choice for all small package Ground, Air, and International shipments.
4. You must be current at all times in your payment of UPS charges. UPS reserves the right to suspend credit and/or terminate this Agreement in the event of noncompliance.
5. All delivery services provided by UPS pursuant to this Agreement are provided to you, and not to your customer. UPS will deal directly only with you in all matters concerning its delivery service provided to you under your shipper number, including but not limited to:

Tracing requests  
Claims and guarantees

C.O.D. preparation and remittance

Return of undeliverable packages and letters  
Proper packaging and labeling

You may provide your customers with your UPS tracking number(s) for their shipment(s), and UPS may, at its discretion, respond directly to your customers if they submit such tracking requests to UPS. With the sole exception of tracking requests, if any, to which UPS in its discretion directs a response directly to your customer, UPS will not deal directly with your customer. Even if UPS responds directly to your customer regarding tracking requests, all claims for loss or damage or requests for money-back guarantees must be submitted to UPS by you, and not by your customer. Any UPS claim payments or money-back guarantees will be paid to you. In the event your customer initiates a tracing request or claim with UPS, we will advise that person to contact you for assistance in the matter. In the event your customer takes action against UPS for loss or damage to a package or letter that you shipped via UPS, you agree to indemnify and hold UPS harmless as against any such third-party claim, irrespective of the cause of such loss or damage. You agree that you are solely responsible for the issuance of any refunds and claims to your customer.

6. With the sole exception of International shipments, all packages and letters tendered by you to UPS will bear your return address only and not that of your customer. International packages and letters tendered by you to UPS should show your customer's telephone number and your customer's name and address as the return address on the UPS shipping label.
7. No reference to "United Parcel Service," "UPS," or any identifying information concerning UPS, including phone numbers, addresses, etc., should appear on any receipt given by you to your customer.

White Copy-ASO Program Manager      Yellow Copy-Customer

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000304

8. You may not list yourself as "UPS Authorized Shipping Outlet" or otherwise refer to "United Parcel Service" or "UPS" in White Pages telephone directory listings. You may use the term "UPS Authorized Shipping Outlet" or artwork provided to you by UPS for this purpose in Yellow Pages telephone directory listings, but only to describe your status in wording smaller than your store or business name.
9. "United Parcel Service" or "UPS" should not appear in letters larger than your store or business name, on any signs, notices, or advertisements.
10. You agree not to ship via UPS: dangerous goods/hazardous materials as defined by IATA/ICAO and the U.S. Code of Federal Regulation Title 49; firearms or ammunition; articles of unusual value; or articles that UPS is not authorized to accept or that UPS states that it will not accept, as set forth in published UPS Tariffs, UPS Rate and Service Guides, and UPS Terms and Conditions of Service in effect at the time of shipment. UPS Tariffs, UPS Rate and Service Guides, and UPS Terms and Conditions of Service can be found at [www.ups.com](http://www.ups.com).
11. You agree to supply UPS with electronic package level detail and packaging labeling in a form acceptable to UPS for every package tendered by you to UPS. Package level detail includes, but is not limited to: consignee's full name, complete delivery address, package weight and zone, service option, and package tracking number. Package labeling includes, but is not limited to: 1Z tracking number bar code, MaxiCode, postal bar code, UPS Routing Code, and appropriate service icon. All packages tendered by you to UPS will be processed using a UPS OnLine or OnLine compatible shipping system.
12. You agree to accept UPS Authorized Return Service (ARS), Air Shipping Document (ASD), Internet Ship, and Regular Account drop-off letters and packages not being shipped under your UPS shipper number, as well as letters and packages subject to any and all UPS drop-off programs that may be implemented in the future, at no charge to your customers unless such a letter or package requires additional packaging services.
13. You agree and understand that UPS reserves to its sole and absolute discretion the rights: to create Tier Levels for participation in the UPS Authorized Shipping Outlet program; to determine the qualifications required to participate in each Tier Level; to determine the benefits associated with each Tier Level, including but not limited to discounts, amounts of any discounts, and inclusion in our Customer Service Telephone Center database available at 1-800-PICK-UPS® and Drop-off Locator shown at [www.ups.com](http://www.ups.com); to make changes in the qualifications and benefits associated with each Tier Level at any time; and to adjust your assigned Tier Level quarterly based on your use of UPS services in the previous quarter.
14. In consideration of the agreement of UPS herein, you agree to indemnify and hold harmless United Parcel Service, Inc., its parent, its subsidiaries and affiliated companies, and the officers, directors, agents, and employees of each of these companies, successors, and assigns, on account of any claims made against them arising from injury to persons or property on or about your premises, or arising from packages shipped via your shipper number containing any article set forth in Paragraph 10 of this Agreement, including attorneys' fees and costs incurred by UPS in connection with such claims.
15. You agree not to sell, assign, or otherwise transfer your UPS shipper number without the prior written authorization of UPS. If you sell, assign, or otherwise transfer your UPS shipper number to another party without the prior written authorization of UPS, you agree to indemnify and hold harmless United Parcel Service, Inc., its parent, its subsidiaries and affiliated companies, and the officers, directors, agents, and employees of each of these companies, successors, and assigns, against losses, damages, claims, and shipping charges, on account of such assignment, including attorneys' fees and costs incurred by UPS in connection with such assignment.
16. UPS amendments to this Agreement shall be effective five (5) days after UPS sends such amendment notice to you. In the event you fail to meet any of the terms of this Agreement, this Agreement can be terminated on five (5) days' notice. This Agreement can be terminated by either party for any reason on ten (10) days' written notice.
17. This Agreement supercedes any prior UPS Authorized Shipping Outlet Agreement.
18. The effective date of this Agreement is set forth below. This Agreement will not take effect unless it is signed and returned to UPS Retail Services on or before that date.

Please sign below to indicate your understanding and acceptance.

Company Name: \_\_\_\_\_

United Parcel Service, Inc.

Address: \_\_\_\_\_

By: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Employee #: \_\_\_\_\_

Date: \_\_\_\_\_

UPS Shipper Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

This Agreement will go into effect on: \_\_\_\_\_

White Copy-ASO Program Manager

Yellow Copy-Customer

United Parcel Service, Inc. (a New York corporation) MC-116200

United Parcel Service, Inc. (an Ohio corporation) MC-115495

United Parcel Service Canada Ltd. MC-186275

**GENERAL TARIFF CONTAINING THE  
CLASSIFICATIONS, RULES AND PRACTICES  
FOR THE  
TRANSPORTATION OF PROPERTY**

In Individual Shipments of Packages or Articles Not Exceeding 150 Pounds per piece nor exceeding 108 inches in Length, or 165 Inches in Length and Girth combined, except as provided in Item 1030 of Tariff, via all Motor and Substituted Service Between Points and Places in the United States. Certain other classifications, rules and practices may apply as provided in the shipper's contract.

For Reference to Governing Publications see Item 400 of Tariff

EFFECTIVE: August 15, 2005

Issued By:

OFFICE OF GENERAL COUNSEL

UNITED PARCEL SERVICE, INC.

55 Glenlake Parkway NE

Atlanta, Georgia 30328

Permanent Address:  
United Parcel Service, Inc.  
(a New York corporation)  
55 Glenlake Parkway, NE  
Atlanta, Georgia 30328

Permanent Address:  
United Parcel Service Canada Ltd.  
6285 Northam Drive, Suite 400  
Mississauga, Ontario  
Canada L4V 1X5

Permanent Address:  
United Parcel Service, Inc.  
(an Ohio corporation)  
55 Glenlake Parkway, NE  
Atlanta, Georgia 30328

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

**TABLE OF CONTENTS**

| <b>SUBJECT</b>                                                                           | <b>ITEM</b> | <b>PAGE</b> |
|------------------------------------------------------------------------------------------|-------------|-------------|
| List of Participating Carriers                                                           |             | 3           |
| Governing Publications                                                                   | 400         | 3           |
| Supplemental Corrections or Successive Issues                                            | 420         | 4           |
| Firearms and Ammunition                                                                  | 425         | 4           |
| Measurement of Combined Length and Girth                                                 | 435         | 5           |
| Packaging                                                                                | 437         | 5           |
| Refusal of Service                                                                       | 440         | 5           |
| Right of Inspection                                                                      | 442         | 5           |
| Definition of "Package"                                                                  | 445         | 5           |
| UPS Automated Shipping System and Source Document                                        | 446         | 5           |
| Package Level Detail (PLD) and Smart Label                                               | 447         | 6           |
| Definition of "Delivery"                                                                 | 448         | 6           |
| Payment of Charges                                                                       | 450         | 6           |
| Use of UPS-Provided Materials and Services                                               | 452         | 7           |
| Use of UPS Electronic Information Systems                                                | 455         | 7           |
| Items Not Accepted for Transportation                                                    | 458         | 7           |
| Definition of Articles of Unusual Value Which Are Not Accepted by UPS for Transportation | 460         | 8           |
| Human Remains and Biological Materials                                                   | 461         | 8           |
| Alcoholic Beverages                                                                      | 462         | 9           |
| Live Animals                                                                             | 463         | 9           |
| Tobacco Products                                                                         | 464         | 9           |
| Correction of Addresses                                                                  | 465         | 10          |
| Refused Packages Returned                                                                | 470         | 10          |
| Drop Shipment                                                                            | 472         | 10          |
| Delivery Change Requests                                                                 | 474         | 10          |
| Deliveries Attempted Three Times Without Extra Charge                                    | 475         | 11          |
| Ship Notification                                                                        | 476         | 11          |
| Shipper Release                                                                          | 477         | 11          |
| Package Tracking/Tracing and Refund Request Charge                                       | 478         | 11          |
| C.O.D. Packages                                                                          | 480         | 11          |
| Remittance of C.O.D.s                                                                    | 485         | 13          |
| UPS Return Services                                                                      | 496         | 13          |
| Interruption of Service                                                                  | 500         | 13          |
| Claims and Legal Actions                                                                 | 505         | 14          |
| Filing of Claims for Loss or Damage To Property                                          | 510         | 14          |
| Acknowledgment of Claims for Loss or Damage To Property                                  | 515         | 14          |
| Time Limit for Filing Claims for Loss or Damage To Property                              | 520         | 15          |
| Investigation of Claims for Loss or Damage To Property                                   | 525         | 15          |
| Disposition of Claims for Loss or Damage To Property                                     | 530         | 15          |
| Limitations of Liability                                                                 | 535         | 16          |
| Method of Determining Transportation Rates                                               | 540         | 17          |
| Options for Payment of Charges                                                           | 560         | 18          |

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000307

## RULES AND OTHER PROVISIONS WHICH GOVERN THE TRANSPORTATION OF PROPERTY

| SUBJECT                                                      | ITEM | PAGE |
|--------------------------------------------------------------|------|------|
| Weekly Service Charge for Daily Pickup Service               | 575  | 21   |
| Hazardous Materials Service                                  | 580  | 21   |
| Hazardous Waste and Mercury-Containing Waste                 | 590  | 22   |
| Portable Electronic Devices                                  | 592  | 22   |
| Delivery Confirmation Service                                | 600  | 22   |
| Proof of Delivery (P.O.D.)                                   | 601  | 22   |
| Additional Handling Charges                                  | 605  | 22   |
| Fuel Surcharge                                               | 606  | 23   |
| Delivery Service for Shippers Receiving Daily Pickup Service | 1000 | 23   |
| On-Call Pickup Service                                       | 1005 | 23   |
| UPS Ground Service Guarantee                                 | 1010 | 24   |
| UPS 3 Day Select Service                                     | 1020 | 24   |
| Rates for Oversize, Overweight and Large Packages            | 1030 | 25   |
| Expedited Service                                            | 1060 | 25   |
| UPS Customer Center                                          | 1080 | 27   |
| The UPS Store™/Third Party Retailers                         | 1090 | 27   |
| Hundredweight Service                                        | 2000 | 28   |

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

| ITEM         | LIST OF PARTICIPATING CARRIERS                                                                                                     |                    |
|--------------|------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| CARRIER CODE | MOTOR CARRIERS                                                                                                                     | CERTIFICATE NUMBER |
| UPSN         | United Parcel Service Inc. (a New York corporation)                                                                                | MC-116200          |
| UPSS         | United Parcel Service Inc. (an Ohio corporation)                                                                                   | MC-115495          |
| UPSC         | United Parcel Service Canada Ltd.                                                                                                  | MC-186275          |
|              | Each of the participating carriers individually, or any combination of them collectively, are sometimes referred to herein as UPS. |                    |

400

GOVERNING PUBLICATIONS

This Tariff, containing the Rates, Classifications, Rules and Practices, incorporates herein the following described tariffs, and their supplements or loose-leaf page amendments or successive issues thereof, except to the extent the terms therein are inconsistent with the terms of this Tariff, in which case the terms of this Tariff govern.

| TITLE OF KIND OF TARIFF | ISSUING AGENT OR CARRIER    | TARIFF |
|-------------------------|-----------------------------|--------|
|                         |                             |        |
| Local Zone Charts       | UNITED PARCEL SERVICE, INC. |        |

The effective UPS Rates for shippers located in the 48 contiguous United States are defined as the Daily, On-Demand, or Retail Rates established by UPS for the service selected by the shipper that apply to the shipper and the package, and are in effect at the time of shipping, plus any additional charges or rates for nonstandard service, additional or nonstandard usage, and any other additional charges referenced within this Tariff or the *UPS Rate and Service Guide*, or those applicable additional rates set out in any customized contracts.

The effective UPS Rates for shippers located in Alaska are the UPS Rates published in the *UPS Rate and Service Guide* for customers located in Alaska, for the service selected by the shipper, which apply to the shipper and the package and are in effect at the time of shipping, plus any additional charges or rates for nonstandard service, additional or nonstandard usage, and any other additional charges referenced within this Tariff or the *UPS Rate and Service Guide*, or those applicable additional rates set out in any customized contracts.

The effective UPS Rates for shippers located in Hawaii are the UPS Rates published in the *UPS Rate and Service Guide* for customers located in Hawaii, for the service selected by the shipper, which apply to the shipper and the package and are in effect at the time of shipping, plus any additional charges or rates for nonstandard service, additional or nonstandard usage, and any other additional charges referenced within this Tariff or the *UPS Rate and Service Guide*, or those applicable additional rates set out in any customized contracts.

To determine the amount of any charge for UPS service, consult the effective UPS Rates. The effective UPS Rates are available at UPS.com and upon request at the local UPS office.

UPS reserves the right in its sole discretion to use any mode of transportation whatsoever to provide the service selected by the shipper. Regardless of the mode of transportation used, the effective UPS Rates

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

for the service selected by the shipper shall apply. If, however, a shipper selects a UPS service to a destination for which only a higher level of service is available, UPS will substitute the next higher level of available service and will charge the corresponding rate for the substituted service.

The effective UPS Rates and Service Guides in effect at the time of shipment, and the description of UPS Services at UPS.com, as well as any modifications, amendments, supplements, or successive publications thereof, are hereby incorporated by reference as part of the terms and conditions of this Tariff.

The UPS Tariff, the effective UPS Rates and Service Guides and the description of UPS Services at UPS.com, which are incorporated in the Tariff; and the UPS source document for each shipment, together comprise the complete and exclusive agreement of the parties, except as modified by any existing or future written agreement between the parties, and may not be contradicted or modified by any oral agreement.

The Tariff is published periodically by United Parcel Service. The most current version of the Tariff may be found at UPS.com and is available at all local UPS offices. UPS reserves the right to unilaterally modify or amend any portion of the UPS Tariff or *UPS Rate and Service Guide* at any time without prior notice. The current version of this Tariff and any modifications or amendments supersedes all previous UPS Tariffs. Any failure to enforce or apply any term or provision of the Tariff, or any other term or provision of the parties' agreement, shall not constitute a waiver of that term or provision by UPS, and shall not diminish UPS's right to enforce such term or provision in the future. If one or more provisions of this Tariff shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

UPS may engage subcontractors to perform transportation and incidental services and contracts on its own behalf and on behalf of its servants, agents, and subcontractors, each of whom shall have the benefit of the terms and conditions set forth in this Tariff and the *UPS Rate and Service Guide*. No such party has authority to waive or vary any of these terms and conditions.

420

SUPPLEMENTAL CORRECTIONS OR SUCCESSIVE ISSUES

Where reference is made in this Tariff to a tariff, item, note, rule, or table, such reference will include any supplemental or successive issues of such tariff, item, note, rule, or table.

425

FIREARMS AND AMMUNITION

Firearms will be transported between licensed importers, licensed manufacturers, licensed dealers and licensed collectors, as defined in the United States Gun Control Act of 1968 (Public Law 90-618, enacted October 22, 1968), as amended by the Firearms Owners' Protection Act (P.L. 99-308, approved May 19, 1986, and a subsequent amendment thereto, P.L. 99-360, approved July 8, 1986) ("the Acts"), law enforcement agencies of the United States or of any department or agency thereof, and law enforcement agencies of any State or any department, agency or political subdivision thereof, and between persons not otherwise prohibited from shipping firearms by federal, state or local law and when such shipment complies with all applicable federal, state and local laws. The shipper must affix a UPS label requesting an adult signature upon delivery to each package containing a firearm. Adult means a person 21 years of age or older. UPS, in its sole discretion, may require the shipper to select a UPS Next Day Air Service for any shipment containing a firearm. Handguns, as defined by the Acts, will only be accepted for transportation via UPS Next Day Air Services, but will not be accepted for transportation via UPS Drop Boxes, Internet Shipping, or in response to a request for On-Call Pickup Service. Firearms, including handguns, will not be accepted when presented for shipment at locations of The UPS Store™ or any Third Party Retailer (as described in Item 1090). Small arms ammunition, as defined in 49 C.F.R. § 173.59, will be transported only when packaged and labeled in compliance with 49 C.F.R. § 172.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

435

MEASUREMENT OF COMBINED LENGTH AND GIRTH

To determine the length of a regularly shaped package or article, measure the longest side. To determine the girth, measure the distance around the package or article at its thickest part, at a right angle to the length. The total of the two measurements is the combined length and girth.

To determine the length, width, height, or combined length and girth of an irregularly shaped package or article subject to dimensional weight billing, assume the package or article to be enclosed in a six-sided carton having rectangular sides of no thickness joined together at right angles.

To determine the combined length and girth of articles of regular shape but with open or hollow portions, such as tires, hoops, coils, or frames, measure by use of outer dimensions only, as if the open or hollow portions were solid.

437

PACKAGING

It is the responsibility of the shipper to ensure that proper packaging is used and that contents of packages are adequately and securely packed, wrapped, and cushioned for transportation. The use of UPS-provided packaging is not a guarantee that an item is sufficiently packaged for transportation. UPS does not provide special handling for packages with "Fragile," package orientation (e.g., "UP" arrows or "This End Up" markings), or any other similar such markings.

440

REFUSAL OF SERVICE

UPS reserves the right to refuse to provide service, among other reasons, for any package which by reason of the dangerous or other character of its contents may, in the sole judgment of UPS, soil, taint, or otherwise damage other packages or UPS's equipment, or which is improperly or insecurely packed or wrapped. Packages must be so packed or wrapped as to meet UPS's published standards related thereto set forth in this Tariff or elsewhere, and as to pass the tests set forth in the International Safe Transit Association, Procedure 3A, Procedure for Testing Packaged Products, published by the International Safe Transit Association. In addition, any tested product must be free from damage and the packaging must afford reasonable protection as determined by UPS, in its sole judgment.

In addition, UPS reserves the right to refuse to provide service for any package, or to or from any location, or to provide alternative service arrangements, when, among other reasons, UPS, in its sole judgment, deems that it is unsafe or economically or operationally impracticable to provide service.

442

RIGHT OF INSPECTION

UPS reserves the right in its sole discretion to open and inspect any package tendered to it, but is not required to do so.

445

DEFINITION OF "PACKAGE"

The term "package," as used herein, means any container and its contents, and includes Letters and Express Envelopes, as well as any article that may be handled without packaging if the handling thereof can be accomplished in a reasonably safe and practicable manner.

446

UPS AUTOMATED SHIPPING SYSTEM AND SOURCE DOCUMENT

The term "UPS automated shipping system" as used herein, means a UPS Online® shipping system or a UPS Online Compatible shipping system that meets UPS Online requirements at the time of shipment. The term "source document" as used herein, means a document provided by UPS for the purpose of shipping a

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

package via UPS. "UPS automated shipping system" and "source document", individually or collectively, are sometimes referred to herein by the term "UPS shipping system".

447

PACKAGE LEVEL DETAIL ("PLD") AND SMART LABEL

Timely upload of Package Level Detail ("PLD") is defined as the electronic transmission of all applicable PLD information to UPS at the time that packages are tendered to UPS. PLD as used herein, includes, but is not limited to consignee's full name; complete delivery address and package weight.

A smart label as defined herein and described in the *UPS Guide to Labeling* includes, but is not limited to, MaxiCode, postal code bar code, current UPS Routing Code, appropriate UPS service level icon and a UPS 1Z tracking number bar code.

448

DEFINITION OF "DELIVERY"

Delivery for all purposes shall be deemed to include, but not be limited to: delivery to the consignee or the consignee's actual or apparent agent or representative, delivery to the address or location specified in the UPS shipping system, delivery to any person present at the address or location specified in the UPS shipping system, delivery to a reasonable alternate address or location, delivery in accordance with trade custom or usage, delivery pursuant to UPS's driver release procedures, delivery pursuant to UPS's shipper release procedures, or delivery otherwise permitted under this Tariff. UPS does not limit delivery of a package to the person specified as the consignee on the source document or in the UPS shipping system. Unless the shipper requests Delivery Confirmation service requiring a signature, UPS reserves the right, in its sole discretion, to make a delivery without obtaining a signature.

450

PAYMENT OF CHARGES

For purposes of this Item, the term "Charges" means all applicable transportation and other charges, including but not limited to, all applicable accessorial charges, surcharges, additional handling charges, and late payment fees.

Notwithstanding any billing plan that is in effect or payment or billing option selected at the time of shipment, the shipper is ultimately liable for and agrees to pay all Charges, including in the event of insolvency, bankruptcy, or non-payment or refusal to pay by the consignee or third party.

UPS reserves the right to bill for Charges based upon the characteristics of, and services requested for, the packages actually tendered to UPS. UPS also reserves the right to audit invoices to verify service selection, package or shipment weight, and applicability of any Charges, and to make appropriate adjustments. All Charges must be paid in the lawful money of the United States of America. If Charges are paid by credit card, the shipper expressly authorizes UPS to assess any Charges and to obtain payment of the Charges by use of the credit card. If, for any reason, any such credit card transaction is rejected or declined, the shipper will pay to UPS a declined transaction fee of ten dollars (U.S.) (\$10.00) per incident, in addition to any late payment fees assessed by UPS and any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper. In no event shall the declined transaction fee exceed the maximum amount allowed by applicable law. The shipper authorizes UPS to charge the declined transaction fee to the shipper's credit card account or to collect the fee directly from the shipper, at UPS's sole option.

UPS reserves the right, in its sole discretion, to request advance payment of Charges for any package sent to any international destination.

If a shipper submits package information to UPS (through an automated shipping system, source document, or UPS Internet Shipping) and does not subsequently tender such package to UPS, it is the shipper's sole responsibility to request an adjustment, as set forth below. Shippers who fail to do so will be liable for all applicable Charges.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

Shippers requesting an invoice adjustment (e.g., adjustment of Charges based on an incorrect rate, billable weight, account number, failure to tender a package, or type of service, etc.) or a refund due to a duplicate payment must notify UPS of the request within 180 days of receiving the contested invoice, or any billing dispute is waived. A partial payment against an invoice is not considered a request for an invoice adjustment.

452

USE OF UPS-PROVIDED MATERIALS AND SERVICES

UPS-provided materials, including but not limited to, packaging materials and supplies, envelopes, labels, label printers, shipping documents, publications and products are provided solely for the use of UPS shippers to obtain UPS services on their behalf and to interact with UPS. Any other use of such UPS-provided materials is strictly prohibited.

Under no circumstances may a shipper sell any UPS-provided materials, products, or services to any third party without prior written authorization from UPS.

455

USE OF UPS ELECTRONIC INFORMATION SYSTEMS

"UPS Systems" means for all purposes herein those UPS electronic information systems to which shippers are granted access by UPS and which are accessed by means of hardware, software, or Internet interfaces.

A shipper may use the UPS Systems solely for UPS-related business conducted by or on behalf of the shipper. Any other use of the UPS Systems is strictly prohibited. A shipper may use or disclose information provided via the UPS Systems only in connection with packages shipped by or to the shipper or on the shipper's behalf.

A shipper may not use the UPS Systems in any way that adversely affects the performance or function of the UPS Systems or interferes with access by other parties to the UPS Systems. A shipper shall not gain access, or attempt to gain access, by any means to any UPS computer system or database, other than the UPS Systems to which the shipper is expressly granted access by UPS.

A shipper shall preserve and reproduce all content of the information provided by the UPS Systems and maintain all data formats, structure, sequence and organization of the information delivered by the UPS Systems, without amendment, deletion or modification of any type. UPS reserves the right to terminate, update, alter or supplement any or all of the UPS Systems and services and information available from the UPS Systems at any time. UPS reserves the right to assess charges for the use of any UPS System, by providing notice of such charges to the shipper. By permitting limited usage of the UPS Systems, UPS does not convey any property interest in or to the UPS Systems or any other UPS property or services.

UPS reserves the right to terminate a shipper's access to and use of the UPS Systems for any reason, including if UPS in its sole judgment believes that (1) the system is being used for an illegal purpose or a purpose not authorized by UPS, or (2) UPS or a third party's rights are being jeopardized, or (3) UPS or any third party is potentially exposed to liability or damage of any type, or (4) the shipper is violating this Tariff or any other applicable agreement between UPS and the shipper.

458

ITEMS NOT ACCEPTED FOR TRANSPORTATION

UPS does not accept for transportation, and shippers are prohibited from shipping:

- (1) Articles of unusual value (as defined in Item 460);
- (2) Hazardous waste;
- (3) Human remains, fetal remains, human body parts, or components thereof;
- (4) Common fireworks;

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

- (5) Packages with an actual weight of more than 150 pounds; or packages that, when measured to determine the billable weight, exceed 108 inches in length, or exceed a total of 165 inches in length and girth combined, or in the case of import shipments, exceed 130 inches in length and girth combined;
- (6) Packages with a value of more than \$5,000 shipped as a result of a request for service made through the Internet by a shipper who has a UPS Internet shipping account only;
- (7) Packages with a value of more than \$1,000 returned via Print Return Label, Print and Mail Return Label, Electronic Return Label or 1 UPS Pickup Attempt Return Services;
- (8) Packages with a value of more than \$500 shipped via a UPS Drop Box;
- (9) Prepaid Letters with a value of more than \$100;
- (10) Packages with a value of more than \$999 when Shipper Release is selected;
- (11) Packages with a C.O.D. amount in excess of \$500 shipped via a UPS Drop Box;
- (12) Packages shipped internationally containing jewelry (not including costume jewelry) having a value of more than \$500;
- (13) Packages presented for shipment at Authorized Shipping Outlets, locations of The UPS Store™ or any Third Party Retailer containing any hazardous materials requiring shipping papers, firearms, or ammunition;
- (14) Packages tendered via UPS Return Services containing hazardous materials or requiring a UPS label requesting an adult signature upon delivery; and
- (15) Any other items prohibited by this Tariff, the UPS Rate and Service Guide, or UPS.com.

460

DEFINITION OF ARTICLES OF UNUSUAL VALUE WHICH ARE NOT ACCEPTED BY UPS FOR  
TRANSPORTATION

Shippers are prohibited from shipping articles of unusual value via UPS. Articles of unusual value shall be deemed to include, but are not limited to:

- (1) Coins, currency, postage stamps, negotiable instruments (except checks), money orders, unset precious stones, and industrial diamonds.
- (2) Any article that contains more than fifty percent by weight of gold or platinum or any combination thereof in raw form, including, but not limited to, bullion, bars, or scraps of these metals.
- (3) Any package having an actual value of more than \$50,000.

UPS will not be liable for any loss of, or damage to, articles of unusual value. UPS reserves the right, but is not required, to return to the shipper any package containing an article of unusual value. Such return will be made solely at the shipper's risk and expense.

461

HUMAN REMAINS AND BIOLOGICAL MATERIALS

No service shall be rendered in the transportation of human remains, fetal remains, human body parts, or components thereof.

Packages containing Diagnostic Specimens as described in 49 C.F.R. § 173.199, which are prepared in accordance with all aspects of 49 C.F.R. § 173.199, will be accepted for transportation.

Transportation of other biological materials is limited, must be prearranged, and will only be provided under the following conditions: the shipper has received prior written authorization from UPS for the specific package tendered; and the shipper requests service in accordance with the conditions set forth in the written authorization from UPS for the package tendered. Any package containing biological materials shall be considered a perishable commodity and will be accepted for transportation solely at the shipper's risk for any damage or loss arising from the perishable nature of the item.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

462

ALCOHOLIC BEVERAGES

The only alcoholic beverages that UPS accepts for transportation are wine and beer. Packages containing wine and beer are accepted for transportation only from shippers who are licensed and authorized under applicable laws to ship alcohol and only on a contractual basis. To receive service for packages containing wine or beer, the shipper must sign a contract and agree to the provisions set forth in the applicable approved UPS agreement for the transportation of wine or beer. The shipper must affix a UPS label, requesting Delivery Confirmation Adult Signature Required service, to each package containing wine or beer. Adult means a person 21 years of age or older. It is the responsibility of the shipper to ensure that a package tendered to UPS does not violate any federal, state, provincial, or local laws or regulations applicable to the package.

UPS reserves the right to dispose of any alcoholic beverages tendered for shipment which shippers are prohibited from shipping, which UPS is not authorized to accept, which UPS states that it will not accept, or which UPS has a right to refuse. The shipper agrees to indemnify, defend, and hold harmless UPS, its parent corporation, and affiliated companies, their officers, directors, employees, agents, and their successors and assigns, from all claims, demands, expenses, liabilities, causes of action, enforcement procedures, and suits of any kind or nature brought by a governmental agency or any other person or entity arising from or relating to the transportation of a package containing alcoholic beverages, or from the shipper's noncompliance with UPS requirements for the shipment of alcoholic beverages or governmental laws or regulations applicable to the transportation of alcoholic beverages. Under no circumstances shall UPS be liable for special, incidental, or consequential damages arising from the transportation of a shipment of alcoholic beverages. UPS reserves the right to discontinue service to any shipper for, among other reasons, tendering a package containing alcoholic beverages that does not comply with all applicable laws or the UPS Terms and Conditions of Service relating to the shipment.

463

LIVE ANIMALS

UPS provides service on a limited basis for packages containing some types of live animals. (The term "animal" as used herein refers to anything living, except plants). UPS will only accept packages containing live animals for shipment within the United States and as set forth in the UPS Terms and Conditions of Service, available at UPS.com. Any package containing a live animal shall be considered a perishable commodity and will be accepted for transportation solely at the shipper's risk for any damage or loss arising from the perishable nature of the item. UPS shall not be liable for any special, incidental, or consequential damages.

464

TOBACCO PRODUCTS

Packages containing tobacco products shipped to a consumer will only be accepted for transportation as a contractual service. To receive service for packages containing tobacco products shipped to a consumer, the shipper must sign a contract and agree to the provisions set forth in the applicable approved UPS agreement for the transportation of tobacco products. For all other service for packages containing tobacco products, the shipper and consignee must be licensed and authorized to ship and receive such items, respectively, pursuant to any applicable federal, state, provincial, or local law or regulation. It is the responsibility of the shipper to ensure that a shipment tendered to UPS does not violate any federal, state, provincial, or local laws or regulations applicable to the shipment.

UPS reserves the right to dispose of any tobacco products tendered for shipment which shippers are prohibited from shipping, which UPS is not authorized to accept, which UPS states that it will not accept, or which UPS has a right to refuse. The shipper agrees to indemnify, defend, and hold harmless UPS, its parent corporation, and affiliated companies, their officers, directors, employees, agents, and their successors and assigns, from all claims, demands, expenses, liabilities, causes of action, enforcement procedures, and suits of any kind or nature brought by a governmental agency or any other person or entity arising from or relating to the transportation of a package containing tobacco products, or from the shipper's

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

noncompliance with UPS requirements for the shipment of tobacco products or governmental laws or regulations applicable to the transportation of tobacco products. Under no circumstances shall UPS be liable for special, incidental, or consequential damages arising from the transportation of tobacco products. UPS reserves the right to discontinue service to any shipper for, among other reasons, tendering a package containing tobacco products that does not comply with all applicable laws or the UPS Terms and Conditions of Service relating to the shipment.

465

CORRECTION OF ADDRESSES

If UPS is unable to deliver any package as addressed by the shipper, or if the package has an incorrect or incomplete address (examples include, but are not limited to, P.O. Boxes, missing suite or apartment numbers, old addresses, and missing/incorrect ZIP Codes), UPS will make reasonable efforts, to be determined in its sole discretion, to secure the correct or complete address. An address validated by UPS may be incorrect or incomplete for purposes of completing delivery and may be corrected by UPS.

If the correct or complete address is secured, UPS, at its sole discretion, will attempt delivery, and the shipper will be provided with the correct or complete address in order to update its internal records. An additional charge will be assessed for an address correction.

470

REFUSED PACKAGES RETURNED

Domestic packages refused by consignees, or which for any other reason cannot be delivered, will be promptly returned to the shipper without additional charge. A package returned to the shipper after delivery is subject to applicable Charges.

If a package is refused by the consignee or for any other reason cannot be delivered, and return of the package is refused by the shipper, or the package cannot otherwise be returned to the shipper, UPS will retain the package for a reasonable period of time, to be determined in its sole discretion (not to exceed thirty days), and UPS reserves the right to dispose of the package thereafter.

472

DROP SHIPMENT

Drop Shipment, as defined herein, means any shipment pursuant to a written agreement between UPS and a specific shipper that permits the shipper to tender quantities of individual packages directly to UPS at a UPS pre-approved designated location. A unique Drop Shipper account number will be assigned, which the shipper agrees to use solely for the origin and destination locations as specified in the UPS Drop Ship Letter of Understanding.

UPS reserves the right to refuse any Drop Shipment request, in its sole discretion, including but not limited to, any Drop Shipment that is operationally or economically impracticable to transport. A request for Drop Shipment service is not reasonable unless the shipper makes a prior arrangement with UPS, agreed to in advance by UPS, as to timing, location and volume of the Drop Shipment.

When a shipper, through prior arrangements with UPS, tenders packages at UPS's receiving stations with a return address requiring a movement greater than a Zone 2 movement from the point of tender, any undelivered packages will be returned automatically and will be charged at the rate applicable between the point of tender and the return address. The effective UPS Rates for the applicable shipment will apply.

474

DELIVERY CHANGE REQUESTS

UPS may honor a request that UPS reroute a package to an address or consignee other than the address or consignee identified on a source document, or in the UPS automated shipping system for the package after tender of the package to UPS. UPS will honor such a request where practicable.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

475

DELIVERIES ATTEMPTED THREE TIMES WITHOUT EXTRA CHARGE

If UPS is unable to deliver a package, a notice will be left at the consignee's address stating that delivery has been attempted. Thereafter a second and, if necessary, a third attempt to deliver the package will be made without additional charge.

476

SHIP NOTIFICATION

Upon request, UPS will provide notification by fax or e-mail, as directed by the shipper, of a shipment requested by the shipper. The UPS Ship Notification service will be provided by UPS subject to the effective UPS Terms and Conditions of Service. Ship notification is available in UPS Online® Worldship® and UPS Online® Compatible vendor shipping systems approved to use this service. Only e-mail Ship Notification is provided through UPS CampusShip™ or UPS Internet Shipping. An additional charge will be assessed for each successfully faxed Ship Notification.

477

SHIPPER RELEASE

A shipper may request that UPS release a package on the first delivery attempt. Shipper Release will be provided by UPS subject to the effective UPS Terms and Conditions of Service. When Shipper Release is selected, the shipper acknowledges and agrees that UPS will make only one delivery attempt, that a signature will not be obtained upon delivery, and that a UPS delivery record showing a completed Shipper Release delivery shall be conclusive proof that delivery was completed. Shipper Release is provided solely at the shipper's risk of loss or damage arising from the release of the package by UPS, and UPS will not be liable to shippers or third parties for any damages arising from the release of the package. Shipper Release service is not available for packages having a value of more than \$999.00 (U.S.).

478

PACKAGE TRACKING/TRACING AND REFUND REQUEST CHARGE

UPS may, in its sole discretion, assess a shipper an additional charge for each Package Tracking/Tracing Request initiated by or at the request of the shipper.

This charge will not be assessed for the first 50 package tracking requests per calendar week, or for a quantity of package tracking requests equal to or less than twenty percent (20%) of the shipper's package volume for that week, whichever is greater.

This charge will not be assessed for a quantity of package tracing requests equal to or less than two percent (2%) of the shipper's package volume for that week.

UPS also reserves the right to assess the shipper a charge in the effective UPS Rates for guaranteed service refund requests when the subject package was delivered in accordance with the applicable UPS Service Guarantee in the effective UPS Terms and Conditions of Service.

480

C.O.D. PACKAGES

C.O.D. means, for all purposes, Collect On Delivery.

Preparation and Listing of C.O.D. Packages: C.O.D.s are accepted for amounts up to \$50,000 per package. Shippers not using a UPS automated shipping system must prepare and attach to each C.O.D. package a UPS C.O.D. tag showing the amount to be collected and enter such amount in the space provided for that purpose. Shippers using a UPS automated shipping system will generate, and apply to each C.O.D. package, a system-generated address label with a C.O.D. bar code and the amount to be collected for each individual package. Each C.O.D. package in a Hundredweight shipment must carry a C.O.D. tag or system-generated label for the goods contained in that package. An additional charge will be assessed for each C.O.D. package tendered to UPS. The entry of a C.O.D. amount is not a declaration of value for purposes of

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

purchasing declared value protection against loss or damage. Payment of the C.O.D. charge does not constitute payment of the declared value charge.

Responsibility for C.O.D.s: Upon delivery of each C.O.D. package, UPS will attempt to collect the amount shown on the C.O.D. tag or the system-generated label attached to the package and transmit to the shipper the amount so collected subject to the provisions of Item 485, or, if collection cannot be made, will return the package to the shipper. The shipper must notify UPS within 45 days from date of shipment if the shipper has not received payment of the C.O.D. amount, or any claim relating thereto shall be deemed waived. Suits shall be instituted within two years after denial of any portion of the claim.

If collection cannot be made within three delivery attempts, or the consignee refuses delivery, UPS will return the package to the shipper.

Consignee's Checks in Payment of C.O.D.s: Unless instructions to collect cashier's check or money order only are shown on the C.O.D. tag (in conformity with the instructions on the tag) or system-generated label, UPS will accept a check or other negotiable instrument issued by or on behalf of the consignee. When instructions to collect cashier's check or money order only are clearly indicated on the C.O.D. tag or system-generated label UPS reserves the right to accept a cashier's check, money order, official bank check or other similar instrument issued by or on behalf of the consignee. All checks or other negotiable instruments (including cashier's checks, official bank checks, money orders, and other similar instruments) tendered in payment of C.O.D.s will be accepted by UPS based solely upon the shipper assuming all risk relating thereto including, but not limited to, risk of nonpayment, insufficient funds, and forgery, and UPS shall not be liable upon any such instrument. All checks or other negotiable instruments (including cashier's checks, official bank checks, money orders, and other similar instruments) will be transmitted to the shipper together with UPS's own check if consignee check(s) collected are for less than the C.O.D. amount.

Currency in Payment of C.O.D.s: UPS will not accept currency in any amount for payment of C.O.D. shipments.

Payment of \$10,000 or more: Payment for any C.O.D. package of \$10,000 or more must be received in a single check or other negotiable instrument such as a cashier's check, money order, official bank check, or other similar instrument.

In the event that UPS accepts a personal or company check when a shipper has properly instructed UPS to collect a cashier's check or money order only, UPS reserves the right, in its sole discretion, to deposit into a UPS account the personal or company check collected and to provide the shipper with a check issued by UPS.

In the event that a shipper timely notifies UPS that it has not received payment of the C.O.D. amount, if UPS's records show that it collected a C.O.D. payment and the remittance has not been cashed, UPS may, in its sole discretion, provide the shipper with a digital image of the check or money order along with a C.O.D. Remittance Verification in order to assist the shipper in locating the missing C.O.D. payment. If the shipper is still unable to locate the C.O.D. payment, UPS may, in its sole discretion, provide the shipper with an indemnified C.O.D. check or money order, which is a digital image of the original payment collected by UPS at the time of delivery and can be deposited in a bank, provided that the original check or money order has not previously been deposited or negotiated. If the indemnified check or money order is invalid for any reason, including but not limited to insufficient funds or forgery, UPS shall not be liable upon the instrument.

C.O.D. packages with an amount to be collected in excess of \$500 will not be accepted for transportation via a UPS Drop Box.

C.O.D. service is not provided for international shipments.

As with all packages, UPS shall not be liable for any special, incidental, or consequential damages in connection with C.O.D. packages.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

485

REMITTANCE OF C.O.D.s

Subject to the remaining provisions of this Item, UPS shall remit C.O.D. collections to the shipper after the date of collection.

For purposes of this Item, the term "Charges" shall have the same definition as set forth in Item 450. The shipper irrevocably authorizes UPS to apply, in its sole discretion and without prior notice to the shipper, any C.O.D. collections to any past due Charges owed by the shipper. To this end, if there are any past due Charges owed by the shipper, the shipper hereby (a) irrevocably assigns and transfers to UPS all of the shipper's right, title and interest in and to each check or other negotiable instrument for payment of a C.O.D. that is received by UPS or its employee or agent, and (b) constitutes and appoints UPS as the shipper's attorney-in-fact and authorizes UPS, in the shipper's name, place and stead, to endorse any such check or other negotiable instrument with the shipper's name, to deposit the same into any UPS account, and to apply the proceeds of the same against any past due Charges owed by the shipper. The shipper acknowledges and agrees that such appointment of UPS as the shipper's attorney-in-fact is coupled with an interest and is irrevocable. UPS may exercise any of its rights under this Item either directly or through any employee or agent.

The shipper relinquishes, waives and agrees not to assert any claim against UPS or any of its employees or agents, any consignee, any collecting or paying bank, or any other person or entity that may directly or indirectly arise as a result of UPS's exercise of any of its rights under this Item. Without diminishing any of UPS's rights under the preceding sentence, the shipper agrees that UPS and such other persons or entities shall not be liable to the shipper or any other person or entity for any special, incidental, or consequential damages in any claim made with respect to UPS's exercise of any such rights.

The shipper agrees that, following UPS's application of any C.O.D. collections to any past due Charges owed by the shipper in accordance with this Item, the shipper will continue to be fully liable for the payment of all remaining Charges owed by the shipper (including, without limitation, (i) any Charges that are not covered by the application of the C.O.D. collections, and (ii) any Charges relating to a previously applied C.O.D. collection that is reversed by reason of the uncollectibility of the C.O.D. check or other negotiable instrument or otherwise).

Nothing in this Item shall constitute an election of remedies by UPS or any other person or entity or a waiver of any of the rights of UPS or any other person or entity under the remaining provisions of this Tariff or at law or in equity.

496

UPS RETURN SERVICES

UPS offers a variety of services for the return of UPS compatible packages, as provided in the applicable UPS Service Guides and effective UPS Terms and Conditions of Service. These services include: Print Return Label, Print and Mail Return Label, Electronic Return Label, 1 UPS Pickup Attempt, 3 UPS Pickup Attempts, and Call Tag. The value limit for each package returned via UPS Print Return Label, UPS Print and Mail Return Label, Electronic Return Label, or 1 UPS Pickup Attempt Return Services is \$1,000. The value limit for each package returned via 3 UPS Pickup Attempts or Call Tag Return Services is \$50,000.

Packages containing certain items are prohibited from being shipped, and are not accepted by UPS, when tendered for transportation via UPS Return Services, including but not limited to: Hazardous Materials and packages requiring a UPS label requesting an adult signature upon delivery.

C.O.D. (Collect On Delivery) service and Collect or Third-Party billing are not provided for UPS Return Services.

500

INTERRUPTION OF SERVICE

UPS shall not be liable for any interruption of service due to causes beyond UPS's control including, but not limited to, the following: the unavailability or refusal of a person to accept delivery of the shipment; acts of

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

God; acts of public authorities acting with actual or apparent authority; acts or omissions of customs or similar authorities; insufficient information provided by a customer; the application of security regulations imposed by the government, or otherwise applicable to the shipment; a government agency hold; riots; strikes or other labor disputes; civil unrest; disruptions of any kind in air or ground transportation networks; and natural disasters.

505

CLAIMS AND LEGAL ACTIONS

Claims against UPS must be filed within strict time limits, including as set forth in Item 450, regarding invoice adjustments or billing disputes; Item 520, regarding claims for loss or damage to property; and pursuant to the UPS Service Guarantee.

All claims against UPS arising from or related to the provision of services by UPS, including, but not limited to, demands for damages, refunds, credits, and any legal or equitable relief whatsoever, shall be extinguished unless the shipper or claimant (1) timely and completely complies with all applicable notice and claims periods set forth in this Tariff and in the *UPS Rate and Service Guide*, including as to claims for loss or damage to property, claims under UPS's Service Guarantee, or claims for invoice adjustments; and (2) pleads on the face of any complaint filed against UPS satisfaction and compliance with those notice and claims periods as a contractual condition precedent to recovery.

Claimants may not deduct the amounts of pending claims from any charges owed to UPS, and the shipper waives any and all rights, including any statutory or common law rights, to set off the amount of any claim against charges owed to UPS.

510

FILING OF CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

All claims for loss of or damage to property transported or accepted for transportation must: (1) be in writing and must include reference to the source document or pickup record number and date of shipment or copies of other documents sufficient to identify the shipment involved, and the declared value; (2) assert the liability of UPS for alleged loss or damage; (3) make claim for payment of a specified or determinable amount of money; and (4) be accompanied by a copy of the original invoice or, if no invoice was issued, other proof, certified to in writing, as to the purchase price paid by the consignee (where the property involved has been sold to the consignee), actual cost or replacement cost of the property, or extent of the damage to the property.

No claims will be voluntarily paid unless filed in writing by or on behalf of the shipper in accordance with these provisions.

515

ACKNOWLEDGMENT OF CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

After receiving a proper written claim in the manner and form and with the supporting documents described in Items 510 and 525, UPS or its designee will acknowledge the receipt of such claim in writing to the claimant within 30 days after the date of receipt, unless such claim has already been paid or denied in writing. UPS will at the time each claim is received create a separate file and assign thereto a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim including the written acknowledgment of receipt and, if in its possession, the source document and delivery receipts, if any, covering the shipment involved. At the time such claim is received, UPS will cause the date of receipt to be recorded on the face of the claim document, and the date of receipt will also appear on the written acknowledgment of receipt sent to the claimant.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

520

TIME LIMIT FOR FILING CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

As a condition precedent to recovery, all claims for loss or damage to property must be filed in writing with UPS within the following time limits: for domestic shipments, claims must be filed within nine months after delivery of the package or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed. For international shipments, claims must be filed within sixty days after delivery of the package or in the case of non-delivery, within sixty days after a reasonable time for delivery has elapsed. Suits shall be instituted within two years after denial of any portion of the claim. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, such claims shall be deemed waived and will not be paid.

A request for proof of delivery does not constitute the filing of a claim.

525

INVESTIGATION OF CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

- (1) Prompt Investigation. Each claim for loss or damage to a package or shipment filed in the manner prescribed herein will be promptly and thoroughly investigated, if investigation has not already been made prior to receipt of the claim.
- (2) Supporting Documents. A necessary part of an investigation requires that each claim be supported by the following: evidence of payment of the shipping and any declared value charges; and either the original invoice, a photographic copy of the original invoice or an exact copy thereof, or an extract made therefrom, certified by the claimant to be true and correct with respect to the property and cost thereof involved in the claim, or certification of prices or costs, with trade or other discounts, allowance, or deductions of any nature whatsoever and the terms thereof, or depreciation reflected thereon; provided, however, that where the property involved in a claim has not been invoiced to the consignee shown on the bill of lading or receipt or where an invoice does not show price or cost, or where the property involved has not been sold, or where the property has been transferred at bookkeeping values only, UPS will, before paying a claim thereon, require the claimant to establish the value in the quantity shipped, transported, or involved and to certify the correctness thereof in writing. UPS reserves the right to request the original shipping record or source document.
- (3) Original Packaging Materials. In the event that a claim is made for damage to a package, the original packaging materials must be made available to UPS or its designee for inspection.
- (4) Verification of Loss. When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, UPS will obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from UPS or from any other source.

530

DISPOSITION OF CLAIMS FOR LOSS OR DAMAGE TO PROPERTY

UPS or its designee, after receiving a written claim for property transported, will pay, decline, or make a firm compromise settlement offer in writing to the claimant within 120 days after UPS receives the claim; provided, however, that if the claim cannot be processed and disposed of within 120 days after receipt, UPS or its designee will at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing of the status of the claim and the reason for the delay in making final disposition thereof and shall retain a copy of such notice to the claimant in its claim file.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

535

LIMITATIONS OF LIABILITY

Each UPS domestic package or international shipment is automatically protected by UPS against loss or damage up to a value of \$100 (U.S.). Unless a greater value is recorded in the declared value field of the UPS source document or the UPS shipping system used, the shipper agrees that the released value of each domestic package or international shipment is no greater than \$100 (U.S.), which is a reasonable value under the circumstances surrounding the transportation, and that UPS shall not be liable for more than \$100 for each domestic package or international shipment. If additional protection is desired, the shipper may declare a value in excess of \$100 by showing a value in excess of \$100 in the declared value field of the UPS source document or the UPS shipping system used. An additional charge as set forth in the UPS Rates in effect at the time of shipping will be assessed.

Whenever property is damaged or lost by UPS in the course of transportation, and a valid claim has been filed in accordance with Items 510, 520, and 525, UPS will pay, at its option, the lowest of the following, not to exceed \$100: (1) for the damaged or lost goods; (2) for the purchase price paid by the consignee (where the property involved has been sold to the consignee); (3) for the actual cost or replacement cost of the property; or (4) for the cost of repairing the damaged property.

Where a value has been declared and the applicable charges paid, UPS's maximum liability shall not exceed the lesser of: (1) the declared value on the UPS source document or shipping system used; (2) the lesser of the purchase price paid by the consignee (where the property involved has been sold to the consignee), the actual cost, or the replacement cost of the property; (3) the cost of repairing the damaged property; (4) \$50,000 per package, except for (i) packages shipped via a UPS Drop Box, in which case UPS's maximum liability shall be \$500 per package, (ii) packages shipped as the result of a request for service made through the Internet by a shipper who has a UPS Internet shipping account only, in which case UPS's maximum liability shall be \$5000 per package, (iii) packages returned via UPS Print Return Label, UPS Print and Mail Return Label, Electronic Return Label, or 1 UPS Pickup Attempt Return Services, in which case UPS's maximum liability shall be \$1,000 per package, and (iv) packages for which Shipper Release is selected, in which case UPS's maximum liability shall be \$999 per package, or (5) \$500 for international jewelry (not including costume jewelry) shipments.

In the event of loss of or damage to any article or articles which are part of a pair or set, UPS will be liable only for an amount consisting of the reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set.

In the event of loss of or damage to any part of property (including any part of a machine) consisting, when complete for sale or use, of several parts, UPS will be liable only for the value of the part lost or damaged, not to exceed the declared value of the part lost or damaged.

When UPS pays the actual cost, the purchase price, or the replacement cost of the property, title to the property shall thereupon pass to UPS; otherwise, the damaged property shall be returned to the shipper. UPS will not be liable or responsible for the loss of or damage to any package, the contents of which shippers are prohibited from shipping, which UPS is not authorized to accept, which UPS states that it will not accept, or which UPS has a right to refuse. UPS will not voluntarily pay a claim for loss or damage to property unless all applicable transportation and other charges have been paid. UPS shall not be liable for and reserves the right in its sole discretion to deny claims pertaining to a package for which there are no UPS records reflecting that the package was tendered to UPS by the shipper.

UPS will not be liable or responsible for the loss of or damage to (1) articles of unusual value (as defined in Item 460), (2) any package resulting from insects, moths, vermin, inherent vice (including, but not limited to, improper, inadequate, or unsafe packaging or wrapping that fails to meet UPS's published standards related thereto set forth in this Tariff or elsewhere), deterioration, dampness of atmosphere, extreme of temperature, ordinary wear and tear, or that which occurred or arose prior to or after the course of transportation by UPS, (3) perishable commodities or commodities requiring protection from heat or cold, to the extent the loss or damage results from exposure to heat or cold or the perishable nature of the items, (4) human remains, fetal remains, human body parts, or components thereof, (5)

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

packages lost or damaged due to war risks, (6) packages lost or damaged due to nuclear damage, (7) packages with a value in excess of \$5000 when the package is shipped as a result of a request for service made through the Internet by a shipper who has a UPS Internet shipping account only, (8) packages having a value of more than \$500 if shipped via a UPS Drop Box, (9) Prepaid Letters having a value of more than \$100, (10) packages shipped internationally containing jewelry (not including costume jewelry) with a value in excess of \$500, (11) packages having a value of more than \$1,000 returned via UPS Print Return Label, UPS Print and Mail Return Label, Electronic Return Label, or 1 UPS Pickup Attempt Return Services, or (12) packages having a value of more than \$999 when Shipper Release is selected.

UPS's liability for a package containing a check or checks is limited to the cost of stopping payment on and reissuing the check(s), not to exceed \$100 per package. In no event shall UPS be liable for the face value of the check(s). UPS's liability for a package containing a phone card, gift certificate, or gift card is limited to the cost (which shall not include any amount of the value attached to the card or certificate) of replacing the physical card(s) or certificate(s), not to exceed \$100 per package. In no event shall UPS be liable for the face value of any phone card, gift certificate, or gift card.

Declaring a value in the declared value field of the UPS source document or UPS shipping system used does not provide protection for, and shippers may not declare a value for protection for, any damages related to providing, or the failure to provide, C.O.D. service, including but not limited to: failure to collect the C.O.D. amount; failure to collect the specified form of payment; collection of an instrument in the wrong amount; failure or delay in delivering the collected instrument to the shipper; or collection of forged, insufficient funds, or otherwise invalid instruments.

UPS does not provide a protective service for the transportation of perishable commodities or commodities requiring protection from heat or cold. Such commodities will be accepted for transportation solely at the shipper's risk for any loss or damage arising from the perishable nature of the item. Shippers shall not file claims for, and UPS shall not be liable to shippers or any third parties for, any damage arising from the transportation of perishable commodities or commodities requiring protection from heat or cold, regardless of whether the package is delivered pursuant to an applicable UPS Service Guarantee or is delayed in transit. UPS reserves the right to dispose of any package in the UPS system containing a perishable commodity that, in UPS's sole discretion, is deemed to be unsafe or unsanitary.

In the event that UPS fails to attempt delivery in accordance with the terms of the UPS Service Guarantee, set forth in full in the Terms and Conditions of Service in the *UPS Rate and Service Guide* and at UPS.com, UPS, at its option, will either credit or refund the transportation charges for each such package to the payer only, upon request, provided that the conditions set forth in the UPS Service Guarantee are met. This is the sole remedy available under the UPS Service Guarantee.

Any declared value in excess of the maximums allowed in the applicable UPS Tariff or Service Guide is null and void. Acceptance for carriage of any package bearing a declared value in excess of the allowed maximums specified in the applicable UPS Tariff or Service Guide, or any package containing articles that shippers are prohibited from shipping or that UPS does not or is not authorized to accept for transportation, does not constitute a waiver of any provision of the Tariff or Service Guide limiting UPS's liability or responsibility for any such package.

Under no circumstances shall UPS be liable for any special, incidental, or consequential damages, including but not limited to, damages arising from loss, misdelivery of, or damage to property, delayed delivery, or failure to attempt delivery in accordance with the UPS Service Guarantee. Under no circumstances shall UPS be liable for any damages whatsoever for delayed delivery, except as specifically provided for shipments made under the UPS Service Guarantee.

UPS shall not be liable for any damages arising from UPS's inability, failure, or refusal to comply with a request to stop, return or reroute shipment of a package after tender to UPS.

540

METHOD OF DETERMINING TRANSPORTATION RATES

To determine rates pursuant to this Tariff:

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

- (1) Refer to the UPS Zone Chart applicable to the package in effect at the time of shipping to determine the appropriate zone for use in determining the rate.
- (2) Refer to the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping and declared value charges applicable to the package in effect at the time of shipping, which are available at UPS.com and upon request at the local UPS office.
- (3) Refer to the effective UPS Rates applicable to the shipper and package and in effect at the time of shipping, for other charges, surcharges or rates charged by reason of nonstandard service and/or additional or nonstandard usage.
- (4) Refer to any applicable customized contract.

Released value of package:

The effective UPS Rates and any declared value charges are applicable only when the value of the property inserted in the declared value field of the UPS shipping system used by the shipper, or agreed upon in writing, as the released value thereof is as follows:

- a. For a value not exceeding \$100 per package:

Apply the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping, which are available at UPS.com and at local UPS offices upon request;

- b. For a declared value exceeding \$100 per package:

Apply the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping, plus the declared value charge, the amount of which is available at local UPS offices upon request and at UPS.com.

560

OPTIONS FOR PAYMENT OF CHARGES

For purposes of this Item, the term "Charges" shall have the same definition as set forth in Item 450.

In its sole discretion, UPS may provide alternative payment terms to certain of its shippers. UPS, in its sole discretion, shall decide which, if any, of the alternative payment plans described below will be made available to the shipper. A shipper that is not enrolled in any of the payment plans described below shall pay all Charges in advance of shipment as required by UPS.

If, for any reason, a negotiable instrument submitted to UPS as payment for Charges is returned to UPS unpaid, or an electronic request for payment is dishonored, UPS may charge the shipper a dishonored payment fee of twenty dollars (U.S. \$20.00) or such greater amount as may be allowed by applicable law, per incident, in addition to any late payment fees assessed by UPS and any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper. In no event shall the dishonored payment fee exceed the maximum amount allowed by applicable law.

As an accommodation to the shipper, and in UPS's sole discretion, UPS may render invoices or copies of invoices to a third party at the request of the shipper. The shipper remains responsible for the timely payment in full of all Charges owed by the shipper. By requesting UPS to render invoices or copies of invoices to a third party, the shipper is deemed to authorize the third party to act on behalf of the shipper, and UPS may rely thereon in all respects.

UPS also may in its sole discretion elect to render an invoice that includes Charges owed in addition to payments owed for services provided by UPS affiliates.

Where UPS elects to make an alternative payment plan available to the shipper, UPS may render an invoice to the shipper on a weekly (i.e., seven days) or a monthly (i.e., four or five calendar weeks) basis. A weekly invoice will include the Charges incurred in the previous week. Notwithstanding that UPS has elected to render an invoice to the shipper on a weekly basis, an invoice may be issued only when the shipper has incurred aggregate Charges in excess of ten dollars (\$10.00), or when five (5) calendar weeks have elapsed from the date of issuance of the last invoice, whichever event occurs first. A monthly invoice

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

will include the Charges incurred for the four or five week period for which the invoice is issued. A weekly service charge will be added to each invoice if the shipper has requested UPS's automatic daily pickup call service. Except as otherwise expressly provided below, UPS's payment terms require payment of all Charges within seven (7) days after receipt of the UPS invoice. In its sole discretion, UPS may offer one or more of the following alternative payment plans for the payment of Charges:

(1). Electronic Funds Transfer Plan (Debit EFT)

By written agreement with UPS, the shipper will provide UPS with the shipper's bank account number and bank account routing number to enable UPS to electronically request payment, for all Charges incurred by the shipper, directly from the shipper's bank, on a weekly or monthly basis. The shipper's bank will remit the amount requested to UPS and deduct that amount from the shipper's bank account. Payments to UPS will be shown on the shipper's bank statements. The shipper is responsible for payment of any fees imposed by the shipper's bank. Additionally, the shipper will receive a weekly or monthly invoice, as applicable, except as described above, from UPS listing the services provided for the applicable billing period. If, for any reason, an electronic request for payment is dishonored, the shipper is responsible for making a timely payment directly to UPS. Past due balances will be subject to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper. No late payment fee shall be assessed with respect to the Electronic Funds Transfer Plan.

(2). Monthly Prepayment Plan

By written agreement with UPS, the shipper will make a prepayment with UPS in an amount equal to four weeks' anticipated Charges as estimated by UPS. Upon notice to the shipper, the required prepayment amount may be changed by UPS at any time to reflect a revised estimate of four weeks' Charges. All prepayment amounts will remain on account with UPS. No interest will be paid or accrued on the prepayment amounts.

The Charges incurred for the applicable month will be totaled and billed to the shipper on a monthly basis. Payment is due within seven (7) days after receipt of the UPS invoice. Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

(3). Weekly Prepayment Plan

By written agreement with UPS, the shipper will make a prepayment with UPS in an amount equal to four weeks' anticipated Charges as estimated by UPS. Upon notice to the shipper, the required prepayment amount may be changed by UPS at any time to reflect a revised estimate of four weeks' Charges. All prepayment amounts will remain on account with UPS. No interest will be paid or accrued on the prepayment amounts.

Shipper will receive invoices on a weekly basis, except as described above. Each invoice will list the previous period's Charges incurred. Payment for all accumulated Charges will be due within seven (7) days following the shipper's receipt of every fourth invoice; however, if prior to receiving the fourth invoice the shipper's accumulated Charges should equal or exceed the prepayment amounts on account with UPS, then the accumulated Charges will be due within seven (7) days following the shipper's receipt of the invoice requiring such payment. Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

(4). Special Payment Plan

By written agreement with UPS, the shipper may elect to prepay an amount equal to the anticipated Charges for a period of between ten to twenty-six weeks, as estimated by UPS. The Charges actually incurred by the shipper will be deducted by UPS on a weekly basis from the prepayment amounts on account with UPS. Weekly invoices marked as paid will be forwarded to the shipper reflecting the balance of the prepayment amount on account with UPS. When the prepayment amount on account with UPS reaches the minimum balance specified in the written agreement, the shipper is required to make another prepayment for an additional period pursuant to the same agreement, or, if the shipper

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

does not do so, the shipper must make another payment arrangement with UPS. All prepayment amounts will remain on account with UPS. No interest will be paid or accrued on the prepayment amounts. If the Charges incurred by the shipper exceed the remaining balance of the prepayment amounts on account with UPS, the excess Charges will be due within seven (7) days following the shipper's receipt of the invoice requiring such payment. Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

(5). Credit Extension Plan

By written agreement with UPS, the shipper may elect to pay an annual credit extension fee and thereafter receive invoices for Charges incurred by the shipper on a monthly basis with no prepayment requirement. The invoices will be payable within seven (7) days following receipt by the shipper. The credit extension fee is based upon the shipper's total annual Charges, as estimated by UPS, and is subject to change annually by UPS in its sole discretion. In order to be eligible for the Credit Extension Plan, the shipper must use UPS's transportation services and the Credit Extension Plan solely for business, commercial, or agricultural purposes. A shipper is not eligible for the Credit Extension Plan if the shipper uses UPS's transportation services and the Credit Extension Plan for any personal, family, or household purposes. By using the Credit Extension Plan (if made available to the shipper), the shipper represents, warrants, certifies, and agrees that it will use UPS's transportation services and the Credit Extension Plan solely for business, commercial or agricultural purposes and not for any personal, family, or household purposes. Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

(6). Weekly Payment Plan

Each week the shipper will receive an invoice for the previous week's Charges except as described above. The invoice is due within seven (7) days of receipt. No prepayment is required under this plan.

Past due balances will be subject to a late payment fee as described below in addition to any collection costs which may be incurred by UPS in the final collection of Charges owed by the shipper.

Shipper acknowledges and agrees that there may be a delay of two or more days between the date that payments are received by UPS and the date that the payments are posted and credited to the shipper's account with UPS. If a UPS remittance advice is attached to the shipper's payment, the payment will be credited accordingly. If no remittance advice is attached to the shipper's payment, the payment will be credited to the oldest outstanding invoice.

For the Monthly Prepayment Plan, the Weekly Prepayment Plan, the Special Payment Plan, the Credit Extension Plan, and the Weekly Payment Plan, a late payment fee will be assessed if the shipper's payment is not received by UPS within fourteen (14) days of the invoice due date. Except as otherwise stated below, the late payment fee will equal five percent (5%) of the total past due balance of the shipper's invoice (including, without limitation, any previously assessed but unpaid late payment fees) that is fourteen (14) days past due or the maximum amount permitted by applicable law, whichever is less.

In determining the late payment fee for the Monthly Prepayment Plan and the Weekly Prepayment Plan, UPS will apply the prepayment amounts on account with UPS to reduce the calculated base amount on which the late payment fee is assessed; provided, that UPS will so apply the prepayment amounts to the oldest outstanding invoice first, and to each subsequent invoice thereafter, until the prepayment amounts have been fully so applied. If an invoice 14 days past due is fully so covered by the prepayment amount, no late payment fee will apply. If an invoice 14 days past due is partially so covered by the prepayment amount, the late payment fee will apply to the portion not so covered by the prepayment amount.

For the Special Payment Plan, a late payment fee will not be assessed if there has been a positive balance in the shipper's prepayment account with UPS at any time during the 27-day period immediately preceding the transmittal of the current invoice to the shipper. The late payment fee for the Special Payment Plan will

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

be assessed on the "charges this period" of the shipper's invoice (including, without limitation, any previously assessed but unpaid late payment fees) that is fourteen (14) days past due.

A late payment fee will be assessed only once on each invoice that is fourteen (14) days past due. Each late payment fee will be due and payable within seven (7) days following the shipper's receipt of the invoice that first reflects the assessment of the late payment fee. The late payment fee is in addition to any collection costs that may be incurred by UPS in the final collection of Charges owed by the shipper. Neither the assessment nor the payment of a late payment fee will (a) affect the shipper's responsibility to pay all Charges owed, or (b) in any manner preclude UPS from exercising any of its rights or remedies hereunder or under applicable law.

575

WEEKLY SERVICE CHARGE FOR DAILY PICKUP SERVICE

When Daily Pickup Service is requested, an additional weekly service charge will be assessed and shall apply in addition to the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping. UPS will call upon each UPS daily pickup service shipping account once each business day to pick up packages for delivery to all points served without a special pickup request. UPS may not call upon a UPS daily pickup service shipping account on any day in which the account indicates that there are no packages available for pickup.

The weekly service charge is based on a daily pickup account's weekly billing total, as reflected in the UPS billing system. The weekly billing total may not necessarily reflect all packages tendered during a calendar week.

580

HAZARDOUS MATERIALS SERVICE

Hazardous Materials, defined as those materials regulated under Title 49 of the Code of Federal Regulations (49 C.F.R.), excluding ORM-D ground shipments, are accepted for transportation only via Daily Pickup Service, and only as a contract service under the provisions set forth in the UPS standard form Agreement for Transportation of Hazardous Materials (Agreement). To receive Hazardous Materials Service, a shipper must either sign an Agreement or incorporate the provisions of the Agreement into the shipper's existing customized contract for shipping service with UPS.

UPS transports Hazardous Materials only within and among the 50 United States and Puerto Rico.

An additional charge will be assessed for each Hazardous Materials package shipped under the Agreement. The effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will apply.

It is the shipper's responsibility to determine if a package contains a Hazardous Material and to properly classify, label, mark, and package it in accordance with governmental regulations, 49 C.F.R. and the terms set forth in the Agreement.

UPS reserves the right to charge and the shipper agrees to pay, for all costs resulting from improperly packed Hazardous Materials, or the cost of disposal if the shipper refuses to accept a returned item. The shipper agrees to indemnify, defend, and hold harmless UPS, its parent corporation, and affiliated companies, their officers, directors, employees, agents, and their successors and assigns, from all claims, demands, expenses, liabilities, causes of action, enforcement procedures, and suits of any kind or nature brought by a governmental agency or any other person or entity arising from or relating to the transportation of a Hazardous Materials package, from the shipper's breach of the Agreement, or from the shipper's non-compliance with governmental laws or regulations applicable to the transportation of Hazardous Materials. Under no circumstances shall UPS be liable for special, incidental, or consequential damages arising from the transportation of a Hazardous Materials shipment.

UPS reserves the right to discontinue service to any shipper for, among other reasons, tendering an undeclared Hazardous Materials package (including ORM-D shipments that are tendered without the proper shipping documentation) to UPS. If a shipper tenders an undeclared Hazardous Materials

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

package to UPS, UPS shall not be liable for the package in the event of loss, damage, delay, or misdelivery, nor shall UPS be liable for any special, incidental, or consequential damages.

Additional terms and conditions regarding the shipment of Hazardous Materials are set forth in the *UPS Guide for Shipping Ground and Air Hazardous Materials*, which is available at UPS.com.

590

HAZARDOUS WASTE AND MERCURY-CONTAINING WASTE

No service shall be rendered in the transportation of hazardous waste. Hazardous waste is a solid waste that meets any of the criteria of hazardous waste as described in Section 261.3 of Title 40 of the Code of Federal Regulations.

UPS's acceptance for transportation of any mercury-containing waste material or used mercury-containing device (including, but not limited to, medical devices, spent or broken fluorescent lamps, thermostats or thermometers) is limited, must be prearranged, and will only be provided pursuant to prior written authorization from UPS upon satisfaction of certain requirements, including appropriate packaging and financial assurances.

592

PORTABLE ELECTRONIC DEVICES

UPS transports packages containing radio frequency devices (RFID), ultra-wideband devices (UWB) and other portable electronic devices (PED) only when such devices are in an inactivated state or otherwise in compliance with applicable law, including 14 C.F.R. 91.21, 14 C.F.R. 121.306, or 47 C.F.R. 15.521(a).

600

DELIVERY CONFIRMATION SERVICE

At the time a shipper tenders a domestic package to UPS, the shipper may request Delivery Confirmation Service by indicating Delivery Confirmation on a UPS source document (excluding Air Shipping Documents) or in a UPS automated shipping system. Each Delivery Confirmation response will include the date of delivery and either the name of the recipient or the disposition of the package; however, in the event of a return, the response will indicate the reason for the return and the date processed. An additional charge will be assessed for each such response. All responses will be consolidated and provided to the shipper in printed or electronic format.

For an additional charge, a shipper may request UPS to obtain the recipient's signature and to include it on the Delivery Confirmation response.

A shipper may request UPS to obtain the signature of an adult 21 years of age or older and to include it in the Delivery Confirmation response. An additional charge will be assessed for each such response. UPS, in its sole discretion, will determine if delivery can be completed when such a request is made, and may request photo identification indicating the recipient's age before completing delivery. The shipper must use a UPS automated shipping system to initiate a request for this service.

A shipper may elect to direct the response to an address other than the return address specified on the shipping label. In such a case, the response will be mailed individually and an additional charge will be assessed.

601

PROOF OF DELIVERY (P.O.D.)

Upon request, UPS will provide proof of delivery via facsimile or mail transmission. The request must include a facsimile number, including area code, for an operating facsimile machine, or an address deliverable by the United States Postal Service for mail. UPS reserves the right to assess the shipper an additional charge for each successfully transmitted or mailed P.O.D.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

605

ADDITIONAL HANDLING CHARGES

An additional handling charge in the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will be assessed for the transportation of the following: any article that is encased in an outside shipping container made of metal or wood; any cylindrical item, such as a barrel drum, pail, or tire, that is not fully encased in a corrugated cardboard shipping container; any package with the longest side exceeding 60 inches or its second-longest side exceeding 30 inches; and any package qualifying as a Large Air Package. An additional handling charge will not be assessed to packages qualifying for a Large Package Surcharge. UPS reserves the right to assess the Additional Handling Charge for any package that, in UPS's sole discretion, requires special handling.

606

FUEL SURCHARGE

UPS reserves the right to institute a fuel surcharge on some or all shipments without prior notice. This surcharge is subject to adjustment monthly. This surcharge may apply to any domestic or international transportation or other charges, including but not limited to, any accessorial charge or surcharge. This surcharge will be applied to such services and for such periods as UPS, in its sole discretion, may determine necessary. The current fuel surcharge is described at UPS.com.

1000

DELIVERY SERVICE FOR SHIPPERS RECEIVING DAILY PICKUP SERVICE

Shippers who elect Daily Pickup Service, pursuant to the terms of Item 575, may ship general commodities except articles of unusual value (as defined in Item 460), Classes A and B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, those commodities injurious or contaminating to other lading and items identified in Item 458. The rate for delivery of packages between points and places in the United States to a commercial location (a place of business or employment, not including a business operated out of a home that does not have an entrance open to the public) or to a residential location (a location that is a home, including a business operating out of a home that does not have an entrance open to the public) shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

If the delivery location could be construed as either residential or commercial, then the rates for residential delivery service will be applied.

For rates applicable to Daily Pickup Service, see Item 575.

Note 1 - UPS will profile the shipper's traffic at a single location and/or at multiple locations as

necessary and, based on that profile, will assign the shipper's traffic to a customer group for the receipt of applicable package information, problem resolution, solution support, and communication services.

Note 2 - In the event a shipper selects the "Bill Consignee" or "Bill Third Party" option and omits the account number or supplies an invalid account number, then in addition to being liable for the transportation and other charges, the shipper shall be assessed an additional charge. An account number is invalid if it is the wrong account number for the bill-to party, or if it is the account number for a consignee or third party who fails to pay the shipping charges.

1005

ON-CALL PICKUP SERVICE

When On-Call Pickup Service is requested by the shipper, UPS will arrange (where reasonably practicable) a package pickup at the shipper's location. The effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will apply. An additional charge for On-Call Pickup Service will also be assessed.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

On-Call Pickup Service is available for packages containing general commodities, except articles of unusual value (as defined in Item 460), Classes A and B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, hazardous materials requiring shipping papers in accordance with 49 C.F.R. § 172.200, those commodities injurious or contaminating to other lading and items identified in Item 458.

1010

UPS GROUND SERVICE GUARANTEE

UPS guarantees on-schedule delivery of UPS Ground Service and UPS Hundredweight Service Ground packages, where such services are available, to all 50 states and Puerto Rico. The guarantee is provided according to the terms of the applicable UPS Service Guarantee in the effective UPS Terms and Conditions of Service.

Note 1 - If the delivery location could be construed as either residential (a location that is a home, including a business operating out of a home that does not have an entrance open to the public) or commercial (a place of business or employment, not including a business operated out of a home that does not have an entrance open to the public), then the rates for residential delivery service will be applied.

Note 2 - The guarantee does not apply to shipments that are delayed due to causes beyond UPS's control including, but not limited to, the following: the unavailability or refusal of a person to accept delivery of the shipment; acts of God; acts of public authorities acting with actual or apparent authority; acts or omissions of customs or similar authorities; insufficient information provided by a customer; the application of security regulations imposed by the government, or otherwise applicable to the shipment; a government agency hold; riots; strikes or other labor disputes; civil unrest; disruptions of any kind in air or ground transportation networks; and natural disasters.

Note 3 - The guarantee does not apply to shipments that are picked up or scheduled to be delivered between December 12th and December 24th.

Note 4 - The sole remedy provided under the UPS Ground Service Guarantee is the credit or refund of transportation charges, which will only be remitted to the payer. Under no circumstances shall UPS be liable for any special, incidental, or consequential damages for failure to attempt delivery in accordance with the UPS Ground Service Guarantee.

1020

UPS 3 DAY SELECT SERVICE

UPS 3 Day Select Service is available for the shipment of general commodities, except articles of unusual value (as defined in Item 460), Classes A and B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, those commodities injurious or contaminating to other lading, and items identified in Item 458, between points and places in the 48 contiguous United States. UPS 3 Day Select Service is available to the shipper by attaching a special label, approved by UPS, at the time the package is tendered to UPS, in accordance with the effective UPS Terms and Conditions of Service. UPS guarantees delivery of UPS 3 Day Select packages subject to the terms of the applicable UPS Service Guarantee in the effective UPS Terms and Conditions of Service.

The rate for delivery of UPS 3 Day Select Service packages to a residential location (a location that is a home, including a business operating out of a home that does not have an entrance open to the public) or to a commercial location (a place of business or employment, not including a business operated out of a home that does not have an entrance open to the public) shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

Note 1 - A service charge for pickup service may apply. For rates applicable to pickup service, see Items 575 and 1005.

Note 2 - Transportation charges will be based on the dimensional weight of the package when the dimensional weight exceeds the actual weight.

Dimensional weight is determined as follows:

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

Step 1 - Calculate cubic size: Multiply the package length by the width by the height (round each number to the nearest whole inch) (LxWxH). The result is the cubic size of the package.

Step 2 - Determine dimensional weight: Divide the cubic size of the package by 194 to determine the dimensional weight (in pounds). Increase fractions of a pound to the next full pound.

$$\frac{L \times W \times H}{194} = \text{Dimensional Weight}$$

Note 3 - Hazardous materials are accepted for transportation via UPS 3 Day Select Service only in passenger aircraft quantities prepared according to the requirements set forth in Title 49 of the Code of Federal Regulations and the *UPS Guide for Shipping Ground and Air Hazardous Materials*, and only for customers who have completed a UPS standard form Agreement for Transportation of Hazardous Materials or have the provisions of that Agreement incorporated into their existing customized contract for shipping service with UPS. Hazardous materials and all "Other Regulated Materials" (ORM) are prohibited from being shipped via UPS 3 Day Select Hundredweight Service.

Note 4 - UPS Hundredweight Service is available for 3 Day Select Service provided the total shipment actual weight is 200 pounds or more. All other terms and conditions of UPS Hundredweight Service contained in the applicable UPS Service Guides and the effective UPS Rates will apply.

1030

RATES FOR OVERSIZE, OVERWEIGHT AND LARGE PACKAGES

Oversize 1: If a package exceeds 84 inches in length and girth combined and is less than or equal to 108 inches in length and girth combined and has an actual weight of less than 30 pounds, the package will be considered "Oversize 1" (OS1). Each OS1 package will be treated as a 30-pound package when calculating the billable weight.

Oversize 2: If a package exceeds 108 inches in length and girth combined, and is less than or equal to 130 inches in length and girth combined, and has an actual weight of less than 70 pounds, the package will be considered "Oversize 2" (OS2). Each OS2 package will be treated as a 70-pound package when calculating the billable weight.

Oversize 3: If a UPS Ground package exceeds 130 inches in length and girth combined and has an actual weight of less than 90 pounds, the package will be considered "Oversize 3" (OS3). Each UPS Ground OS3 package will be treated as a 90-pound package when calculating the billable weight and will be subject to a Large Package Surcharge.

A Large Package Surcharge (LPS) will be applied to each UPS Ground package sent between locations in the United States, including Hundredweight, when the size of the package exceeds 130 inches in length and girth combined and/or the package is identified as OS3. Each Large Package in a UPS Ground multi-piece shipment may receive an LPS. An LPS will not apply to UPS Standard To Canada packages or Authorized Return Services Ground packages.

A package shipped using a UPS Air Service or UPS 3 Day Select is considered a Large Air Package when its length, combined with twice the width plus twice the height, exceeds 130 inches, and is equal to or less than 165 inches. For each Large Air Package, the rate is based on the greater of the dimensional weight or the actual weight. Large Air Packages are subject to a minimum billable rate of \$90. The minimum billable rate will not apply to UPS Hundredweight Service shipments.

Packages with an actual weight of more than 150 pounds, or packages that, when measured to determine the billable weight, exceed 108 inches in length, or exceed a total of 165 inches in length and girth combined, or in the case of import shipments, exceed 130 inches in length and girth combined, are not accepted for transportation. If found in the UPS system, they are subject to one or more of the following additional charges: Over Maximum Weight (\$50), Over Maximum Length (\$50), or Over Maximum Size (\$50).

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

1060

EXPEDITED SERVICE

Expedited Service may be selected by a shipper for general commodities, except articles of unusual value (as defined in Item 460), Classes A & B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, those commodities injurious or contaminating to other lading and items identified in Item 458. This service is available between points and places in the United States. Expedited Service may be selected by tendering a package to UPS and attaching a special label, approved by UPS, requesting expedited UPS Next Day or 2nd Day delivery service.

When such service is requested, the rates for delivery of UPS Next Day or UPS 2nd Day Letters, Express Envelopes or packages, with a value not exceeding \$100 per package, shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

Note 1 - Alternatively, the shipper may attach a special label, approved by UPS, to the package requesting UPS Next Day Saver delivery service. The UPS Next Day Saver delivery service will be provided by UPS subject to the terms and conditions published in the applicable UPS Service Guides. The effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will apply.

Note 2 -The shipper may attach a special label, approved by UPS, to the package requesting UPS Next Day Early A.M. delivery service. The UPS Next Day Early A.M. delivery service will be provided by UPS, subject to the terms and conditions published in the applicable UPS Service Guides, and subject to the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping. The shipper may request optional verbal confirmation of delivery service by indicating Verbal Confirmation of Delivery on the UPS Next Day Early A.M. source document or in the UPS automated shipping system. When this service is selected, UPS will call the shipper to confirm delivery on the day of delivery. The Verbal Confirmation of Delivery will be provided for an additional charge.

Note 3- The shipper may also attach a special label, approved by UPS, to the package requesting UPS 2nd Day A.M. delivery service. The UPS 2nd Day A.M. delivery service will be provided by UPS, subject to the terms and conditions published in the applicable UPS Service Guides. The effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping will apply.

Note 4 - For Next Day services, there is no weight limit for Express Envelopes containing correspondence, urgent documents, and electronic media. When a Next Day service is selected, Express Envelopes containing items other than those listed above are subject to the corresponding rates for the applicable weight. The shipper agrees to comply with the requirements of the Private Express Statutes when using UPS 2nd Day A.M. and UPS 2nd Day services. For UPS Second Day services, Express Envelopes weighing one (1) pound or more are subject to the corresponding rates for the applicable weight.

Note 5 -A service charge for pickup service may apply. For rates applicable to pickup service, see Items 575 and 1005.

Note 6 - An additional charge will be assessed on each UPS Next Day or UPS 2nd Day package picked up on Saturday for subsequent delivery.

An additional charge will be assessed on regular Saturday Pickup accounts when a pickup stop is made and no packages are picked up.

Note 7 - Transportation charges will be based on the dimensional weight of the package when the dimensional weight exceeds the actual weight.

Dimensional weight is determined as follows:

Step 1 - Calculate cubic size: Multiply the package length by the width by the height (round each number to the nearest whole inch) (LxWxH). The result is the cubic size of the package.

Step 2 - Determine dimensional weight: Divide the cubic size of the package by 194 to determine the dimensional weight (in pounds). Increase fractions of a pound to the next full pound.

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

$\frac{L \times W \times H}{194}$  = Dimensional Weight

Note 8 - In the event a shipper selects the "Bill Consignee" or "Bill Third Party" option for a UPS Next Day or 2nd Day package and omits the account number or supplies an invalid account number, then in addition to being liable for the transportation and other charges, the shipper shall be assessed an additional charge. An account number is invalid if it is the wrong account number for the bill-to party, or if it is the account number for a consignee or third party who fails to pay the shipping charges.

Note 9 - Hazardous materials are accepted for transportation via expedited delivery service only in passenger aircraft quantities prepared according to the requirements set forth in Title 49 of the Code of Federal Regulations and the *UPS Guide for Shipping Ground and Air Hazardous Materials*, and only for customers who have completed a UPS standard form Agreement for Transportation of Hazardous Materials or have the provisions of that Agreement incorporated into their existing customized contract for shipping service with UPS.

Note 10 - UPS Hundredweight Service is available for Expedited Service provided the total shipment weight is 100 pounds or more. All other terms and conditions of the UPS Hundredweight Service contained in the applicable UPS Service Guides and the effective UPS Rates will apply.

1080

UPS CUSTOMER CENTER

A UPS Customer Center is a UPS facility where shippers may tender packages for transportation by UPS. Customer Centers will accept packages containing general commodities, except articles of unusual value (as defined in Item 460), Classes A and B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities in bulk, commodities requiring special equipment, hazardous materials requiring shipping papers in accordance with 49 C.F.R. § 172.200, those commodities injurious or contaminating to other lading and items identified in Item 458.

The rates for packages sent from a UPS Customer Center to a residential location (a location that is a home, including a business operating out of a home that does not have an entrance open to the public) or to a commercial location (a place of business or employment, not including a business operated out of a home that does not have an entrance open to the public) shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

If the delivery location could be construed as either residential or commercial, then the rates for residential delivery service will be applied.

Before releasing any package at a UPS Customer Center to a consignee or other recipient, UPS reserves the right to require sufficient verification, as determined by UPS in its sole discretion, of the recipient's name, address, authorization to receive the package, or any other information UPS deems necessary to release the package in its sole discretion.

1090

THE UPS STORE™/THIRD PARTY RETAILERS

The UPS Store™ locations are independently owned and operated by licensed franchisees of Mail Boxes Etc., Inc., an indirect subsidiary of United Parcel Service of America, and are not agents of UPS. UPS assumes no liability other than to The UPS Store location, as the shipper of the package, for lost, damaged, or delayed packages sent via that The UPS Store location. Any such liability to The UPS Store location is subject to the limitations set forth in the applicable UPS Tariff or *UPS Rate and Service Guide*. All inquiries regarding packages shipped via any The UPS Store location must be directed to the shipping The UPS Store location. UPS will deal solely with The UPS Store location in all matters concerning packages shipped via The UPS Store location, including but not limited to: tracking/tracing requests; claims and guarantees; C.O.D. preparation and remittance; return of undeliverable packages and letters; proper packaging and labeling; and billing. Even if UPS responds directly to customers of a The UPS Store location regarding tracking requests, UPS will not be liable to those customers. The UPS Store locations are solely responsible

RULES AND OTHER PROVISIONS WHICH GOVERN THE  
TRANSPORTATION OF PROPERTY

for the issuance of any refunds and claims to those who shipped packages via The UPS Store location. The UPS Store locations agree not to ship any articles that UPS does not accept for transportation. The UPS Store locations shall indemnify and hold harmless UPS in any action against UPS arising from the loss, damage, or delay of a package shipped via that The UPS Store location.

UPS Authorized Shipping Outlets or Commercial Counters (collectively referred to within this Item as "Third-Party Retailers") are independently owned and operated businesses and are not agents of UPS. UPS assumes no liability other than to the Third-Party Retailer, as the shipper of the package, for lost, damaged, or delayed packages sent via the Third-Party Retailer. Any such liability to the Third-Party Retailer is subject to the limitations set forth in the applicable UPS Tariff or *UPS Rate and Service Guide*. All inquiries regarding packages shipped via Third-Party Retailers must be directed to the Third-Party Retailer. UPS will deal solely with the Third-Party Retailer in all matters concerning packages shipped via a Third-Party Retailer, including but not limited to: tracking/tracing requests; claims and guarantees; C.O.D. preparation and remittance; return of undeliverable packages and letters; proper packaging and labeling; and billing. Even if UPS responds directly to Third-Party Retailer customers regarding tracking requests, UPS will not be liable to those customers. Third-Party Retailers are solely responsible for the issuance of any refunds and claims to those who shipped packages via the Third-Party Retailer. The Third-Party Retailer agrees not to ship any articles that UPS does not accept for transportation. Third-Party Retailers shall indemnify and hold harmless UPS in any action against UPS arising from the loss, damage, or delay of a package shipped via the Third-Party Retailer.

2000

HUNDREDWEIGHT SERVICE

UPS Hundredweight Service is available only for customers receiving Daily Pickup Service. Hundredweight Service may be selected for shipment of general multiple-piece commodities that total 200 pounds actual weight or more for commercial or residential Ground or 3 Day Select delivery service, or for expedited shipments totaling 100 pounds or more sent to a single address on the same day. Excluded shipments include: articles of unusual value (as defined in Item 460), Classes A & B explosives, household goods as defined in 49 U.S.C. § 13102(10), commodities requiring special equipment, hazardous materials requiring shipping papers in accordance with 49 C.F.R. § 172.200, those commodities injurious or contaminating to other lading and items identified in Item 458.

The rate for delivery of Hundredweight shipments subject to the terms and conditions in the applicable UPS Service Guides, with a value not exceeding \$100 per package, shall be the effective UPS Rates applicable to the shipper and the package and in effect at the time of shipping.

Note 1 - RATE DETERMINATIONS - For Ground and 3 Day Select Hundredweight shipments, a minimum charge equal to the greater of either a charge based on 15 pounds per package or a shipment minimum charge in effect at the time of shipping will be assessed. For expedited Hundredweight shipments, a minimum charge based on an average weight of 10 pounds per package will be assessed.

Note 2 - MAXIMUM WEIGHT PER PACKAGE is 150 pounds. The maximum weight for an "Other Regulated Materials" (ORM) package is 66 pounds unless further restricted in the *UPS Guide for Shipping Ground and Air Hazardous Materials*, which is available at UPS.com.

Note 3- For expedited shipments, if the dimensional weight of a package exceeds the actual weight, the dimensional weight of that package will be used in the calculation of the shipment billed weight. See Item 1060 for explanation of dimensional weight.

Note 4 - UPS Express Envelopes and Letters are excluded from Hundredweight Service.

Note 5 - UPS Return Services are not provided for UPS Hundredweight Service.

Note 6 -All ORM packages are prohibited in UPS 3 Day Select Hundredweight and expedited Hundredweight Service.

The End

# LAVON ART GALLERY

CONTRACT REGARDING THE ART WORK OF IVANA VIDOVIC MLINAR

March 1, 2003

By this document, Lavon Art Gallery ("Lavon") is contracting with Ivana Vidovic Mlinar (Mlinar) to purchase paintings of her art work. All "\$" are US dollars. The specific provisions of this contract follow:

**1. Artwork** - Mlinar will produce for "Lavon", exclusively, at least 24 original paintings (two or more monthly) per year between March 1, 2003 and December 31, 2008 (five year period). These "impressionistic style" oil-based paintings on canvas will be of size (40"x40" and 36"x48"-in any direction), quality, composition, and style consistent with work previously acquired by "Lavon" from Mlinar.

**2. Base Compensation** - "Lavon" will purchase from Mlinar each painting - oil on canvas for \$ 1,000.00, described in Paragraph 1. No special assignments or commissions for portraits, drawings or other artistic works will be accepted by Mlinar without prior written approval of "Lavon". Also, "Lavon" agrees to be responsible for all shipping costs. All original oils on canvas will be rolled and secured in appropriate tubes.

**3. Quality of Work** - If in "Lavon" sole judgment, the quality of the original oils produced and submitted by Mlinar deteriorates, "Lavon" will notify Mlinar of it judgment, and will give Mlinar the opportunity to correct the problem. If, after 20 days, the quality problems have not been corrected, "Lavon" has right to terminate the contract with further notice.

**4. Rights Acquired** - Through this contract, "Lavon" acquires both title to the physical piece as well as all copyrights and other intangible rights in all works purchased under this contract. Mlinar may not, therefore, grant any of these rights to parties other than "Lavon" while this contract is in force. This means, for

example, that "Lavon" has the rights to make limited edition prints and that Mlinar's only right to compensation for these reproductions are the rights contained under this contract. Mlinar agrees to execute such further assignments or documents as "Lavon" may reasonably request to more completely carry out the intent of this contract and to provide any certificate of authenticity that may be required by "Lavon" or requested by any purchaser from "Lavon"

**5. Mlinar Confirmation of Ownership and Other Matters.** - Mlinar warrants that she is or will be the sole creator of all works covered by this agreement, that she has or will have good title to all works and own copyrights to the works and that they do not violate any copyright, rights to privacy or publicity or other personal or property rights of any third party. Mlinar agrees to indemnify "Lavon" for any losses or damages caused "Lavon" if any of these assurances are false or incomplete.

**6. Right to represent Other Artists.** - Mlinar agrees that "Lavon" may represent other artists and that there are no restrictions on "Lavon" as to the artists which it may represent or exhibit.

**7. Use of Name and Likeness.** - Mlinar gives "Lavon" permission to use her name, picture, portrait or photograph in any manner in all forms of media and at exhibitions and displays in order to advertise or promote her works and / or "Lavon's" stores and galleries.

**8. Manner of Sale or Exploitation.** - Mlinar agrees that "Lavon" has the right to exploit the works it purchases and / or reproduces as it deems suitable as their sole owner and may establish prices for them on its discretion.

**9. Limited Editions.** - During the term of this contract, "Lavon" will select certain Mlinar's original oils for limited edition giclee reproductions. Mlinar agrees to organize and conduct all matters regarding printing and opening new limited editions. "Lavon" will be responsible for all costs of printing and shipping to "Lavon" including the costs under Paragraph 10.

**10. Compensation for Sales of Reproductions.** - "Lavon" will pay Mlinar \$ 50.00 per signature of any giclee print and additional \$ 50.00 for any embellishing per print within the size approx. 30"x40" in any direction. Any size that exceed above mentioned size will be paid additionally \$ 50.00 per print.

**11. Method of Payment.** - As long as this contract is in force, "Lavon" will

pay on or before 20th day of each month, commencing in March 2003 to Mlinar \$ 2,000.00 for two original paintings as of Paragraph 1., as a non-recourse advance against all monies due under Paragraphs 2. and 10.

**12. Certain Enforced Rights, Other Matters.** - This agreement is intended to be legally enforceable and governed by the laws of Florida. "Lavon" and Mlinar understand that the other shall have the right to injunctive relief in the event of a breach, in addition to other available remedies, and that the prevailing party in any court proceeding shall be entitled to recover from the losing party all court costs, including reasonable attorney fees. Neither party shall be considered in breach of this agreement unless the party in question is given 10 days notice of the violation and 10 day period in which to correct violation.

**13. Notices.** - All notices, requests, demands, and other communications under this contract shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on tenth day after mailing if mailed to the party to whom notice is to be given, by first class mail registered, postage prepaid and properly addressed as follows:

Ivana Vidovic Mlinar  
13900Exotica Lane  
West Palm Beach, FL 33414

Lavon Art Gallery  
1020 RT.18  
Center 18 Shopping Center  
East Brunswick, NJ 08816

---

Ivana Vidovic Mlinar

---

Rose Lavon

```

MISC0905M          CUSTOMER ADDRESS (INQUIRY)          05/09/11 10:09:14
                                (US)
SHIPREF NO.        ACCOUNT TYPE          ACCOUNT START DATE    COUNTRY
0000Y10406         07 (OCCASIONAL AIR CUST ) 11/06/02              US
CUSTOMER ID: 0007903576
                                ADDRESS TYPES
ALL/ALL OTHERS X   PKUP X BILLING X   COD X CLAIMS X DELIVERY CONFIRMATION
DELIVER X          TRACING X
NAME               : LEVON ART GALLERY          STORE #:
ATTENTION          : ROSE LEVON
                   NUMBER          PFX NAME          TYPE SFX
STREET             : 1020                ROUTE 18
FLOOR              :
ROOM/SUITE         :
P.O. BOX #         :
ADTNL INFO:
CITY/TOWN          : EAST BRUNSWICK
COUNTY            : MIDDLESEX
STATE              : NJ
ZIP CODE           : 08816-4354
NEXT=NEXT SCREEN  PRV=PREV MENU  CLR=CLR  RET=BACK  F10=PRG  F12=MAIN MENU

```

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000338

MSC0905M

CUSTOMER ADDRESS (INQUIRY)  
(US)

05/07/11 10:00:06

0000Y10406

07 (OCCASIONAL AIR CUST )

11/06/02

US

0007903576

X

X

X

X

X

X

LEVON ART GALLERY  
ROSE LEVON

1020

ROUTE 18

EAST BRUNSWICK  
MIDDLESEX  
NJ  
08816-4354

UPS 001513

EX F TO RESPONSE TO UPS MOTION TO DISMISS

05/09/11 10:08:06

SHIPPER NO. ACCOUNT TYPE ACCOUNT START DATE COUNTRY  
 0000010406 07 OCCASIONAL AIR CUST 11/06/02 US  
 CUSTOMER ID: 0007903576

ADDRESS TYPE  
 ALL/ALL OTHERS X PROPAK BILLING COP X CLAIMS X DELIVERY CONFIRMATION  
 DELIVERY X TRACKING X  
 NAME : LEVON ART GALLERY STORE #:  
 ATTENTION : ROSE LEVON  
 NUMBER PREFIX NAME TYPE SEX  
 STREET : 1020 ROUTE 18  
 FLOOR :  
 ROOM/SUITE :  
 P.O. BOX # :  
 ADDR LINE:  
 CITY/TOWN : EAST BRUNSWICK  
 COUNTY : MIDDLESEX  
 STATE : NJ  
 ZIP CODE : 08816-4354

PF5=MAIN MENU PF6=EXIT PF7=MENU PF8=INFO PF12=MAIN MENU

Copyright © 1994 UPS, Inc. All Rights Reserved.

05/09/11 10:08:06

QW53220

MSC1001M CONTACT INFORMATION (INQUIRY) 05/09/11 10:06:25  
SHIPPER NO: 0000Y10406 CUST NAME: LEVON ART GALLERY

PICKUP CONTACT:  
NAME: ROSE LEVON  
TITLE: OWNER NUMBER: ( 732 ) 257 - 8981 EXT:

ACCOUNTS PAYABLE CONTACT:  
NAME:  
TITLE: NUMBER: ( 732 ) 617 - 0700 EXT:

OTHER CONTACTS:  
NAME: ROSE LEVON  
TITLE: OWNER NUMBER: ( 732 ) 257 - 8981 EXT:

OTHER CONTACTS:  
NAME:  
TITLE: NUMBER: ( ) - EXT:

OTHER CONTACTS:  
NAME:  
TITLE: NUMBER: ( ) - EXT:

PF2=NEXT SCRIN PF3=PREV SCRIN PF5=DONE PF7=BACK PF8=FWED PF12=MAIN MENU

Connected to TRINETGROUPS.COM port 2004

MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000341

```

MSC1101M                SERVICE INFORMATION                05/09/11 10:08:28
                        (INQUIRY)

SHIPPER NO: 0000Y10406  CUST NAME: LEVON ART GALLERY

CNTR: 0890  SLIC OVERRIDE: N  DIST: 27  FEG: 07

ACCOUNT STATUS: D  ( CANCELLED )

PICKUP INFORMATION:
    PICKUP TYPE           : 08  ( NO PICKUP )
    EARLIEST PICKUP       : 08 : 00
    DESIRED PICKUP        : 17 : 00
    LATEST PICKUP         : 17 : 00
    NOTIFY BY TIME        : 16 : 00
    PICKUP POINT          :
    EST. DAILY VOLUME     : 00001
    PICKUP START DATE     :   /   /
    PICKUP DAYS           : MON TUE WED THU FRI

PF2=NEXT SCRN  PF3=PREV SCRN  PF4=PREV MENU  PF5=DONE  PF12=MAIN MENU
  
```

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000342

MSC1101M

SERVICE INFORMATION  
(INQUIRY)

04/21/11 10:42:34

SHIPPER NO: 000053Y8V2 CUST NAME: LAVON ART GALLERY

CNTR: 0776 SLIC OVERRIDE: N DIST: 27 REG: 07

ACCOUNT STATUS: D ( CANCELLED )

## PICKUP INFORMATION:

PICKUP TYPE : 08 ( NO PICKUP )  
EARLIEST PICKUP : 08 : 00  
DESIRED PICKUP : 17 : 00  
LATEST PICKUP : 17 : 00  
NOTIFY BY TIME : 16 : 00  
PICKUP POINT :  
EST. DAILY VOLUME : 00001  
PICKUP START DATE : / /  
PICKUP DAYS : MON TUE WED THU FRI

PF2=NEXT SCRN PF3=PREV SCRN PF4=PREV MENU PF5=DONE PF12=MAIN MENU

UPS 001517

EX F TO RESPONSE TO UPS MOTION TO DISMISS

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000343

MSC0905M

CUSTOMER ADDRESS (INQUIRY)  
(US)

04/25/11 11:16:10

000053Y8V2

07 (OCCASIONAL AIR CUST )

03/04/04

US

0009014518

X

X

X

X

X

X

LAVON ART GALLERY  
STEVE LAVON

280

ROUTE 9

N

MORGANVILLE  
MONMOUTH  
NJ  
07751-1572

UPS 001518

EX F TO RESPONSE TO UPS MOTION TO DISMISS

MSC1001M CONTACT INFORMATION (INQUIRY) 04/29/11 11:16:56  
SHIPPER NO: 000053Y8V2 CUST NAME: LAVON ART GALLERY

PICKUP CONTACT:  
NAME: STEVE LAVON  
TITLE: (SELF) NUMBER: ( 732 ) 617 - 0700 EXT:

ACCOUNTS PAYABLE CONTACT:  
NAME:  
TITLE: NUMBER: ( ) - EXT:

OTHER CONTACTS:  
NAME: STEVE LAVON  
TITLE: (SELF) NUMBER: ( 732 ) 617 - 0700 EXT:

OTHER CONTACTS:  
NAME:  
TITLE: NUMBER: ( ) - EXT:

OTHER CONTACTS:  
NAME:  
TITLE: NUMBER: ( ) - EXT:

PF2=NEXT SCRIN PF3=PREV SCRIN PF5=DONE PF7=BACK PF8=FWRD PF12=MAIN MENU

Connected to INSECURE.UPS.COM port 2024 11/17/09 JPM-8270-2 50649345

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM COUNTY, FLORIDA

|                               |   |                        |
|-------------------------------|---|------------------------|
| IVANA VIDOVIC MLINAR,         | ) | - CONFIDENTIAL -       |
|                               | ) | PURSUANT TO PROTECTIVE |
| Plaintiff,                    | ) | ORDER                  |
|                               | ) |                        |
| vs.                           | ) | Case No. 50 2008 CA    |
|                               | ) | 036246XXXXMB AH        |
| UNITED PARCEL SERVICE, INC.,  | ) |                        |
| PAK MAIL OF WELLINGTON, INC., | ) |                        |
| RECOVERY MANAGEMENT CORP.     | ) |                        |
| d/b/a CARGO LARGO and AARON   | ) |                        |
| ANDERSON,                     | ) |                        |
| Defendant.                    | ) |                        |

DEPOSITION OF MICHELLE FAIMON,  
produced, sworn and examined on Wednesday, November  
2, 2011, at the offices of Cross Reporting Service,  
Inc., 110 South Main Street, in Independence, Missouri,  
before:

JAMES A. LEACOCK, CCR, for  
CROSS REPORTING SERVICE, INC

a Certified Court Reporter for the State of Missouri.

Taken on behalf of the Plaintiff.

APPEARANCES:

For the Plaintiff:

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, PA  
By: Ms. Mara Hatfield  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
(By Phone)

For the Defendant United Parcel Service:

ALSTON & BIRD  
By: Ms. Angela Adams  
1201 West Peach Street, NW  
Atlanta, Georgia 30309

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000346

| Page 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A. Okay.</p> <p>2 Q. On occasion I may ask a question that I don't</p> <p>3 state very well or for some other reason you don't</p> <p>4 understand. If you don't understand my question</p> <p>5 for any reason, please tell me that you don't</p> <p>6 understand and I will try to ask a better</p> <p>7 question, okay?</p> <p>8 A. Yes.</p> <p>9 Q. If you answer the question, I am going to assume</p> <p>10 that you understood it. Also if you need a break</p> <p>11 at any time, please let me or your attorney know</p> <p>12 and we will finish your answer and take a break.</p> <p>13 Do you understand?</p> <p>14 A. Yes.</p> <p>15 Q. Sometimes during this deposition you might give an</p> <p>16 answer as completely as you can and then later on,</p> <p>17 maybe five minutes later or two hours later, you</p> <p>18 remember some additional information in response</p> <p>19 to the earlier question or in clarification to the</p> <p>20 earlier question. If that happens to you, please</p> <p>21 tell me, and that you would like to add something</p> <p>22 to the earlier answer and we can do that right</p> <p>23 then while it is on your mind. Is that okay?</p> <p>24 A. Yes.</p> <p>25 Q. Sometimes during a deposition you might think of</p> | <p>1 MS. ADAMS: This is Angela Adams. I am</p> <p>2 just going to jump in. What she brought, it</p> <p>3 was just the production. The contracts that</p> <p>4 had been produced to you. Our production to</p> <p>5 you.</p> <p>6 Q. (By Ms. Hatfield) Okay. I just would like to</p> <p>7 identify which documents she has.</p> <p>8 A. I'm not using them.</p> <p>9 Q. What is the first contract that you have, ma'am?</p> <p>10 A. Just a minute, I'll get that. It is called</p> <p>11 "Overgoods Management Operating Procedures."</p> <p>12 Q. On the bottom of that document, does it say</p> <p>13 UPS-000190?</p> <p>14 A. Yes.</p> <p>15 Q. Does that go through -- what is the final UPS</p> <p>16 Bates number of that document?</p> <p>17 A. 000194. Excuse me, 195.</p> <p>18 Q. What is the next document that you have?</p> <p>19 A. UPS-000196 through --</p> <p>20 Q. Where does that go to?</p> <p>21 A. 000209.</p> <p>22 Q. Is the name of the document, UPS-000196, Agreement</p> <p>23 for Overgoods Management and for the Purchase and</p> <p>24 Sale of Salvaged Goods and Consignment Sales?</p> <p>25 A. Yes.</p>    |
| Page 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 documents that might help you remember the answer</p> <p>2 to a question or might help you give a more</p> <p>3 accurate answer. If you do, tell me and if we</p> <p>4 have those documents available for you to review,</p> <p>5 we'll let you know, or you might be able to supply</p> <p>6 them to your attorney at a later time. Are you</p> <p>7 taking any medication or drugs of any kind that</p> <p>8 might affect your ability to understand or answer</p> <p>9 my questions today?</p> <p>10 A. No.</p> <p>11 Q. Are you under the care for any illness that might</p> <p>12 affect your ability to answer my questions today?</p> <p>13 A. No.</p> <p>14 Q. Is there any reason that you can think of why you</p> <p>15 will not be able to answer my questions fully and</p> <p>16 truthfully today?</p> <p>17 A. No.</p> <p>18 Q. Did you bring any documents with you for the</p> <p>19 deposition today?</p> <p>20 A. Yes.</p> <p>21 Q. What documents did you bring?</p> <p>22 A. I brought a binder of the contracts.</p> <p>23 Q. What contracts are those?</p> <p>24 A. The ones between UPS and the vendor.</p> <p>25 Q. Can we identify those contracts by title?</p>                                                                                         | <p>1 Q. And you have that document through UPS-000209?</p> <p>2 A. Yes.</p> <p>3 Q. Do you have another contract with you today?</p> <p>4 A. Just a minute. Yes. It is called "Services</p> <p>5 Agreement," UPS-001527 through UPS-001565. Excuse</p> <p>6 me, 1567. 1567.</p> <p>7 MR. MAYER: I'm sorry, what was the</p> <p>8 starting number on that set?</p> <p>9 THE WITNESS: UPS-001527.</p> <p>10 MR. MAYER: Okay, I've got that, thanks.</p> <p>11 Q. (By Ms. Hatfield) What is the title of that</p> <p>12 again, I'm sorry?</p> <p>13 A. Services Agreement.</p> <p>14 Q. And the next document that you have?</p> <p>15 A. Well, the next document that I have is UPS-001568,</p> <p>16 called "Services Agreement Statement Of Work,"</p> <p>17 through UPS-001585.</p> <p>18 Q. How many more documents do you have?</p> <p>19 A. None.</p> <p>20 Q. Okay. First the agreement called "Services</p> <p>21 Agreement," 1527 through 1567. Is there a date on</p> <p>22 that agreement?</p> <p>23 A. Just a minute. It is dated as of December 1st,</p> <p>24 2008.</p> <p>25 Q. And the second agreement, the Statement Of Work</p> |

3 (Pages 6 to 9)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000347

| Page 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Agreement, 1568 through 1585, does that have a</p> <p>2 date?</p> <p>3 A. December 1st, 2008.</p> <p>4 Q. Okay, ma'am. The first two agreements that you</p> <p>5 spoke about we have pre-marked as Exhibit A, and</p> <p>6 we are going to be discussing those with you. I</p> <p>7 would like you to just hold the other exhibits to</p> <p>8 the side, because we may discuss those as well and</p> <p>9 mark them separately.</p> <p>10 MS. ADAMS: What other exhibits should</p> <p>11 she hold to the side?</p> <p>12 Q. (By Ms. Hatfield) The Services Agreement and the</p> <p>13 Services Agreement Statement Of Work. I am just</p> <p>14 saying we may talk about those and we may mark</p> <p>15 them as exhibits. The first two agreements she</p> <p>16 spoke about, UPS-190, the second one starting at</p> <p>17 UPS-196, those are pre-marked.</p> <p>18 MS. ADAMS: Okay.</p> <p>19 Q. (By Ms. Hatfield) Ms. Faimon, where are you</p> <p>20 employed?</p> <p>21 A. United Parcel Service.</p> <p>22 Q. Where do you work for United Parcel Service, where</p> <p>23 in the country?</p> <p>24 A. Independence, Missouri.</p> <p>25 Q. The address of where you work?</p> | <p>1 Q. So you said the facility is leased by the vendor,</p> <p>2 by the facility do you mean the site?</p> <p>3 A. Yes.</p> <p>4 Q. Is the UPS site or facility freestanding or is it</p> <p>5 within a larger operation?</p> <p>6 A. I'm not sure I understand the question. It is in</p> <p>7 a --</p> <p>8 MS. ADAMS: Let her rephrase it.</p> <p>9 Q. (By Ms. Hatfield) Is it in a building with its</p> <p>10 own exit and entrance and there's no other exit</p> <p>11 and entrance on the building or is it within a</p> <p>12 building that has other functions or other sites</p> <p>13 or other activities going on besides the ones that</p> <p>14 you oversee?</p> <p>15 A. It is in a facility with multiple doors. Other</p> <p>16 than just the one that UPS opens.</p> <p>17 Q. Are there other activities going on within the</p> <p>18 building besides those that you oversee?</p> <p>19 A. I don't understand activities.</p> <p>20 Q. The other doors that you mentioned, what are those</p> <p>21 doors for?</p> <p>22 A. Those are for trailers to be unloaded and vendor</p> <p>23 employees to come through.</p> <p>24 Q. So the vendor employees are the recovery</p> <p>25 management employees?</p> |
| Page 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 A. 1600 North Missouri State Route 291, Suite 800,</p> <p>2 Independence, Missouri, 64058.</p> <p>3 Q. How long have you worked at that address?</p> <p>4 A. 15 years.</p> <p>5 Q. In that 15 years working at that address, has it</p> <p>6 always been for United Parcel Service, Inc.?</p> <p>7 A. Yes.</p> <p>8 Q. What is your current title?</p> <p>9 A. Corporate Overgoods Site Manager.</p> <p>10 Q. Is there a particular site that you manage?</p> <p>11 A. The Independence site.</p> <p>12 Q. Who owns that site?</p> <p>13 A. I don't understand the question.</p> <p>14 Q. You said that your job title is UPS Corporate</p> <p>15 Overgoods Site Manager?</p> <p>16 A. Correct.</p> <p>17 Q. Do you understand the site to be owned by</p> <p>18 Corporate Overgoods, by UPS or by some other</p> <p>19 party?</p> <p>20 A. The facility is leased by a vendor.</p> <p>21 Q. Who is that vendor?</p> <p>22 A. RMC.</p> <p>23 Q. Can you please tell me what those initials stand</p> <p>24 for?</p> <p>25 A. Recovery Management Corporation.</p>                                                                                                                          | <p>1 A. Correct.</p> <p>2 Q. What are those Recovery Management employees</p> <p>3 doing?</p> <p>4 A. Working.</p> <p>5 Q. Would you consider that work to be an activity?</p> <p>6 A. Yes.</p> <p>7 Q. What is the nature of that activity or work?</p> <p>8 A. Loading, unloading trailers, moving freight. That</p> <p>9 would be it.</p> <p>10 Q. Do you oversee those employees?</p> <p>11 A. No, I do not.</p> <p>12 Q. What employees do you oversee?</p> <p>13 A. I have a part-time temporary employee.</p> <p>14 Q. So you oversee one employee?</p> <p>15 A. I oversee one temporary employee for United Parcel</p> <p>16 Service.</p> <p>17 Q. How long have you been the Corporate Overgoods</p> <p>18 site manager?</p> <p>19 A. 15 years.</p> <p>20 Q. In those 15 years, how many employees have you</p> <p>21 overseen?</p> <p>22 A. Five.</p> <p>23 Q. Do you recall their names?</p> <p>24 A. Yes.</p> <p>25 Q. Can we have the names of the five employees that</p>                                                                                                                                                                                                                                           |

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000348

| Page 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 you have overseen in your 15 years as Corporate</p> <p>2 Overgoods site manager?</p> <p>3 A. Kay Cook. Erin Doty.</p> <p>4 Q. Did you say Kay Cook?</p> <p>5 A. Kay Cook. Erin Doty. Joe Holiday. Carmen Bohn.</p> <p>6 And the current employee is Robert Haley.</p> <p>7 Q. What years did Kay work for you?</p> <p>8 A. It would be 19 -- probably 1998 through -- I</p> <p>9 really don't remember how long.</p> <p>10 Q. Under or over ten years?</p> <p>11 A. Under.</p> <p>12 Q. Under or over five years?</p> <p>13 A. It would be right at.</p> <p>14 Q. And about how long did Ms. Doty work for you?</p> <p>15 A. About the same.</p> <p>16 Q. Did Ms. Doty and Kay's work coincide or did Ms.</p> <p>17 Doty follow Kay?</p> <p>18 A. They coincide.</p> <p>19 Q. For about how long did they coincide?</p> <p>20 A. About three years.</p> <p>21 Q. So Ms. Doty probably started around 2001 and left</p> <p>22 in around 2006?</p> <p>23 A. That sounds about right.</p> <p>24 Q. Then Ms. Holiday, did she work while Ms. Doty</p> <p>25 worked or subsequent to?</p>                                                                   | <p>1 Q. Oh, okay. Mr. Haley, when did he start working</p> <p>2 for you?</p> <p>3 A. It is Haley. And he started working for me in</p> <p>4 July of 2011.</p> <p>5 Q. Do you recall which of these employees who was</p> <p>6 working with you in November of 2005?</p> <p>7 A. I believe it would be -- it is right on the border</p> <p>8 of either Carmen Bohn or Erin Doty. It was</p> <p>9 probably a transition time.</p> <p>10 Q. What are the duties that you have as the overgoods</p> <p>11 site manager?</p> <p>12 A. My job is to oversee the current contract with the</p> <p>13 vendor, to provide guidance and interpretation of</p> <p>14 the contract. Plus it is to oversee audits, to</p> <p>15 make sure that the vendor complies with what UPS</p> <p>16 has put forward as guidance and handling the</p> <p>17 unknown overgoods.</p> <p>18 Q. How often do you interact then with Recovery</p> <p>19 Management employees?</p> <p>20 A. I interact mostly with the RMC manager and team</p> <p>21 leaders.</p> <p>22 Q. I'm sorry. RMC manager and who else?</p> <p>23 A. Team leaders.</p> <p>24 Q. How many team leaders are there?</p> <p>25 A. There are two supervisors and one team leader.</p> |
| Page 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 A. She worked after Ms. Doty for approximately four</p> <p>2 months.</p> <p>3 Q. Do you know why she only worked for that brief of</p> <p>4 time?</p> <p>5 A. She had another job and owned a business and said</p> <p>6 it was too much for her to do.</p> <p>7 Q. Do you still keep in contact with Ms. Holiday?</p> <p>8 A. Once every seven, eight months we connect with a</p> <p>9 hello.</p> <p>10 Q. Do you know what kind of business she has?</p> <p>11 A. Concrete.</p> <p>12 Q. Does she still have that?</p> <p>13 A. I don't know.</p> <p>14 Q. You said that she had another job and she had a</p> <p>15 business. Was the other job the other business or</p> <p>16 did she have another job in addition thereto?</p> <p>17 A. It was the concrete business. It was her and her</p> <p>18 husband's -- her and her husband's.</p> <p>19 Q. Then Ms. Bohn, did she work the same time as</p> <p>20 Holiday did or after?</p> <p>21 A. After.</p> <p>22 Q. About how long did she work for?</p> <p>23 A. Five to six years.</p> <p>24 Q. So she probably left somewhere in 2008, 2009 time?</p> <p>25 A. She left earlier this year.</p> | <p>1 Q. Does your job include interactions with Mr. Packs?</p> <p>2 A. On occasion when we have a meeting.</p> <p>3 Q. About how often does that occur?</p> <p>4 A. Perhaps once every five, six months.</p> <p>5 Q. Has it always been at that consistent rate, about</p> <p>6 biannually?</p> <p>7 A. That is correct.</p> <p>8 Q. Has that been for the life of the present</p> <p>9 contract?</p> <p>10 A. Yes.</p> <p>11 Q. You have been the Corporate Overgoods Site Manager</p> <p>12 for 15 years. So you started in what year?</p> <p>13 A. 1996.</p> <p>14 Q. In 1996 you were working at that same facility?</p> <p>15 MS. ADAMS: Objection, did you ask a</p> <p>16 question?</p> <p>17 Q. (By Ms. Hatfield) When you worked in 1996, was it</p> <p>18 at that same facility on 1600 North Missouri State</p> <p>19 Park Route 291?</p> <p>20 A. Yes.</p> <p>21 Q. Was that the same vendor in 1996?</p> <p>22 A. I'm not sure I understand the question.</p> <p>23 Q. Who is the vendor at the facility today?</p> <p>24 A. Recovery Management.</p> <p>25 Q. Who was the vendor of the facility in 1996?</p>                                                                                                  |

5 (Pages 14 to 17)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000349

| Page 18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A. Recovery Management.</p> <p>2 Q. Just so we're clear. Are your offices in the</p> <p>3 facility at the same location?</p> <p>4 MS. ADAMS: Objection, no question was</p> <p>5 asked.</p> <p>6 Q. (By Ms. Hatfield) Are your offices and</p> <p>7 facility -- are your offices and facility in the</p> <p>8 same location?</p> <p>9 A. Yes.</p> <p>10 Q. Do they share the same address?</p> <p>11 A. Yes.</p> <p>12 Q. In 1996 when the vendor was Recovery Management,</p> <p>13 were they a vendor of the lease only or did they</p> <p>14 do other -- did they perform other services to</p> <p>15 UPS?</p> <p>16 A. They were -- could you repeat the question,</p> <p>17 please.</p> <p>18 Q. Sure. Well, okay. Today, present day, you said</p> <p>19 that you work in a facility that is leased by</p> <p>20 Recovery Management Corporation to UPS; is that</p> <p>21 accurate?</p> <p>22 A. That is correct.</p> <p>23 Q. Does Recovery Management provide other services</p> <p>24 besides the facility to UPS?</p> <p>25 A. No.</p>                                                                                                                        | <p>1 A. Correct.</p> <p>2 Q. What did you do in 1985?</p> <p>3 A. Actually it would be 1986. I was promoted to</p> <p>4 supervisor. And prior to that, for six months I</p> <p>5 was a UPS driver.</p> <p>6 Q. So you went from being a teleprocessing operator</p> <p>7 to a UPS driver for a period of six months?</p> <p>8 A. Correct.</p> <p>9 Q. Where was your teleprocessing operator job?</p> <p>10 A. Would you like the address?</p> <p>11 Q. Just the city and state.</p> <p>12 A. Okay, Kansas City, Kansas.</p> <p>13 Q. At that time, when you did data entry for</p> <p>14 teleprocessing or for tracers, do you know what</p> <p>15 happened with the information that you input? How</p> <p>16 it was utilized?</p> <p>17 A. It was input into the system and it would print</p> <p>18 out an onion-skinned tracer to the destination zip</p> <p>19 code, at which time it would be handled to look</p> <p>20 for a delivery. And the signature was copied on</p> <p>21 the onion skin and mailed to the customer.</p> <p>22 Q. Do you know what would happen if the delivery</p> <p>23 signature was not found?</p> <p>24 A. Yes, they would do an investigation to try and</p> <p>25 find maybe if it was delivered at an alternate</p> |
| Page 19                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page 21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1 Q. What services are included within the leasing of</p> <p>2 the facility?</p> <p>3 A. It is to process unknown overgoods for UPS.</p> <p>4 Q. And that's through a lease agreement?</p> <p>5 A. I'm not sure where you are going with this. I'm</p> <p>6 not -- RMC leases the facility. That's all I</p> <p>7 know.</p> <p>8 Q. How is RMC paid for providing that service to UPS?</p> <p>9 A. They are not paid. They provide a service for UPS</p> <p>10 and, in turn, they purchase the unknown overgoods.</p> <p>11 Q. Before you became the site manager for UPS in</p> <p>12 1996, did you have any other employment with UPS?</p> <p>13 A. Yes.</p> <p>14 Q. When did you start working for UPS?</p> <p>15 A. In 1978.</p> <p>16 Q. What was your first job with UPS?</p> <p>17 A. I was a teleprocessing operator.</p> <p>18 Q. What is that?</p> <p>19 A. A data entry person.</p> <p>20 Q. What kind of data were you entering?</p> <p>21 A. Tracers that customers would place to look for</p> <p>22 packages.</p> <p>23 Q. How long did you hold that position?</p> <p>24 A. I did that for seven years.</p> <p>25 Q. So from 1978 until roughly 1985?</p> | <p>1 address. They would take and look at a damage</p> <p>2 report to see if possibly it might have been</p> <p>3 damaged. And if there were no signs of the</p> <p>4 package, then an LDI, which is a liquid -- a loss</p> <p>5 and damage investigation, would be issued to the</p> <p>6 customer.</p> <p>7 Q. What is an onion skin?</p> <p>8 A. It is a piece of paper that is very see through,</p> <p>9 very clear, so that you could place the onion skin</p> <p>10 on the delivery record and trace the signature of</p> <p>11 who signed for the package.</p> <p>12 Q. During the time that you were a teleprocessing</p> <p>13 operator, was UPS engaged in any contract with a</p> <p>14 salvage dealer such as Recovery Management?</p> <p>15 A. I do not know.</p> <p>16 Q. When you became a driver in 1986, where were you</p> <p>17 stationed or located?</p> <p>18 A. Kansas City. I actually delivered in</p> <p>19 Independence.</p> <p>20 Q. How long again was it before you were promoted?</p> <p>21 A. It was February of 1986.</p> <p>22 Q. So in 1985 you became a driver?</p> <p>23 A. Correct.</p> <p>24 Q. What were you promoted to?</p> <p>25 A. A delivery information supervisor.</p>                                      |

6 (Pages 18 to 21)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000350

| Page 22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Q. What were your job -- what were your duties in</p> <p>2 that job?</p> <p>3 A. It was to oversee the tracing process and the</p> <p>4 paying of claims.</p> <p>5 Q. Before an LDI was issued or a claim was paid, was</p> <p>6 there a facility where a lost item could be</p> <p>7 searched?</p> <p>8 A. Yes, there was.</p> <p>9 Q. What was that facility at that time?</p> <p>10 A. That facility was in Peachtree, Georgia.</p> <p>11 Q. Were items ever salvaged or sold from that</p> <p>12 facility in Peachtree?</p> <p>13 A. I did not know that at that time.</p> <p>14 Q. Do you know now?</p> <p>15 A. I believe that there were, yes.</p> <p>16 Q. What leads you to believe that?</p> <p>17 A. Just when I took the position that I am currently</p> <p>18 holding. I went to Peachtree for training.</p> <p>19 Q. What occurred at that training that led you to</p> <p>20 believe that there had been sales of lost items</p> <p>21 during the 1986 era?</p> <p>22 A. The manager then at that time reviewed the</p> <p>23 historical information, plus they were currently</p> <p>24 sending and liquidating products at that time.</p> <p>25 Q. What time was this? What time did you train at</p>                                   | <p>1 A. In '96 they were given catalogs.</p> <p>2 Q. What kind of catalogs?</p> <p>3 A. Supplier catalogs from various manufacturers.</p> <p>4 Q. What would happen if it wasn't \$100? What would</p> <p>5 happen if it was deemed to be under \$100?</p> <p>6 A. The product would then be liquidated.</p> <p>7 Q. What did that entail?</p> <p>8 A. That would entail determining whether or not it</p> <p>9 was an account or if it was an item that needed to</p> <p>10 be returned to a customer that we may have had on</p> <p>11 file.</p> <p>12 Q. By customer on file, do you mean you located the</p> <p>13 shipper or the manufacturer?</p> <p>14 A. The manufacturer.</p> <p>15 Q. How would you determine whether they were a</p> <p>16 manufacturer on file? Were there lists</p> <p>17 disseminated?</p> <p>18 A. We had a list of manufacturers that we would</p> <p>19 return their product after a given amount of time</p> <p>20 for either a claim compensation or they would pay</p> <p>21 for the return of the product, a nominal.</p> <p>22 Q. Well, hold on. I'm confused, because I thought</p> <p>23 you said that if it was not worth \$100 or more,</p> <p>24 you would not shelf it. But now you are saying</p> <p>25 that these items which went back to the customer,</p> |
| Page 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1 Peachtree?</p> <p>2 A. That would have been in August of '96.</p> <p>3 Q. What did your training entail?</p> <p>4 A. It entailed three weeks of reviewing the current</p> <p>5 process as it was.</p> <p>6 Q. What was the current process then?</p> <p>7 A. The current process then was to evaluate the</p> <p>8 product, determine whether or not it should be put</p> <p>9 on the shelf for a period of time in which our</p> <p>10 customers could trace and find their -- look for</p> <p>11 their packages.</p> <p>12 Q. How did they determine that?</p> <p>13 A. How did they determine?</p> <p>14 Q. You said that they would evaluate the product.</p> <p>15 What were the qualifications used to evaluate the</p> <p>16 product?</p> <p>17 A. At that time it was \$100. Anything that was of</p> <p>18 retail value of \$100 would be placed on the shelf.</p> <p>19 Q. How would you determine if it was of retail value</p> <p>20 of \$100?</p> <p>21 A. The processor would have current knowledge of</p> <p>22 whether or not it was determined that it was over</p> <p>23 \$100, if it was then it would go on the shelf.</p> <p>24 Q. But what -- how would the processor gain that</p> <p>25 knowledge? Were they given catalogs?</p> | <p>1 it was after it was held for some time. So I'm</p> <p>2 not clear that we are talking about the same</p> <p>3 thing. If it was determined that an item was not</p> <p>4 worth \$100 --</p> <p>5 A. It would be returned to the customer.</p> <p>6 Q. Directly without holding?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. They would either pay out a claim</p> <p>9 compensation for it --</p> <p>10 MS. ADAMS: Objection. Mara, she will</p> <p>11 respond to your questions, but not your</p> <p>12 statements. Okay?</p> <p>13 MS. MAHONEY: She didn't even finish</p> <p>14 what she was saying, Angela.</p> <p>15 MS. ADAMS: Well, this was like three</p> <p>16 statements in a row. This is just for</p> <p>17 further notice.</p> <p>18 MS. MAHONEY: She is in the middle of a</p> <p>19 question.</p> <p>20 Q. (By Ms. Hatfield) The problem is, I am confused</p> <p>21 by her prior testimony. So I am just trying to</p> <p>22 clarify the air and then I will ask a question.</p> <p>23 If she is confused, she will let me know. Okay.</p> <p>24 MS. ADAMS: Finish your question, Mara.</p> <p>25 Q. (By Ms. Hatfield) Ms. Faimon, if a product was</p>                                                                                                                                    |

7 (Pages 22 to 25)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000351

| Page 26                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 28                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 determined to be of less value than \$100, what</p> <p>2 would happen to it?</p> <p>3 A. The product would go through the special account</p> <p>4 list to determine if we had a manufacturer on file</p> <p>5 that we would be returning to. We would return to</p> <p>6 that customer, if we did. If we did not, the item</p> <p>7 would be liquidated.</p> <p>8 Q. What did that liquidation entail?</p> <p>9 A. Putting in a box or a tote and charging the vendor</p> <p>10 for that tote.</p> <p>11 Q. Who was the vendor at that time?</p> <p>12 A. I'm confused on "that time," what year are we</p> <p>13 talking about?</p> <p>14 Q. This was during the year 1996 when you were being</p> <p>15 trained.</p> <p>16 A. Okay. The vendor at that time was Recovery</p> <p>17 Management and National Product Sales.</p> <p>18 Q. Where was National Product Sales located?</p> <p>19 A. Salt Lake City.</p> <p>20 Q. Where was Recovery Management located at that</p> <p>21 time?</p> <p>22 A. Independence, Missouri.</p> <p>23 Q. The process you were discuss -- the process you</p> <p>24 were discussing where items were reviewed to see</p> <p>25 if they were \$100 of value or not, where was that</p>                                                                                                                                                                             | <p>1 Group.</p> <p>2 Q. What was the distinction then between an item that</p> <p>3 was \$100 or more and an item that was less than</p> <p>4 \$100?</p> <p>5 A. I'm not sure I understand the distinction that you</p> <p>6 are speaking of.</p> <p>7 Q. Well, when we first started discussing the process</p> <p>8 in 1996 in Peachtree, you said that you were</p> <p>9 training on how they evaluate a product and they</p> <p>10 were evaluated for whether they were \$100 or more.</p> <p>11 What was the point of evaluating it to see whether</p> <p>12 it was worth \$100 or more if they were treating it</p> <p>13 the same way?</p> <p>14 A. You trailed off towards the end of that question.</p> <p>15 Could you repeat it, please.</p> <p>16 Q. When an item first came in to Peachtree, was it</p> <p>17 evaluated to determine whether it was worth \$100</p> <p>18 or more?</p> <p>19 A. Yes.</p> <p>20 Q. What is the purpose of determining its value as</p> <p>21 \$100 or more?</p> <p>22 A. The purpose is to place it on the shelf if it is</p> <p>23 more than \$100.</p> <p>24 Q. What would happen with the products that were</p> <p>25 placed on the shelf?</p>                                                                                                                                                                                                        |
| Page 27                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 29                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>1 occurring in 1996?</p> <p>2 A. That was occurring from Peachtree, Georgia.</p> <p>3 Q. How was it determined whether the product would go</p> <p>4 to NPS in Salt Lake City or to Recovery Management</p> <p>5 in Independence?</p> <p>6 A. They would fill up a trailer of liquidation and</p> <p>7 when that trailer got full it went to Salt Lake</p> <p>8 City. Then they would alternate.</p> <p>9 Q. So these items that were not worth more than \$100</p> <p>10 were not shelved; is that correct?</p> <p>11 A. With the exceptions of the special accounts, yes.</p> <p>12 Q. So was there any opportunity to do any tracing or</p> <p>13 any investigation for who the shipper might be?</p> <p>14 A. Yes, there was.</p> <p>15 Q. How did that occur if the item was not shelved?</p> <p>16 A. It actually went to an area called Call Group.</p> <p>17 And the Call Group would actually open the box and</p> <p>18 look on the inside for any invoices or on the</p> <p>19 outside for any carton markings that might lead us</p> <p>20 to the shipper or the consignee.</p> <p>21 Q. These were for items that were worth \$100 or less?</p> <p>22 A. That is correct. It didn't matter what the value</p> <p>23 was. If the carton or the item had any lead</p> <p>24 information on it that would help us match that to</p> <p>25 our customer, then that's what went to the Call</p> | <p>1 A. It would be on the shelf for a total of five</p> <p>2 months in hopes that the customer would place a</p> <p>3 call to United Parcel Service to let us know that</p> <p>4 the merchandise was not delivered. And it would</p> <p>5 allow UPS to try and match the description of the</p> <p>6 product on the shelf with our customer's</p> <p>7 description of what was lost.</p> <p>8 Q. If an item was not worth \$100 and was not one of</p> <p>9 the special accounts, it was sent to the Call</p> <p>10 Group?</p> <p>11 A. Only if it had markings -- before we salvage it --</p> <p>12 or excuse me, before we liquidate it, we would</p> <p>13 want to make sure that there isn't any information</p> <p>14 on there that might lead us to where it needed to</p> <p>15 go. So those would be set aside to the Call</p> <p>16 Group. They would not be shelved. For the Call</p> <p>17 Group to make that determination, to make the</p> <p>18 phone calls, to make any investigation possible</p> <p>19 before it gets liquidated. If they were unable to</p> <p>20 find where it needed to go, then it would be</p> <p>21 liquidated.</p> <p>22 Q. So was the first thing that happened was that it</p> <p>23 was determined whether it was \$100 or more? Or</p> <p>24 was the first thing that happened, a determination</p> <p>25 as to whether there was any marking on it?</p> |

8 (Pages 26 to 29)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM COUNTY, FLORIDA

|                               |   |                        |
|-------------------------------|---|------------------------|
| IVANA VIDOVIC MLINAR,         | ) | - CONFIDENTIAL -       |
|                               | ) | PURSUANT TO PROTECTIVE |
| Plaintiff,                    | ) | ORDER                  |
|                               | ) |                        |
| vs.                           | ) | Case No. 50 2008 CA    |
|                               | ) | 036246XXXXMB AH        |
| UNITED PARCEL SERVICE, INC.,  | ) |                        |
| PAK MAIL OF WELLINGTON, INC., | ) |                        |
| RECOVERY MANAGEMENT CORP.     | ) |                        |
| d/b/a CARGO LARGO and AARON   | ) |                        |
| ANDERSON,                     | ) |                        |
| Defendant.                    | ) |                        |

DEPOSITION OF LOUIS D. PACK,

produced, sworn and examined on Wednesday, November 2, 2011, at the offices of Cross Reporting Service, Inc., 110 South Main Street, in Independence, Missouri, before:

JAMES A. LEACOCK, CCR, for  
CROSS REPORTING SERVICE, INC

a Certified Court Reporter for the State of Missouri.

Taken on behalf of the Plaintiff.

APPEARANCES:

For the Plaintiff:

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, PA  
By: Ms. Mara Hatfield  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
(By Phone)

For the Defendant United Parcel Service:

ALSTON & BIRD  
By: Ms. Angela Adams  
1201 West Peach Street, NW  
Atlanta, Georgia 30309



# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000354

| Page 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Q. What was the subject matter?</p> <p>2 MR. MAYER: Form.</p> <p>3 A. I don't remember.</p> <p>4 Q. (By Ms. Hatfield) Are you aware that you are</p> <p>5 under oath right now?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall being under oath in the prior matter</p> <p>8 where you gave a deposition?</p> <p>9 A. Sure.</p> <p>10 Q. Do you remember what the questions were about?</p> <p>11 MR. MAYER: Form.</p> <p>12 A. I don't remember.</p> <p>13 Q. (By Ms. Hatfield) You do recall that it was</p> <p>14 business-related?</p> <p>15 MR. MAYER: Form.</p> <p>16 A. Yes, it was a number of years ago and it was</p> <p>17 business-related.</p> <p>18 Q. (By Ms. Hatfield) How many other business</p> <p>19 entities do you know?</p> <p>20 MR. MAYER: Form.</p> <p>21 A. By own, what do you mean?</p> <p>22 Q. (By Ms. Hatfield) Well, I said -- earlier you</p> <p>23 said that you were involved in a lawsuit and I</p> <p>24 said were you personally the plaintiff or the</p> <p>25 defendant or was it Recovery Management and you</p>                                                                                                                                                                                                                                           | <p>1 MR. MAYER: Form.</p> <p>2 A. D &amp; J Realty. Hawthorn Property Partners. J.H.</p> <p>3 Investors. Silver Oak Partners. Double Dog</p> <p>4 Sports and Entertainment. Hoops, LLC. And</p> <p>5 Horsing Around Hoops, LLC. I believe that's all</p> <p>6 that come to mind right now.</p> <p>7 Q. (By Ms. Hatfield) What kind of a company is</p> <p>8 Silver Oak Partners?</p> <p>9 MR. MAYER: Objection to form.</p> <p>10 A. It is a owner of multi-family housing in the</p> <p>11 Dallas-Fort Worth metropolitan area.</p> <p>12 Q. (By Ms. Hatfield) What sort of business is D.D.</p> <p>13 Sports and Entertainment engaged in?</p> <p>14 MR. MAYER: Form.</p> <p>15 A. It is inactive.</p> <p>16 Q. (By Ms. Hatfield) What sort of business -- what</p> <p>17 sort of business activities was it engaged in?</p> <p>18 MR. MAYER: Form.</p> <p>19 A. Promoting sporting events.</p> <p>20 Q. (By Ms. Hatfield) What sort of sporting events</p> <p>21 did D.D. Sports and Entertainment promote?</p> <p>22 MR. MAYER: I am going to, instead of</p> <p>23 objecting to each and every question I am</p> <p>24 just going to put a general objection in at</p> <p>25 this time to any questions concerning any</p> |
| Page 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 said it wasn't Recovery -- or was it your business</p> <p>2 interests, and you said it wasn't Recovery</p> <p>3 Management but there are other business entities I</p> <p>4 own. What did you mean by own?</p> <p>5 A. I believe I said I have other business interests.</p> <p>6 But if I didn't, let me correct that.</p> <p>7 Q. What other business interests do you have?</p> <p>8 MR. MAYER: Objection to form.</p> <p>9 A. I am involved in some real estate partnerships.</p> <p>10 Q. (By Ms. Hatfield) What is the nature of your</p> <p>11 involvement?</p> <p>12 MR. MAYER: Form.</p> <p>13 A. In some cases I am a minority LLC member. In</p> <p>14 other cases I am a managing member.</p> <p>15 Q. (By Ms. Hatfield) About how many other business</p> <p>16 entities do you have any ownership -- in about how</p> <p>17 many other business entities do you have an</p> <p>18 ownership interest?</p> <p>19 MR. MAYER: Objection, form.</p> <p>20 A. Approximately a half dozen.</p> <p>21 Q. (By Ms. Hatfield) What are the names of those</p> <p>22 companies? Just to give a scope of time, I asked</p> <p>23 the question of do you have any business interests</p> <p>24 in. So as of today, how many business entities do</p> <p>25 you hold a business interest in?</p> | <p>1 other business entities that Mr. Pack is</p> <p>2 involved in even now or was in the past that</p> <p>3 do not relate to the issues of this lawsuit.</p> <p>4 Any investment matters or any personal</p> <p>5 involvement in any of these corporations.</p> <p>6 And then we'll go on from there so I don't</p> <p>7 have to interrupt you each time. Go ahead.</p> <p>8 Q. (By Ms. Hatfield) That's fine. Thank you.</p> <p>9 A. Basketball.</p> <p>10 Q. When did it become inactive?</p> <p>11 A. Oh, I would say three years ago.</p> <p>12 Q. What kind of business activity is Hoops, LLC</p> <p>13 engaged in?</p> <p>14 A. We produced a basketball documentary.</p> <p>15 Q. Do you recall the title of that documentary?</p> <p>16 A. History of Basketball.</p> <p>17 Q. Is that still an active LLC?</p> <p>18 A. Yes.</p> <p>19 Q. What sort of business activities is Horsing Around</p> <p>20 Hoops, LLC engaged in?</p> <p>21 A. It is not really active now, but it was formed to</p> <p>22 promote competitive, non-professional basketball.</p> <p>23 Q. Are any of these business interests which you have</p> <p>24 described regular or repeated customers at</p> <p>25 Recovery Management?</p>     |

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000355

| Page 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 12                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A. The ones that you asked about?</p> <p>2 Q. The seven that you -- the seven that you described</p> <p>3 to me. D &amp; J Realty, Hawthorn properties?</p> <p>4 A. I didn't describe D &amp; J Realty or Hawthorn. They</p> <p>5 lease real estate to Recovery Management.</p> <p>6 Q. Does that real estate include the facilities that</p> <p>7 are leased by UPS?</p> <p>8 A. I don't know.</p> <p>9 MR. MAYER: Objection, form.</p> <p>10 A. I don't know what -- I don't have a lease with</p> <p>11 UPS. So I don't -- I'm not sure what you are</p> <p>12 referring to.</p> <p>13 Q. (By Ms. Hatfield) Do those -- does D &amp; J lease</p> <p>14 the real estate where Recovery Management</p> <p>15 warehouse is located that contains the UPS</p> <p>16 facility?</p> <p>17 A. No.</p> <p>18 Q. Does Recovery Management own that property</p> <p>19 outright?</p> <p>20 A. No.</p> <p>21 Q. Does Recovery Management lease that property from</p> <p>22 somebody?</p> <p>23 A. Yes.</p> <p>24 Q. Who does Recovery Management lease that property</p> <p>25 from?</p>                                                                   | <p>1 your head. It is difficult to record uh-huhs and</p> <p>2 hmm-hmms. So if you could keep your answers to</p> <p>3 verbal answers, that would be great. Also if I am</p> <p>4 at any point difficult to understand or not</p> <p>5 speaking loud enough, please let me know and I</p> <p>6 will adjust the volume of my voice or of the</p> <p>7 telephone. On occasion I may ask a question that</p> <p>8 I don't state very well or for some other reason</p> <p>9 you don't understand it. If you don't understand</p> <p>10 my question for any reason, please tell me that</p> <p>11 you don't understand and I will try to ask a</p> <p>12 better question, okay?</p> <p>13 A. Yes.</p> <p>14 Q. If you answer the question, I am going to assume</p> <p>15 that you understood the question, okay?</p> <p>16 A. Yes.</p> <p>17 Q. Also if you need a break at any time, please let</p> <p>18 me or your attorney know and we will finish your</p> <p>19 answer and take a break. Do you understand?</p> <p>20 A. Yes.</p> <p>21 Q. At certain times in the deposition your attorney</p> <p>22 may voice an objection for the record. When he</p> <p>23 does so, you should still answer my question</p> <p>24 unless he directs you not to answer my question.</p> <p>25 Is that clear?</p> |
| Page 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Page 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1 A. Woodmen of the World.</p> <p>2 Q. Do you have a business interest in Woodmen of the</p> <p>3 World?</p> <p>4 A. No.</p> <p>5 Q. Do you know if UPS has an interest in Woodmen of</p> <p>6 the World?</p> <p>7 A. No. I do not know.</p> <p>8 Q. Hawthorn Property Partners a regular customer of</p> <p>9 Recovery Management?</p> <p>10 A. As I mentioned, D &amp; J and Hawthorn both lease real</p> <p>11 estate to Recovery Management.</p> <p>12 Q. What real estate do they lease to Recovery</p> <p>13 Management?</p> <p>14 A. Our retail and warehouse operations off of Noland</p> <p>15 Road.</p> <p>16 Q. We got a little distracted before I went over the</p> <p>17 ground rules. You have been deposed previously,</p> <p>18 that may not be necessary. But it is important</p> <p>19 that you remember that I will ask you questions</p> <p>20 and your answers will be recorded by a court</p> <p>21 reporter. Do you understand that you need to</p> <p>22 speak up and answer orally so the court reporter</p> <p>23 can hear you clearly?</p> <p>24 A. Yes.</p> <p>25 Q. You won't be able to record a nod or a shake of</p> | <p>1 A. Yes.</p> <p>2 Q. Sometimes during a deposition you might give an</p> <p>3 answer as completely as you can and then later on,</p> <p>4 be it five minutes later or two hours later, I</p> <p>5 don't expect to go two hours, but you may remember</p> <p>6 some additional information in response to the</p> <p>7 earlier question or in clarification to the</p> <p>8 earlier question. If that happens, please tell me</p> <p>9 that you would like to add something to the</p> <p>10 earlier answer and we can do that right away while</p> <p>11 it is on your mind. All right?</p> <p>12 A. Yes.</p> <p>13 Q. Sometimes during this deposition you might think</p> <p>14 of documents that might help you remember the</p> <p>15 answer to a question or might help you give a more</p> <p>16 accurate answer. If you do, tell me and we may be</p> <p>17 able to get those documents to you. Is that okay?</p> <p>18 A. Yes.</p> <p>19 Q. Are you taking any medication or drugs of any kind</p> <p>20 which might make it difficult for you to</p> <p>21 understand and answer my questions today?</p> <p>22 A. No.</p> <p>23 Q. Is there any reason that you can think of why you</p> <p>24 will not be able to answer my questions fully and</p> <p>25 truthfully?</p>                |

4 (Pages 10 to 13)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000356

| Page 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A. No.</p> <p>2 Q. Are you currently under a doctor's care for any</p> <p>3 illness that might impede your ability to</p> <p>4 understand or to give answers today?</p> <p>5 A. No.</p> <p>6 Q. Did you bring any documents with you to the</p> <p>7 deposition today?</p> <p>8 A. No.</p> <p>9 Q. Mr. Pack, how long have you owned Recovery</p> <p>10 Management Corporation?</p> <p>11 MR. MAYER: Objection to form.</p> <p>12 A. 20 years.</p> <p>13 Q. (By Ms. Hatfield) Throughout the 20 years that</p> <p>14 you have owned Recovery Management Corporation,</p> <p>15 has it always been organized under the same</p> <p>16 business entity that it is organized now or was it</p> <p>17 ever organized under a different name?</p> <p>18 A. Early on it was Recovery Sales Corporation.</p> <p>19 Q. Do you recall what years that was?</p> <p>20 A. No.</p> <p>21 Q. Was there a reason for the name change?</p> <p>22 A. I thought management was a better descriptor of</p> <p>23 the company than sales.</p> <p>24 Q. Mr. Pack, where did you attend high school?</p> <p>25 A. Pembroke Hill, Kansas City, Missouri.</p> | <p>1 Q. What was the first job that you had?</p> <p>2 MR. MAYER: How far are you going back?</p> <p>3 You want to go back to childhood on this or</p> <p>4 after college?</p> <p>5 Q. (By Ms. Hatfield) Well, he didn't work when he</p> <p>6 was in college. Did you work prior to going to</p> <p>7 college?</p> <p>8 A. I did.</p> <p>9 Q. What job did you hold before college and at what</p> <p>10 time?</p> <p>11 MR. MAYER: Objection to form.</p> <p>12 A. Just odd jobs for my dad's company.</p> <p>13 Q. (By Ms. Hatfield) From what years did you work</p> <p>14 odd jobs for your dad's company?</p> <p>15 A. Throughout my pre-college years.</p> <p>16 Q. What was the name of that company?</p> <p>17 A. Underwriter Sales Corporation.</p> <p>18 Q. What was the nature of that business?</p> <p>19 MR. MAYER: Objection to form.</p> <p>20 A. They represented insurance companies and helped</p> <p>21 sell goods that insurance companies would get as a</p> <p>22 result of paying off claims to large commercial</p> <p>23 customers.</p> <p>24 Q. (By Ms. Hatfield) Did any of those customers</p> <p>25 include UPS?</p>                                                                                                                                                                                |
| Page 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 Q. Did you graduate?</p> <p>2 A. I did.</p> <p>3 Q. What year, do you recall?</p> <p>4 A. 1973.</p> <p>5 Q. Did you go on to college or did you go right into</p> <p>6 business?</p> <p>7 A. I went to college.</p> <p>8 Q. Where did you go to college?</p> <p>9 A. University of Texas Austin.</p> <p>10 Q. Did you go right in 1973?</p> <p>11 A. Yes.</p> <p>12 Q. Did you graduate?</p> <p>13 A. No.</p> <p>14 Q. How long did you attend classes there?</p> <p>15 A. Four years.</p> <p>16 Q. What did you study?</p> <p>17 A. Music.</p> <p>18 Q. Why didn't you graduate?</p> <p>19 MR. MAYER: Objection to form.</p> <p>20 A. I didn't have enough hours after four years.</p> <p>21 Q. (By Ms. Hatfield) Did you have a job while you</p> <p>22 were in college?</p> <p>23 A. No.</p> <p>24 Q. Did you play music professionally?</p> <p>25 A. No.</p>                                                                                                                                                                                                                                                                       | <p>1 A. No.</p> <p>2 Q. Did any of those customers include interstate</p> <p>3 shippers?</p> <p>4 A. I'm not familiar with interstate shippers.</p> <p>5 Q. Did any of those customers include FedEx?</p> <p>6 A. I want to clarify. I joined the company full time</p> <p>7 in the second half of the '80s after we started</p> <p>8 working with Yellow Freight. My focus was really</p> <p>9 on the -- with Yellow Freight, the transportation</p> <p>10 clients. And we started working with UPS in 1989</p> <p>11 under Underwriter Sales Corporation. So that's a</p> <p>12 correction to -- I was answering about UPS in</p> <p>13 respect to paying off claims of large commercial</p> <p>14 clients. Different business. One is insurance,</p> <p>15 another is transportation.</p> <p>16 Q. That's fair. I was still really asking about the</p> <p>17 time that you were working there in high school.</p> <p>18 So your answer then was still accurate, because</p> <p>19 that would have been before 1973?</p> <p>20 A. No. It is not before 1973. It is 1989.</p> <p>21 Q. Okay. Did you hold any other jobs in high school</p> <p>22 besides work you did for your father's company?</p> <p>23 A. I worked at the Glenwood Manor Motel in the</p> <p>24 restaurant for a while.</p> <p>25 Q. What did you do?</p> |

5 (Pages 14 to 17)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000357

| Page 34                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 36                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A. In terms of scope and resources and number of</p> <p>2 shipments.</p> <p>3 Q. Is the difference in scope a matter of size?</p> <p>4 A. Volume.</p> <p>5 Q. Who has a larger volume, YRC or UPS?</p> <p>6 A. UPS.</p> <p>7 Q. How much larger of volume of UPS goods do you deal</p> <p>8 with in YRC?</p> <p>9 MR. MAYER: Form.</p> <p>10 A. A thousand.</p> <p>11 Q. (By Ms. Hatfield) What is the difference in the</p> <p>12 resources that you use?</p> <p>13 A. We have one part-time person working with the YRC</p> <p>14 goods and we have 40 to 50 full-time people</p> <p>15 dedicated to the UPS operation.</p> <p>16 Q. Have the tools that have been provided to the</p> <p>17 employees who work on the UPS goods always been</p> <p>18 roughly the same as the tools that are provided to</p> <p>19 the one person who works for YRC?</p> <p>20 A. No.</p> <p>21 Q. What is the difference?</p> <p>22 A. First if you could clarify what you mean by tools.</p> <p>23 Q. The work that your employees do with UPS goods,</p> <p>24 what kind of system were they using in 2005? What</p> <p>25 did they do in 2005 in order to manage the</p>                                                   | <p>1 overgoods for UPS, what was the financial</p> <p>2 arrangement for the purchase of goods from UPS?</p> <p>3 What did it include?</p> <p>4 A. We paid a certain amount for a piece of, a salvage</p> <p>5 unit.</p> <p>6 Q. When you started managing overgoods for UPS, did</p> <p>7 the financial relationship change at all?</p> <p>8 A. Yes.</p> <p>9 Q. How so?</p> <p>10 A. I believe we got a credit toward the salvage that</p> <p>11 we were purchasing, based on the work that we did.</p> <p>12 Q. Did you tell UPS at the time that you were</p> <p>13 negotiating this arrangement, that if you were</p> <p>14 going to start taking on additional obligations</p> <p>15 and provide a service to UPS, that you wanted to</p> <p>16 be paid for it?</p> <p>17 A. That was part of the negotiation.</p> <p>18 Q. Did you get a credit for items found to be the</p> <p>19 compensation that you wanted?</p> <p>20 A. Say that again.</p> <p>21 Q. Did you think it was a fair deal that being given</p> <p>22 a credit for the salvages found?</p> <p>23 A. Well, that's not how we were -- that wasn't the</p> <p>24 basis for the compensation.</p> <p>25 Q. What was the basis for the compensation then?</p>                          |
| Page 35                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Page 37                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 overgoods?</p> <p>2 A. We use a system that is provided to us by UPS.</p> <p>3 Q. What kind of system was that?</p> <p>4 A. A computer system.</p> <p>5 Q. At that same time was the one part-time person</p> <p>6 working for YRC using a computer system?</p> <p>7 A. No.</p> <p>8 Q. What was the YRC person doing?</p> <p>9 A. We weren't doing it in 2005.</p> <p>10 Q. Okay. How long did Recovery Sales Corporation</p> <p>11 help to identify shipments for YRC?</p> <p>12 A. We started about three years ago.</p> <p>13 Q. Do you continue to do that today?</p> <p>14 A. We do.</p> <p>15 Q. Did you approach UPS about starting to manage some</p> <p>16 overgoods or did they approach you?</p> <p>17 A. I think it was an evolution of the relationship.</p> <p>18 I don't know exactly where it started.</p> <p>19 Q. Do you recall who you first talked with about</p> <p>20 augmenting the relationship between UPS and</p> <p>21 recovery sales to include management of overgoods?</p> <p>22 A. Ted Johnson.</p> <p>23 Q. Do you recall what his title was at that time?</p> <p>24 A. I think it was manager of overgoods.</p> <p>25 Q. Before Recovery Sales Corporation started managing</p> | <p>1 A. The basis was we estimated the amount of expense</p> <p>2 it would take to run this operation and equated</p> <p>3 that to the number of packages that we would be</p> <p>4 handling. And so we got a credit towards the</p> <p>5 goods that we bought based on that.</p> <p>6 Q. So is it fair to say that the negotiations paid</p> <p>7 for your expenses but that you didn't make a</p> <p>8 profit from the service provided?</p> <p>9 MR. MAYER: Objection to form.</p> <p>10 A. If I am hearing what you said, those statements</p> <p>11 are sort of contradictory. Could you restate</p> <p>12 the --</p> <p>13 Q. (By Ms. Hatfield) Not really. I mean, before</p> <p>14 you --</p> <p>15 A. If you just restate it, I guess I didn't</p> <p>16 understand.</p> <p>17 Q. Prior to becoming an overgoods service provider to</p> <p>18 UPS, you just bought goods from them and sold</p> <p>19 them, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And then when you became an overgoods manager, the</p> <p>22 contract included getting a credit in the amount</p> <p>23 of your expenses for searching out shipper</p> <p>24 information on products; is that correct?</p> <p>25 A. We got a credit that was based on, although not</p> |

10 (Pages 34 to 37)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000358

| Page 38                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 40                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 equal to, the labor that is required to receive</p> <p>2 and evaluate and data enter and process the goods.</p> <p>3 Q. Was it greater than or less than that amount of</p> <p>4 expense?</p> <p>5 A. Typically less than.</p> <p>6 Q. So once you became an overgoods manager, you were</p> <p>7 still buying goods from UPS and receiving a credit</p> <p>8 that paid you back your expenses for being an</p> <p>9 overgoods manager but not entirely; is that fair?</p> <p>10 Is that accurate?</p> <p>11 A. That is a partial representation. Instead of</p> <p>12 buying what was traditionally a third of the</p> <p>13 salvage, we now got half the salvage.</p> <p>14 Q. How did that come about?</p> <p>15 A. As a result of the negotiation.</p> <p>16 Q. When you got a third of the salvage, who got the</p> <p>17 other two-thirds?</p> <p>18 A. It was sort of a revolving door. Any variety of</p> <p>19 companies.</p> <p>20 Q. When you got half of the salvage goods, who got</p> <p>21 the other half?</p> <p>22 A. A company called NPS in Salt Lake City.</p> <p>23 Q. Do you have an ownership interest in NPS?</p> <p>24 A. No.</p> <p>25 Q. Have you ever had an ownership interest in NPS?</p> | <p>1 this"?</p> <p>2 MR. MAYER: Objection to form.</p> <p>3 A. Might not what to do what?</p> <p>4 Q. (By Ms. Hatfield) I might not want to become a</p> <p>5 manager of the overgoods or manage your overgoods,</p> <p>6 I just want to sell your goods?</p> <p>7 A. I don't recall that.</p> <p>8 Q. Do you recall ever thinking that?</p> <p>9 MR. MAYER: Objection to form.</p> <p>10 A. I don't know.</p> <p>11 Q. (By Ms. Hatfield) Do you recall in October of</p> <p>12 2004 whether UPS started an incentive program</p> <p>13 based on the amount of items found by Recovery</p> <p>14 Management for the amount of shippers found by</p> <p>15 Recovery Management belonging to a certain item?</p> <p>16 A. I know we introduced an incentive into the</p> <p>17 contract. I don't recall when it was.</p> <p>18 Q. Do you recall why that incentive was introduced?</p> <p>19 A. To the best of my recollection, since it was a</p> <p>20 consistent theme that the priority was to get</p> <p>21 shipments back to the customer, wherever possible,</p> <p>22 the owner, it seemed like it made sense to incent</p> <p>23 that behavior to reinforce it.</p> <p>24 Q. You testified earlier that Recovery Sales</p> <p>25 Corporation started the service of overgoods</p> |
| Page 39                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 41                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <p>1 MR. MAYER: Objection to form.</p> <p>2 A. What was the second question?</p> <p>3 MR. MAYER: Same as the first.</p> <p>4 Q. (By Ms. Hatfield) No, the first was do you have</p> <p>5 an ownership interest in NPS and the answer was</p> <p>6 no. The second was have you ever had an ownership</p> <p>7 interest in NPS?</p> <p>8 A. No.</p> <p>9 Q. Have you ever had an ownership interest in UPS?</p> <p>10 A. Not that I am aware of.</p> <p>11 Q. Have you ever worked for UPS?</p> <p>12 A. No.</p> <p>13 Q. Has anyone in your family ever worked for UPS?</p> <p>14 A. No.</p> <p>15 Q. When your relationship with UPS changed from being</p> <p>16 a buyer of salvaged goods to being a buyer of</p> <p>17 salvaged goods and an overgoods processor, were</p> <p>18 you happy with that change?</p> <p>19 MR. MAYER: Objection to form.</p> <p>20 A. I felt it was the right business decision.</p> <p>21 Q. (By Ms. Hatfield) If you did not want to become</p> <p>22 an overgoods servicer, would UPS still have</p> <p>23 allowed you to buy their salvaged goods?</p> <p>24 A. I don't know.</p> <p>25 Q. Did you ever tell UPS "I might not want to do</p>                                              | <p>1 processing in October of 1997; is that correct?</p> <p>2 A. That's what I recall, yes.</p> <p>3 Q. The incentive program -- well, actually, here,</p> <p>4 let's try to establish this. I would like to take</p> <p>5 a look at what has been marked previously as</p> <p>6 Exhibit E. to November 2nd Depositions. If we can</p> <p>7 mark that as an E. to the deposition, Mr. Pack.</p> <p>8 MR. MAYER: It has not been marked.</p> <p>9 MS. ADAMS: We haven't marked E.</p> <p>10 MS. HATFIELD: Wait, I may have the</p> <p>11 wrong one then.</p> <p>12 MR. MAYER: H. may be the one that you</p> <p>13 are referring to?</p> <p>14 MS. HATFIELD: I mean that I had</p> <p>15 previously marked as Exhibit E., and I would</p> <p>16 like to mark that as Exhibit E. to this</p> <p>17 deposition.</p> <p>18 MR. MAYER: We have to get that one</p> <p>19 then. Also at this time it would be good to</p> <p>20 tell you that Mr. Pack is available until</p> <p>21 3:00 o'clock. That's when we assumed that</p> <p>22 the next deposition would be starting. So I</p> <p>23 don't know how much more that you have, but I</p> <p>24 wanted you to be able to keep that in mind in</p> <p>25 your questioning. We may have to continue</p>                                    |

11 (Pages 38 to 41)

AGREEMENT FOR OVERGOODS MANAGEMENT AND  
FOR THE PURCHASE AND SALE OF SALVAGED GOODS AND CONSIGNMENT SALES

THIS AGREEMENT is by and between **UNITED PARCEL SERVICE GENERAL SERVICES CO.**, a corporation organized and existing under the laws of Delaware on behalf of itself and its affiliates and subsidiary companies (collectively "Seller" or "UPS") **RECOVERY MANAGEMENT CORPORATION**, a corporation organized and existing under the laws of Missouri, having its chief executive office at 13900 East 35<sup>th</sup> Street, Independence, Missouri, 64055 (hereinafter called the "buyer").

This Agreement sets forth the terms and conditions under which Seller will cause to be delivered to Buyer certain goods and Buyer will perform management and consignment services relating to the goods as set forth in the attached (i) Overgoods Management Operating Procedures and (ii) Consignment of Merchandise terms. This Agreement, including the attached Overgoods Management Operating Procedures, and Consignment of Merchandise terms both of which are incorporated hereby reference and are collectively referred to as "the Agreement" sets forth the entire understanding and agreement of the parties and supersedes any and all prior or contemporaneous agreements or understandings, written or oral, between the parties as to the subject matter of this Agreement. This Agreement may only be modified or amended upon the written approval of both parties.

1. **DEFINITIONS.** Terms as used in this Agreement shall have the following definitions:

- a. **Unit of Shipment.** "Unit of Shipment" is a unit of goods in the form in which, prior to loss or damage, it had been or was to be transported by Seller, without enlargement or diminution of any kind, in packaged or unpackaged form.
- b. **Overgoods.** "Overgoods" are any articles as to which consignee and shipper are unknown.
- c. **Salvaged Goods.** "Salvaged Goods" are any articles as to which Seller has acquired an interest, including but not limited to those which Seller has acquired title pursuant to the terms of the UPS Tariff Item 535.
- d. **Special Items.** "Special Items" are goods that Seller has determined, or will determine from time to time, shall not be sold to Buyer. Such goods shall include "Special Account" goods.
- e. **Special Account.** "Special Account" goods are any goods that Seller has identified or will identify from time to time, to Buyer as related to a specific manufacturer or distributor. Seller has furnished Buyer with a list of such manufacturers and distributors to date and such list will be available for inspection by Buyer at reasonable times. Seller agrees to notify buyer of Special Account Contract Changes in a timely manner.
- f. **Net Available Salvaged Goods.** "Net Available" Salvaged Goods are all the goods Seller has offered to Buyer for sale, excluding Special Items.
- g. **Matured Goods.** "Matured Goods" are articles which have been processed pursuant to the terms of the Overgoods Management Operating Procedures and warehoused for a period five months, or such other period as determined by Seller (the "Maturing Period").

2. **Term and Termination.**

- a. The term of this Agreement shall commence on April 1, 2003, and shall continue in full force and effect until March 31, 2006, unless this Agreement is earlier terminated in accordance with its terms, or is extended by written agreement of the parties.
- b. Either party may terminate this Agreement upon ninety- (90) days written notice.
- c. Notwithstanding anything in this Agreement to the contrary (including the provisions regarding early termination set forth in paragraph 2 above), in the event either party provides notice of early termination: (i) each party's obligations, requirements and benefits under this Agreement shall continue during the 90-day period after receipt of written notice of termination; and (ii) upon the 91st day after receipt of such written notice of termination, delivery and evaluation of Overgoods shall cease, but Buyer shall continue to provide Seller storage of maturing Overgoods received prior to the expiration of the 90-day period and Buyer shall complete shipping of voided Overgoods and processing Special Accounts, all in accordance with The Overgoods Management Operating Procedures which is attached hereto and incorporated herein. Buyer shall purchase the remaining Overgoods as they mature out of Buyer's warehouse at rates stated in Exhibit A which is attached hereto and incorporated herein. Buyer agrees to provide Seller reasonable access to remove all equipment, supplies and any remaining UPS property for a reasonable time, not to exceed 30 days, after the last remaining Overgoods have been matured.

3. **Sale to Buyer of Released Units of Shipment.** Seller agrees to sell and Buyer agrees to purchase for the price set forth in Exhibit "A" to this Agreement, those Units of Shipment released for sale from goods managed by Buyer pursuant to the Overgoods Management Operating Procedures. The purchase price of per Unit of shipment will be calculated yearly as set forth on Exhibit "A" for the contract period. This price includes all Buyers' costs and expenses incurred in providing services as set forth in this Agreement.

4. **Annual Purchase Price Review.** Buyer and Seller agree to an annual purchase price review. The price review will include but not be limited to Seller's average cost per paid claim differential from previous year, government consumer price index (CPI) for the previous 12 months, Seller's transportation cost, Buyer's wage and benefit increases or decreases, increases relating to Buyer's occupancy costs and any other operating costs of Buyer's relating to Overgoods management for Seller. Prior to any annual review, Seller and Buyer may adjust the price per Unit of Shipment upon mutual written agreement.

5. **Payment Terms.** Buyer's payment for Net Available Salvaged Goods shall be due ten calendar (10) days after receipt by Buyer of invoice from Seller. Seller will invoice Buyer weekly on each Monday for previous week's Net Available Salvaged Goods. All payments shall be made by wire transfer.

6. **Resale to Seller.** If at any time, or from time to time, Seller shall notify Buyer that a Unit of Shipment is the subject of a claim or potential claim by a customer, and Buyer has not sold such item, Buyer shall on Seller's request resell such item to Seller for a price equal to the selling price currently in effect of the Unit of Shipment. Buyer shall cooperate with Seller in locating and processing any such item from Buyer's premises.
7. **Delivery to Buyer.** Seller shall deliver all Overgoods and Salvage units to Buyer at 1600 N. M-291 Hwy, Independence, Missouri, 64058 (or any other mutually agreed upon location). Buyer agrees and understands that Seller may change its districts and operating areas at times and may change districts between Buyers. Seller agrees to notify Buyer in writing of any changes of volume or flows within thirty (30) days of such changes. Until such notice is provided, Seller agrees to continue sending Units of Shipment to the Buyer from the same UPS districts that were supplying Units of Shipments as of the First Quarter 2003.
8. **Prohibited Items.** Certain items shall not be salvaged by Buyer at anytime. These items include, but are not limited to, firearms, controlled substances, prescription drugs, and as further set forth in the Overgoods Management Operating Procedures.
9. **Buyer's Indemnification Obligation.** Buyer hereby agrees to indemnify, defend, release, and hold harmless Seller against any and all liabilities, claims, demands, suits, judgments, damages, and losses of any kind, including costs, expenses, and legal fees arising out of or in any way connected with Buyer's performance of services specified in this Agreement, including any claim of levy, attachment, lien or process resulting from Buyer's handling of the Salvaged Goods.
10. **Buyer Responsibility for Goods.** Any injury to or loss or destruction of any of the Salvaged Goods, Overgoods, or Special Items in the possession of Buyer (other than goods for which Seller remains responsible in accordance with Overgoods Management Operating Procedures) shall be the sole responsibility of Buyer and shall not relieve Buyer of its obligations under this Agreement.

11. **Insurance Obligations.** Buyer will, at Buyer's expense, insure goods against such casualties, risk or loss, in such amounts (as set forth below) and with such insurance carrier and with such loss payable clause as may be reasonably satisfactory to Seller. All such insurance policies, or insurance certificates evidencing the same, shall be furnished to Seller and such policies shall provide that they shall not be canceled without at least ten (10) days' prior written notice to Seller. Buyer shall, at Buyer's expense, carry insurance in companies and in form approved by Seller, in each case including Seller as an insured or additional insured, as follows:
- (i) Auto Liability Insurance providing coverage for motor vehicle liability with limits of at least \$1,000,000 combined single limit;
  - (ii) Commercial General Liability Insurance including products and completed operations coverage with a minimum limit of liability for personal injury, bodily injury, including death resulting therefrom, and property damage of \$1,000,000 per occurrence;
  - (iii) Bailee or warehouse legal liability coverage providing coverage for personal property of Seller in the care, custody, or control of Buyer for limits of at least \$4,000,000; and
  - (iv) Workers Compensation as required by law of the state of hire.

All of the above-required coverage shall be with insurance carriers that have a minimum A.M. Best rating of A-VII. All required policies of insurance must contain a provision mandating thirty (30) days advance written notice in the event of cancellation or material change in such policy. In the event that insurance limits required by this agreement are reduced by claims to a level below that required, vendor shall inform UPS and at its own expense, replenish such limits to the level required.

**Certificates of Insurance** - Vendor shall provide UPS with certificates of insurance evidencing the coverage's required hereunder within fifteen (15) days after execution of this agreement. United Parcel Service, Inc. and each of its subsidiaries shall be named as additional insureds on coverages (i) and (ii) above.

Buyer shall keep all the insurance provided for in clause (i), (ii), (iii) and (iv) of this section in full force and effect at least through March 31, 2006. In the event this Agreement is extended in writing, then the required insurance shall automatically be similarly extended.

If any goods are lost, damaged or destroyed and insurance proceeds are paid to Buyer in respect thereof, Buyer shall promptly remit such proceeds to Seller on account of payments, if any, due under this Agreement.

12. **No Use of Seller's Name, Confidentiality.** Buyer agrees that it will at all times sell the goods purchased under this Agreement in Buyer's own name and not in the name of Seller. Buyer shall not use in any manner the name "United Parcel Service of America, Inc." or "United Parcel Service", or "UPS" or any variation thereof in connection with the sale, advertising or promotion of any such goods. Buyer agrees it will not, except as required by law or with the express written consent of Seller, disclose the contents or advertise or publicize the contents of this Agreement. Buyer agrees not to reproduce, use or in any manner simulate any name, insignia, trademark or work mark which is owned by or descriptive of Seller, including Seller's parent, United Parcel Service of America, Inc. It is expressly understood and agreed that Buyer's obligations hereunder shall survive the performance of the terms of this Agreement, its rescission or other termination and shall remain in full force and effect and shall be deemed several from and independent of the other provisions of this Agreement
  
13. **Default.** The occurrence of any one or more of the following events shall constitute an Event of Default (an "Event of Default") hereunder:
  - a. Buyer fails to pay within five calendar days of receipt of notice from Seller of any amounts due and payable hereunder, as required in section 5 of this Agreement;
  - b. Buyer shall fail to materially comply with any other provisions of this Agreement which have not been cured within thirty days after notice of such material noncompliance from Seller;
  - c. Upon execution of this Agreement, any written representation or warranty furnished Seller by Buyer in connection with this Agreement which is materially false and which has been materially relied upon by Seller;
  - d. Buyer shall make an assignment for the benefit of its creditors;
  - e. Proceedings in bankruptcy or for reorganization of Buyer or for the readjustment of any of its debts under the federal bankruptcy Act, as amended, or under any other act or law, whether state or federal, now or hereafter existing, for the relief of debtors, shall be commenced by or against Buyer, and, if against Buyer, shall not have been dismissed within thirty (30) days from the date of commencement;
  - f. A receiver or trustee shall be appointed for Buyer or for any substantial part of Buyer's goods or any proceedings shall be instituted by or against Buyer for the dissolution, or the full or partial liquidation, of Buyer and, if against Buyer, shall not have been discharged within thirty (30) days from the date of commencement.

Upon the occurrence of any one or more of the Events of Default specified above, Seller shall provide Buyer with written notice of the default. Buyer shall have ten (10) days to cure the default, unless the default cannot be cured within said ten-day period (in which case Buyer shall have a reasonable period of time to cure the default, provided Buyer is in the process and continues efforts to do so). In the event default has not been cured as hereinabove set forth, this Agreement may be terminated by Seller, and all amounts due to Seller from Buyer hereunder shall immediately become due and payable without further notice.

14. **Buyer Representations and Warranties.** Buyer represents and warrants that:
- a. This Agreement has been duly authorized, executed and delivered by Buyer and constitutes a valid and binding instrument enforceable against Buyer in accordance with its terms;
  - b. Buyer's execution and delivery of this Agreement, its consummation of the transactions contemplated hereby and its fulfillment of the terms thereof will not violate any law of any provision of the articles of incorporation or bylaws of the Buyer and will not conflict with or result in any breach of any of the terms of, or constitute a default under or result in the imposition of any lien upon any asset of Buyer pursuant to the terms of, any other agreement or instrument to which Buyer is a party or by which it or its property is bound;
  - c. Buyer is a corporation duly organized, validly existing and in good standing on the date hereof under the laws of Missouri with lawful power to engage in the business it conducts and proposes to conduct;
  - d. Except as set forth in Exhibit "B" ("List of Liens and/or List of Litigation") attached hereto, there are no security interests, liens or encumbrances which attach to or otherwise affect any of the assets of Buyer or proceeds thereof, including Seller's Goods upon their sale to Buyer hereunder;
  - e. Except as set forth in Exhibit "B" ("List of Liens and/or List of Litigation") attached hereto, there are no actions, suits or proceedings pending or, to the knowledge of Buyer, threatened against or affecting Buyer or its properties before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign and there are no judgments outstanding against Buyer.
  - f. **Hazardous Materials.**
    - i. Buyer acknowledges that some Salvaged Goods, which Buyer will handle for Seller and purchase from Seller, may constitute or contain Hazardous Material, including any material designated or regulated under the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, *et seq.* or the regulations codified at Title 49 of the Code of Federal Regulations (collectively the "HMTA"). For any Hazardous Material offered, presented, or otherwise tendered to Buyer, Buyer shall fully comply with all federal, state and/or local laws (including, without limitation, common law), codes, statutes, ordinances, orders, and/or regulations, applicable to such Hazardous Material including, without limitation the HMTA. Buyer warrants and represents that Buyer will comply with all such laws and regulations, and will cause all of its employees, contractors, and agents to so comply, including without limitation, compliance with all training requirements for persons who may handle Hazardous Materials. Buyer shall provide a safe working environment for Seller's employees while such employees are at Buyer's facility, including compliance with all safety and health requirements related to hazardous materials.

- ii. Buyer represents and warrants that Buyer will comply with all applicable laws and regulations related to the disposal of hazardous waste, including, all applicable laws and regulations regarding the handling, storage, transportation and disposal of such hazardous waste. At the time a determination is made that a salvaged good is to be disposed of, title, risk of loss and all other obligations of ownership shall pass to Buyer. Buyer shall be designated as the generator of any hazardous waste disposed of from Buyer's facility and any manifest accompanying such hazardous waste shall include Buyer's name and generator identification number.
- iii. If any Overgoods or Salvaged Goods are determined, in Buyer's reasonable judgment, with opportunity for Seller to confirm, to contain or constitute hazardous waste, Buyer agrees not to accept such goods for delivery from Seller and to immediately notify Seller of the condition of the goods and non-acceptance. If Buyer fails to so notify Seller, Buyer shall be responsible for all costs associated with disposal of such goods. If Buyer does so notify Seller, and Seller confirms the goods contained or constituted hazardous waste upon arrival, Seller agrees that it will pay the actual cost of disposal of the hazardous waste generated from the overgoods or salvage goods. Under no circumstances shall Seller assume any responsibility or liabilities for waste generated from goods that are from sources other than Seller.
- g. Buyer will comply with, and conduct its operations in accordance with, all applicable federal, state and local laws and regulations, including, but not limited to, all federal FDA agreements, DEA and ATF rules and regulations, regulations for processing all classes of drugs, and processing of items governed by Alcohol, Tobacco and Firearms regulations. Buyer further represents and warrants that it is responsible to ensure that it is properly trained as specified in any applicable regulations.
- h. Buyer agrees that it will comply with and will facilitate Seller's compliance with the existing Donation Agreement with Heart to Heart and Harvestors Food Bank or any future such agreement which shall be attached as Exhibit D.

All of the representations and warranties contained herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect as continuing warranties and representations until all of the liabilities of Buyer to Seller shall have been duly discharged.

15. **Seller Representations.** Seller represents that:
- a. This Agreement has been duly authorized, executed and delivered by Seller and constitutes a valid and binding instrument enforceable against Seller in accordance with its terms;
  - b. Seller's execution and delivery of this Agreement, its consummation of the transactions contemplated hereby and its fulfillment of the terms hereof will not violate any law of any provision of the articles of incorporation or bylaws of the Seller and will not conflict with or result in any breach of any of the terms of, or constitute a default under or result in the imposition of any lien upon any asset of Seller pursuant to the terms of any other agreement or instrument to which Seller is a party or by which it or its property is bound;

- c. Seller is a corporation duly organized, validly existing and in good standing on the date hereof under the laws of Delaware with lawful power to engage in the business it conducts and proposes to conduct;
- d. Seller represents that it will have good title to the Salvaged Goods to be sold under this Agreement in every case free from encumbrances and that Seller has and will have the right to sell the same. Seller will defend the title of the Salvaged Goods against claims of all persons insofar as such claims or demands are based upon (i) alleged acts or omissions of Seller or (ii) alleged transactions or events occurring prior to the delivery of the Salvaged Goods in question.

All of the representations and warranties contained herein shall survive the execution and delivery of this Agreement and shall continue in full force and effect as continuing warranties and representations until all of the liabilities of Seller to Buyer shall have been duly discharged.

- 16. SELLER MAKES AND BUYER RECEIVES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATED TO OR ARISING OUT OF THE GOODS OR THIS AGREEMENT. ALL GOODS, INCLUDING SALVAGED GOODS, SPECIAL ITEMS, OR DAMAGED GOODS AND THE CONTENTS OF ANY UNIT OF SHIPMENT, ARE PROVIDED "AS IS," AND SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ALL OTHER WARRANTIES THAT MAY OTHERWISE ARISE FROM COURSE OF DEALING, USAGE OF TRADE OR CUSTOM.

- 17. **Waiver.** No failure or delay or omission on the part of either party to exercise or avail itself of any right, power or remedy that it has or may have hereunder shall operate as a waiver of any right or remedy.

- 18. **Amendment.** No amendment, modification or waiver or any provision of this Agreement shall be effective unless the same shall be in writing and signed by the parties hereto.

- 19. **Notices.** All notices, requests, demands and other communications made in connection with this Agreement shall be in writing (including telegraphic communications) and sent by UPS Next Day Air or mailed by registered or certified mail, telegraphed or delivered to the applicable party at the addresses indicated below:

If to Seller at: United Parcel Service 55 Glenlake Parkway, N.E. Atlanta, Georgia 30328  
Attn: Corporate Security Manager

If to Buyer: Recovery Management Corporation, 13900 East 35<sup>th</sup> Street, Independence, Missouri, 64058  
Attention: President

Or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All such notice, requests, demands and other communications shall, when sent by UPS Next Day Air or when mailed or telegraphed, be effective when deposited in UPS Next Day Air or in the mails or delivered to the telegraph company, respectively, addressed as aforesaid.

20. **No Consequential Damages.** In no event will Seller or Buyer be liable for any indirect, incidental, special or consequential damages of any kind, or damages for lost profits, or loss of goodwill arising out of or relating to this Agreement or its implementation, whether liability is based in contract, tort, product liability or any other theory of liability. The foregoing limitation of liability will apply regardless of whether Buyer or Seller knows or has been advised of the possibility of such damages.
21. **Assignment.** Except that Seller may assign this Agreement to any affiliate of Seller which is capable of performing this Agreement in Seller's discretion, neither party shall assign this Agreement without the written consent of the other. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and permitted assigns.
22. **Governing Law.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties have caused these presents to be executed, dated as of the day and year first above written.

UNITED PARCEL SERVICE GENERAL  
SERVICES CO.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

RECOVERY MANAGEMENT CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT "A"

Calculation of Unit of Shipment

|                                                                            |                  |
|----------------------------------------------------------------------------|------------------|
| Salvage Tote                                                               | \$22.60 per Tote |
| Salvage Call Tag                                                           | \$22.60 per Unit |
| Matured Unit > or = \$100.00                                               | \$21.90 per Unit |
| Matured Unit > or = \$75.00 and <\$100.00<br>"Units marked with Blue Dots" | \$ 2.01 per Unit |

Per Unit and per Tote price as described in contract

EXHIBIT "B"

BUYER LIST OF LIENS AND/OR LITIGATION

**Liens:** Buyer has made a general pledge of assets to Colombian Bank and Trust, 4701 W  
110<sup>th</sup> St Leawood, KS 66211 (913) 491-1061

**Litigation:** None.

Seller:

By:

Buyer:

By:

Date:

## EXHIBIT "C"

## CONSIGNMENT OF MERCHANDISE

The following terms govern Recovery Management Corporation ("RMC") consignment sales of Merchandise and remittance of payment to United Parcel Service, Inc. ("UPS"). For purposes of this Exhibit, the term "Merchandise" shall refer to any single shipment of goods to which UPS has acquired title pursuant to its Tariff Item 535, or unknown overgoods that have been matured for 9 months, and with a retail value in excess of Five Thousand Dollars (\$5000).

1. UPS shall deliver Merchandise to Recovery Management Corporation (RMC) premises located at 1600 N. M-291 Hwy, Independence, Missouri 64058 (or other mutually agreed upon locations).
2. UPS authorizes Recovery Management to sell, transfer or otherwise convey UPS's interest in Merchandise, subject to the terms set forth herein, including as set forth in section 9, regarding absence of warranties to RMC or any ultimate purchaser. UPS shall execute all necessary and appropriate documentation to evidence such sale, transfer, or conveyance to RMC.
3. The proceeds of Recovery Management sales of such Merchandise shall be held in trust by Recovery Management for UPS until Recovery Management has accounted for and remitted such proceeds to UPS pursuant to the provisions of this Agreement.
4. Recovery Management shall not attempt to sell on consignment any goods that do not meet the definition of Merchandise as set forth herein or any goods not approved or identified by UPS. If Recovery Management learns of the existence of, or Recovery Management's possession of, goods that may qualify as Merchandise but which have not previously been identified as such to or by UPS, Recovery Management shall notify UPS of the nature of the goods so that UPS may determine, in its sole discretion, whether such goods shall be considered for consignment sale.
5. UPS shall receive Sixty Five percent (65%) of the proceeds from Recovery Management's sales of the Merchandise.

6. Recovery Management shall, at its own expense:
- (a) Accept delivery of Merchandise at its premises at 1600 N. M-291 Hwy, Independence, Missouri 64058 (or any other location mutually agreed upon by the parties hereto), on a mutually established schedule.
  - (b) Provide a receipt for the Merchandise in a mutually-acceptable form, and to report to UPS the status of all received Merchandise.
  - (c) Prepare and clean the Merchandise for sale, and devote reasonable efforts to the advertisement, display, and sale of the Merchandise to achieve maximum sales potential for the Merchandise.
  - (d) Provide security on the premises for protection from theft, pilferage, robbery, and fire protection to meet requirements of state and local ordinances.
  - (e) Pay the sales tax required by law on all of the Merchandise, and to keep tax records as required by law of all such sales tax payments.
  - (f) Maintain accurate accounts of all transactions, including receipt storage and sales of Merchandise pursuant to this Agreement.
  - (g) Remit to UPS by business check by the fifteenth (15<sup>th</sup>) day of each month (or the following business day if the fifteenth (15<sup>th</sup>) falls on a Saturday, Sunday or public holiday) UPS's appropriate percentage of gross sales as determined pursuant to Paragraph 6 hereof for the immediately preceding month's sales during the term of this Agreement.
  - (h) Upon request of UPS, make available for audit on an annual basis all records of all transactions arising under these consignment terms, including UPS's personal inspection and inventory of all items of Merchandise in the possession of Recovery Management under this Agreement. Any notice of termination of the Agreement shall constitute a notice of and request for audit.

- (i) Provide UPS's designated representative access to Recovery Management's premises so that UPS's representatives may carry out the tasks set forth in Paragraph 1.
- 7. Recovery Management shall carry all risk of loss for the Merchandise until such time as Recovery Management has accounted for and remitted to UPS Sixty Five percent (65%) portion of the sales.
- 8. Recovery Management shall provide, at its expense, public liability insurance with adequate limits on the premises and fire and extended coverage insurance sufficient to cover the contents, naming UPS as an additional insured on any such policy as its interest may appear. UPS further agrees to submit copies of each insurance policy, and renewal or replacements thereof to UPS. If Recovery Management fails to provide such insurance, UPS may obtain such insurance and Recovery Management shall reimburse UPS for all such reasonable costs of purchasing such insurance.
- 9. RECOVERY MANAGEMENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT UPS MAKES AND RECOVERY MANAGEMENT RECEIVES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATED TO OR ARISING OUT OF THE MERCHANDISE OR THESE CONSIGNMENT TERMS. ALL MERCHANDISE IS PROVIDED "AS IS," AND UPS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ALL OTHER WARRANTIES THAT MAY OTHERWISE ARISE FROM COURSE OF DEALING, USAGE OF TRADE OR CUSTOM. Recovery Management expressly agrees to notify and advise all purchasers or potential purchasers of the Merchandise that the Merchandise is offered for sale "as is" and is offered for sale and sold with no warranties of any kind and that warranties are expressly disclaimed as set forth herein. Recovery Management agrees to assume full responsibility for and shall indemnify, defend, and hold harmless UPS, its officers, directors, employees and agents, and all persons acting on its behalf, from and against any and all claims, losses, damages, costs, attorney's fees and expenses, arising out of or relating to Recovery Management's sale of Merchandise to any purchaser, including any claims regarding use, condition, or performance of any Merchandise.
- 10. Recovery Management and UPS may from time to time, modify or establish additional operating policies and procedures governing consignment sales by letter agreement, which shall become a part of this Exhibit.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM COUNTY, FLORIDA

|                               |   |                        |
|-------------------------------|---|------------------------|
| IVANA VIDOVIC MLINAR,         | ) | - CONFIDENTIAL -       |
|                               | ) | PURSUANT TO PROTECTIVE |
| Plaintiff,                    | ) | ORDER                  |
|                               | ) |                        |
| vs.                           | ) | Case No. 50 2008 CA    |
|                               | ) | 036246XXXXMB AH        |
| UNITED PARCEL SERVICE, INC.,  | ) |                        |
| PAK MAIL OF WELLINGTON, INC., | ) |                        |
| RECOVERY MANAGEMENT CORP.     | ) |                        |
| d/b/a CARGO LARGO and AARON   | ) |                        |
| ANDERSON,                     | ) |                        |
| Defendant.                    | ) |                        |

DEPOSITION OF ELIZABETH SIMONS,

produced, sworn and examined on Wednesday, November 2, 2011, at the offices of Cross Reporting Service, Inc., 110 South Main Street, in Independence, Missouri, before:

JAMES A. LEACOCK, CCR, for  
CROSS REPORTING SERVICE, INC

a Certified Court Reporter for the State of Missouri.

Taken on behalf of the Plaintiff.

APPEARANCES:

For the Plaintiff:

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, PA  
By: Ms. Mara Hatfield  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
(By Phone)

For the Defendant United Parcel Service:

ALSTON & BIRD  
By: Ms. Angela Adams  
1201 West Peach Street, NW  
Atlanta, Georgia 30309

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000374

| Page 22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 24                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A. Uh-huh, yes.</p> <p>2 MR. MAYER: Form.</p> <p>3 Q. (By Ms. Mahoney) How did you sell artwork in bulk</p> <p>4 quantities?</p> <p>5 A. The bid sale is just that. It is a bid for</p> <p>6 auction. So I had -- I didn't sell any of it. I</p> <p>7 just sent it to the processing center to be placed</p> <p>8 in the bid sale. And it was auctioned off to the</p> <p>9 highest bidder.</p> <p>10 Q. When the bid sale auctions would take place, did</p> <p>11 they take place over days or how were they</p> <p>12 organized?</p> <p>13 A. The bid sale auction happens every Thursday from</p> <p>14 2:00 until 8:00 p.m. by silent auction. Winners</p> <p>15 are notified after -- they can call in to find out</p> <p>16 if they won their bids after midnight.</p> <p>17 Q. In 2007 did you also have the bid sales on every</p> <p>18 Thursday by silent auction?</p> <p>19 A. Yes.</p> <p>20 Q. Are there certain buyers who regularly participate</p> <p>21 in the bid sales?</p> <p>22 A. I don't know. I don't go.</p> <p>23 Q. Who is responsible for doing the bid sale?</p> <p>24 A. I don't know who has that responsibility.</p> <p>25 Q. Do you know who Aaron Anderson is?</p> | <p>1 A. He was the manager of the boutique.</p> <p>2 Q. What is the boutique?</p> <p>3 A. The boutique is our area within the store that</p> <p>4 sells our jewelry, designer clothing, and other</p> <p>5 high-end items, like collectibles and handbags and</p> <p>6 such.</p> <p>7 Q. Do you know why Mark introduced you to Aaron</p> <p>8 Anderson?</p> <p>9 A. I'm not sure. I think he was being friendly.</p> <p>10 Q. In the year 2007, how frequently would you see</p> <p>11 Aaron Anderson in the store?</p> <p>12 A. I'm not sure. Maybe once every couple of months.</p> <p>13 Q. Do you know what Aaron Anderson does for a living?</p> <p>14 A. No.</p> <p>15 Q. Did Aaron Anderson ever tell you that he was</p> <p>16 interested in a particular type of item?</p> <p>17 A. Yes.</p> <p>18 Q. What did Aaron Anderson tell you?</p> <p>19 A. He told me that he was interested in buying art.</p> <p>20 Q. Did he specify what type of art?</p> <p>21 MR. MAYER: Form.</p> <p>22 A. He said that he was interested in buying my</p> <p>23 antique lithographs. He said he was interested in</p> <p>24 buying a number of antique maps that we had. And</p> <p>25 he was interested in other, he said, high-end</p> |
| Page 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1 A. Yes, I do.</p> <p>2 Q. Who is Aaron Anderson?</p> <p>3 A. He is a customer that would come in to the store.</p> <p>4 Q. When did you first deal with Aaron Anderson?</p> <p>5 A. I'm not sure. I know I met him years ago. I</p> <p>6 don't know how long.</p> <p>7 Q. Where did you meet him?</p> <p>8 A. In the store.</p> <p>9 Q. When you were at the -- when you were working at</p> <p>10 the retail location, for example, in 2005 and</p> <p>11 2007, are you actually out on the retail store</p> <p>12 floor or are you in an office?</p> <p>13 A. I was in an office.</p> <p>14 Q. How did you meet Aaron Anderson then?</p> <p>15 A. Oftentimes I would walk through the store. And I</p> <p>16 was introduced to him by another manager at the</p> <p>17 store.</p> <p>18 Q. Who introduced you to Aaron Anderson?</p> <p>19 A. I believe that was Mark Cianciolo who was our</p> <p>20 boutique manager at the time.</p> <p>21 Q. Can you spell that last name for me?</p> <p>22 A. C-i-a-n-c-i-o-l-o.</p> <p>23 Q. His first name was Mark, M-a-r-k?</p> <p>24 A. Yes.</p> <p>25 Q. What was Mark's title, please?</p>                                                              | <p>1 lithographs and paintings.</p> <p>2 Q. (By Ms. Mahoney) Did he ask you to call him when</p> <p>3 you received these items in the store?</p> <p>4 A. Yes.</p> <p>5 MR. MAYER: Form.</p> <p>6 Q. (By Ms. Mahoney) When did he tell you what type</p> <p>7 of art that he was interested in?</p> <p>8 A. Oh --</p> <p>9 MR. MAYER: Form.</p> <p>10 A. -- gosh. About when I met him.</p> <p>11 Q. (By Ms. Mahoney) Do you remember when that was?</p> <p>12 A. No, I don't.</p> <p>13 Q. When did he tell you -- strike that. When did he</p> <p>14 ask you to call him when you had these types of</p> <p>15 items?</p> <p>16 MR. MAYER: Form.</p> <p>17 A. I had probably known him or so about three months</p> <p>18 later.</p> <p>19 Q. (By Ms. Mahoney) You mean that you met him and</p> <p>20 then about three months later you were talking</p> <p>21 with him and he asked you to call him when you</p> <p>22 received these types of items?</p> <p>23 MR. MAYER: Form.</p> <p>24 A. Correct.</p> <p>25 Q. (By Ms. Mahoney) So you had known of him for</p>                                                                                                                                                              |

7 (Pages 22 to 25)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000375

| Page 26                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 28                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 approximately three months before he asked you to</p> <p>2 call him when you received these items?</p> <p>3 MR. MAYER: Form.</p> <p>4 A. Yes.</p> <p>5 Q. (By Ms. Mahoney) Did you call him when you</p> <p>6 received these types of items?</p> <p>7 A. No.</p> <p>8 Q. Why not?</p> <p>9 A. I didn't like him.</p> <p>10 Q. Why?</p> <p>11 A. He just did not strike me as, I don't know, he</p> <p>12 just gave off bad vibes.</p> <p>13 Q. Like what type of vibes?</p> <p>14 MR. MAYER: Form.</p> <p>15 A. I don't know. There was just something about him</p> <p>16 I didn't like.</p> <p>17 Q. (By Ms. Mahoney) Do you know whether anyone else</p> <p>18 at Recovery Management or Cargo Largo would call</p> <p>19 Aaron Anderson when the store received the types</p> <p>20 of items that he was interested in?</p> <p>21 A. No.</p> <p>22 Q. Do you know whether Aaron Anderson is a friend of</p> <p>23 Mr. Pack's?</p> <p>24 A. No.</p> <p>25 Q. No, you don't know or no, he is not a friend?</p>                               | <p>1 Q. (By Ms. Mahoney) Do you know whether Mark and</p> <p>2 Aaron Anderson were friends outside of the</p> <p>3 relationship that they had in the store?</p> <p>4 A. No, I do not.</p> <p>5 Q. When Mark introduced you to Aaron Anderson, what</p> <p>6 did Mark say?</p> <p>7 MR. MAYER: Form.</p> <p>8 A. If I remember correctly, Mark just introduced me</p> <p>9 to Aaron as the person that handled the art.</p> <p>10 Q. (By Ms. Mahoney) Did Mark tell you anything about</p> <p>11 Aaron at that time?</p> <p>12 A. No.</p> <p>13 Q. I know you told me that in 2001 you started</p> <p>14 helping to research the art. Is that something</p> <p>15 that you presently do?</p> <p>16 A. No.</p> <p>17 Q. Were you researching the art in 2005?</p> <p>18 A. Yes.</p> <p>19 Q. Were you researching the art in 2007?</p> <p>20 A. Yes.</p> <p>21 Q. When you would research artwork that came into</p> <p>22 Recovery Management's possession, could you tell</p> <p>23 whether or not that particular piece of art that</p> <p>24 you were working on was from the overgoods area?</p> <p>25 A. The only way I could tell would be in the -- well,</p>                                                                                                       |
| Page 27                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Page 29                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>1 A. No, I don't know.</p> <p>2 Q. Have you ever discussed Aaron Anderson with Mr.</p> <p>3 Pack?</p> <p>4 A. No.</p> <p>5 Q. You mentioned Mark Cianciolo I think?</p> <p>6 A. Cianciolo.</p> <p>7 Q. Okay. I am going to call him Mark. Is Mark</p> <p>8 presently -- do you know whether Mark is presently</p> <p>9 employed by Cargo Largo or Recovery Management?</p> <p>10 A. No, he is not.</p> <p>11 Q. Do you know when the last time it was that Mark</p> <p>12 was employed by Cargo Largo or Recovery</p> <p>13 Management?</p> <p>14 A. It has been at least six months, maybe more.</p> <p>15 Q. It has been six months since Mark has been</p> <p>16 employed there?</p> <p>17 A. Correct.</p> <p>18 MR. MAYER: Form.</p> <p>19 Q. (By Ms. Mahoney) Do you know who is presently the</p> <p>20 manager of the boutique?</p> <p>21 A. Currently we have no manager for the boutique.</p> <p>22 Q. Do you know why Mark left Recovery Management or</p> <p>23 Cargo Largo?</p> <p>24 MR. MAYER: Form.</p> <p>25 A. No, I do not.</p> | <p>1 all the -- everything would come over to me in a</p> <p>2 big gaylord on a pallet, and the only way I could</p> <p>3 tell was the number on that Gay -- that was taped</p> <p>4 to the gaylord as to what carrier it came from.</p> <p>5 Q. What is a gaylord?</p> <p>6 A. A gaylord is like a big box that sits on a pallet.</p> <p>7 It is like four feet wide. Well, about four feet</p> <p>8 square. Actually most things are shipped in a</p> <p>9 gaylord, they are just like boxes and different</p> <p>10 items will be stacked in it.</p> <p>11 Q. How were you able to determine whether a</p> <p>12 particular item came from overgoods?</p> <p>13 A. Only items from one carrier, let's say, for</p> <p>14 example, overgoods. All overgood items -- or only</p> <p>15 overgood items could be in one gaylord. And it</p> <p>16 would just have a number on it that would tell me</p> <p>17 where it came from.</p> <p>18 Q. I'm sorry, I didn't understand that. You said</p> <p>19 only one overgood item could be in --</p> <p>20 A. No, I said --</p> <p>21 MR. MAYER: Wait until she finishes her</p> <p>22 question, please.</p> <p>23 A. I'm sorry.</p> <p>24 Q. (By Ms. Mahoney) I'm finished.</p> <p>25 MR. MAYER: Then there's no question</p> |

8 (Pages 26 to 29)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000376

| Page 30                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 32                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 asked. I don't know what you want the</p> <p>2 witness to do.</p> <p>3 Q. (By Ms. Mahoney) Okay. Did you say that only one</p> <p>4 item could be in a gaylord?</p> <p>5 A. No. Only items from one carrier could be in a</p> <p>6 gaylord.</p> <p>7 Q. Okay. So it is possible that you would have a</p> <p>8 four-foot square box and all of the items in that</p> <p>9 box would be from UPS, for example?</p> <p>10 A. Correct.</p> <p>11 Q. But items from different shippers would not be</p> <p>12 commingled within the same box?</p> <p>13 A. Correct.</p> <p>14 Q. How could you identify which shipper the box was</p> <p>15 coming from?</p> <p>16 A. There is a piece of paper taped to the outside and</p> <p>17 on that piece of paper was a number, and that</p> <p>18 number would say where it was coming from. It was</p> <p>19 just like a bar coded number.</p> <p>20 Q. So if you received a gaylord with a piece of paper</p> <p>21 taped on the outside indicating it had come from</p> <p>22 UPS, how did you know that it had come from</p> <p>23 overgoods?</p> <p>24 A. Because in our company, that's one in the same.</p> <p>25 It is overgoods, it is the same thing as saying</p>                                                                    | <p>1 A. Just that an artist is claiming that we conspired</p> <p>2 to steal her artwork.</p> <p>3 Q. (By Ms. Mahoney) Have you ever seen pictures of</p> <p>4 the artwork that is at issue in this lawsuit?</p> <p>5 A. No.</p> <p>6 Q. I refer you to what was pre-marked as Exhibit K.</p> <p>7 MR. MAYER: The witness has that</p> <p>8 document now.</p> <p>9 MS. MAHONEY: Thanks.</p> <p>10 Q. (By Ms. Mahoney) Turn to the second page of the</p> <p>11 pre-marked Exhibit K.?</p> <p>12 A. Okay.</p> <p>13 Q. Do you recognize that painting that is kind of</p> <p>14 depicted there?</p> <p>15 A. Yes, I do.</p> <p>16 Q. How is it that you recognize it?</p> <p>17 A. I remember handling this piece.</p> <p>18 Q. What is it that you remember about this piece?</p> <p>19 A. That it was -- when it came to us it was rolled</p> <p>20 very, very tightly. Like so tightly that it</p> <p>21 wouldn't lay flat. And I also remember that I</p> <p>22 couldn't make out the artist's signature.</p> <p>23 Q. Do you remember anything else about this painting?</p> <p>24 A. No.</p> <p>25 Q. So you do have an independent recollection of</p> |
| Page 31                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 33                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>1 UPS as far as handling merchandise from UPS.</p> <p>2 Q. When you received -- how often did you receive</p> <p>3 these gaylords with the art?</p> <p>4 A. It varied. Sometimes it would only be, I think,</p> <p>5 once a month, sometimes I got two a week.</p> <p>6 Q. When the gaylord came to you, do you know how long</p> <p>7 those items in the gaylord had been at Recovery</p> <p>8 Management?</p> <p>9 A. No, I do not.</p> <p>10 Q. When you received a gaylord, what did you do?</p> <p>11 A. I sorted through everything in there.</p> <p>12 Q. Then what did you do after you sorted through it?</p> <p>13 A. I would start to, first off, get -- to separate</p> <p>14 out anything that was damaged too badly to be</p> <p>15 sold. I would also try to separate out any</p> <p>16 artwork that was like bulk or low quality to be</p> <p>17 sent to the bid sale. Art that needed to be</p> <p>18 repaired or cleaned up. Art that could just</p> <p>19 easily be priced. And then art that needed to be</p> <p>20 researched.</p> <p>21 Q. Are you aware of the allegations in this lawsuit?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell me what your understanding is of the</p> <p>24 allegations in this lawsuit?</p> <p>25 MR. MAYER: Objection to form.</p> | <p>1 opening up this painting and dealing with it,</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. Can you turn to the next page. Do you recognize</p> <p>5 this painting?</p> <p>6 A. I believe so.</p> <p>7 Q. What do you recognize it as being?</p> <p>8 A. When I received the first painting, there was also</p> <p>9 another painting rolled up with it. And I believe</p> <p>10 this is the other painting.</p> <p>11 Q. Were you able on the second painting that depicts</p> <p>12 one woman in the center -- okay. The first</p> <p>13 picture that we looked at has a horse with a woman</p> <p>14 next to it, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And the second, I am going to refer you to the</p> <p>17 second picture now that does not have the horse in</p> <p>18 it. On the second picture that we are discussing,</p> <p>19 were you able to make out the artist's name on</p> <p>20 that picture?</p> <p>21 A. No.</p> <p>22 Q. Was there any identification on the back of either</p> <p>23 of the pictures?</p> <p>24 A. Not that I remember.</p> <p>25 Q. Did you receive both of these pictures at the same</p>                |

9 (Pages 30 to 33)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000377

| Page 34                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 36                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 time?</p> <p>2 A. Yes.</p> <p>3 Q. What is the first thing that you did when you</p> <p>4 received them, please?</p> <p>5 A. I tried to carefully unroll them.</p> <p>6 Q. What did you do next?</p> <p>7 A. I just probably noted just the general description</p> <p>8 of the two of them. And then I tried to hang</p> <p>9 these canvasses so that I could get them to unroll</p> <p>10 without damaging or cracking the paint.</p> <p>11 Q. You said you noted the general description.</p> <p>12 A. Yes.</p> <p>13 Q. Was there a description that was included with the</p> <p>14 paintings?</p> <p>15 A. I don't remember.</p> <p>16 Q. When you said you noted the general description,</p> <p>17 what did you mean?</p> <p>18 A. Oh, I probably like recorded, say, for example, on</p> <p>19 the first one, like "Woman with horse. Tone on</p> <p>20 tone stripes."</p> <p>21 Q. Where did you make that record?</p> <p>22 A. It was just probably on a notepad.</p> <p>23 Q. Do you know the date that you first came in</p> <p>24 contact with these two paintings?</p> <p>25 A. No.</p>                                                                                                                                                                                                      | <p>1 handling art anymore. I didn't see a reason to</p> <p>2 keep them.</p> <p>3 Q. When did you purge them?</p> <p>4 A. Oh, gosh, I don't know, maybe three years ago.</p> <p>5 Four years ago. I'm not sure.</p> <p>6 Q. I think you said you purged them three to four</p> <p>7 years ago, correct?</p> <p>8 MR. MAYER: Objection to form.</p> <p>9 Q. (By Ms. Mahoney) Is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And you purged them because you stopped dealing</p> <p>12 with art; is that correct?</p> <p>13 MR. MAYER: Form.</p> <p>14 A. Yes.</p> <p>15 Q. (By Ms. Mahoney) When did you stop dealing with</p> <p>16 art?</p> <p>17 A. It was probably early 2007.</p> <p>18 Q. I want to go back to what happened when you first</p> <p>19 received these paintings. The last thing that you</p> <p>20 told me was that you tried to hang the canvasses</p> <p>21 so that they would unroll. What did you do after</p> <p>22 that?</p> <p>23 A. I let them -- after they unrolled enough, I</p> <p>24 weighted the bottom corners and still hung them,</p> <p>25 but hung them, like I said, with the bottom</p>                                                                                                                                                       |
| Page 35                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Page 37                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1 Q. Do you keep a record of your activities?</p> <p>2 A. At that time I did. I'm sorry.</p> <p>3 Q. I asked you did you keep a record of your</p> <p>4 activities and I think you said, "At that time I</p> <p>5 did." So my question is what record did you keep?</p> <p>6 A. Well, I would -- every time that I received art in</p> <p>7 and I went through my own sort process, I wrote</p> <p>8 down all the pieces of art work that I received</p> <p>9 and handled and what I decided to do with them.</p> <p>10 Q. Where are those records?</p> <p>11 A. I don't know now.</p> <p>12 Q. How did you maintain your records at that time?</p> <p>13 A. Just on -- in a notebook and then also on a</p> <p>14 spreadsheet on the computer.</p> <p>15 Q. What system was that spreadsheet maintained in?</p> <p>16 A. No system. It was just a spreadsheet.</p> <p>17 Q. Was it an Excel document or was it a Word document</p> <p>18 that you created?</p> <p>19 A. It was an Excel spreadsheet.</p> <p>20 Q. Where is that Excel document now?</p> <p>21 A. I don't know. I no longer have it. When I</p> <p>22 stopped handling the art I purged all my records</p> <p>23 from that.</p> <p>24 Q. Did you say you purged all your records?</p> <p>25 A. Yeah. I didn't need them anymore. I wasn't</p> | <p>1 corners weighted so that the canvasses would</p> <p>2 flatten out. And at the same time I was trying to</p> <p>3 find out more information on the pieces.</p> <p>4 Q. Do you remember making any note about the</p> <p>5 condition of the painting?</p> <p>6 A. I don't remember, no.</p> <p>7 Q. When you weighted the bottom and tried to get the</p> <p>8 paintings to flatten out, did you then -- strike</p> <p>9 that. You weighed the bottoms and tried to</p> <p>10 flatten the paintings out. Were you then able to</p> <p>11 determine who the artist was?</p> <p>12 A. No.</p> <p>13 Q. You said you tried to find out more about the</p> <p>14 pieces. What did you do to find out more about</p> <p>15 the pieces?</p> <p>16 A. I tried to do basic Internet searches on them</p> <p>17 based on the piece and also based on the style of</p> <p>18 painting they are. I would try to maybe view some</p> <p>19 different galleries that handled pieces that</p> <p>20 appeared similar.</p> <p>21 Q. What did you find?</p> <p>22 A. Nothing for a long while and then I found one</p> <p>23 gallery, I don't recall the name. But I do</p> <p>24 remember finding one gallery that had pieces that</p> <p>25 were very similar. And I saw the signature that</p> |

10 (Pages 34 to 37)

# MLINAR RECORD ON APPEAL AS INDICATED BY INDEX 000378

| Page 50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 52                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 Q. There is a part on here that says "Manufacturer,"</p> <p>2 and then there is a code and it says "Ivana</p> <p>3 Vidovic." Did you input that information?</p> <p>4 A. Yes.</p> <p>5 Q. What does that manufacturer code mean?</p> <p>6 A. That's just a sequential number saying that it was</p> <p>7 the 107,555th manufacturer entered into our</p> <p>8 inventory control system.</p> <p>9 Q. So did you create a new manufacturer number for</p> <p>10 Ivana Vidovic?</p> <p>11 A. Yes.</p> <p>12 Q. And from that point forward then she was assigned</p> <p>13 to that number in your system?</p> <p>14 A. Correct.</p> <p>15 Q. Then down on the bottom right, I think again it is</p> <p>16 dated 11-28-07. And it says "Rose Lavon," and</p> <p>17 then it repeats across and then the retail number.</p> <p>18 What does that information notate?</p> <p>19 A. Let me see. That is -- it says -- it looks like</p> <p>20 retail \$3500.</p> <p>21 Q. Where did you get that information from and why</p> <p>22 did you put it in this screen?</p> <p>23 A. That was probably my compare to without being able</p> <p>24 to find an exact determination. I probably put in</p> <p>25 like the only thing by the artist that was similar</p> | <p>1 Q. Who would notify you if a claim was made?</p> <p>2 A. Our overgoods manager, Darrell Goodwin.</p> <p>3 Q. Has he ever notified you in the entire -- in your</p> <p>4 entire employment at Recovery Management, has he</p> <p>5 ever notified you about claims made for goods that</p> <p>6 had been released?</p> <p>7 A. Yes.</p> <p>8 Q. When is the last time he did that?</p> <p>9 A. I would say a few months ago, probably three or</p> <p>10 four months ago, I got an e-mail from him asking</p> <p>11 if I had seen a particular painting in the store.</p> <p>12 Q. And had you?</p> <p>13 A. No.</p> <p>14 Q. Prior to the three or four months ago, had Darrell</p> <p>15 ever contacted you about a claim that had been</p> <p>16 made for an item that had been sent to you?</p> <p>17 A. Yes, there has probably been, I don't know, maybe</p> <p>18 eight to ten times during my whole tenure with the</p> <p>19 company.</p> <p>20 Q. How does he notify you of the claims for the goods</p> <p>21 that you are handling?</p> <p>22 A. He would notify me by e-mail.</p> <p>23 Q. Have you ever been able to locate an item that he</p> <p>24 sends you the claim information on?</p> <p>25 A. Yes.</p> |
| Page 51                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page 53                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 and like of a recorded price that I could find.</p> <p>2 Q. I can't read -- I don't know if the boxes on top</p> <p>3 of the 11-28-07, I don't know whether that has</p> <p>4 print or not. Do you know that?</p> <p>5 A. No, I can't read that either.</p> <p>6 Q. So this area where you made these notes, is that</p> <p>7 just a note section for you to make those kinds of</p> <p>8 notes?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. After you determined that the manufacturer</p> <p>11 was Ivana Vidovic, did you ever have any</p> <p>12 communications with anyone at overgoods to see if</p> <p>13 what -- to see whether or not a claim for this</p> <p>14 painting had ever been made?</p> <p>15 A. No.</p> <p>16 Q. After you determined that the manufacturer was</p> <p>17 Ivana Vidovic, did you ever have any</p> <p>18 communications with anyone at UPS to determine</p> <p>19 whether a claim had been made for this painting?</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. Because anything that is released by UPS and</p> <p>23 overgoods is supposed to be for -- it is to be</p> <p>24 released for sale. If there is a claim about it,</p> <p>25 then I would have been notified.</p>                                      | <p>1 Q. On how many occasions?</p> <p>2 A. Twice that I remember.</p> <p>3 Q. What were those items?</p> <p>4 A. One was a group of -- or a couple of, I guess,</p> <p>5 antique Chinese pieces of art. And one was a -- I</p> <p>6 can't remember if it was a painting or a</p> <p>7 lithograph. It was one of the two.</p> <p>8 Q. Are you familiar with an artist by the name of</p> <p>9 Jeff Shaller?</p> <p>10 A. Yes, I have heard that name.</p> <p>11 Q. How are you familiar with Jeff Shaller?</p> <p>12 A. I have seen his work before and if I recall, we</p> <p>13 had one of his pieces come through the company</p> <p>14 that I put out for sale.</p> <p>15 Q. Do you know who purchased that piece?</p> <p>16 A. I believe Aaron Anderson told me that he purchased</p> <p>17 it.</p> <p>18 Q. Have you ever talked to Jeff Shaller?</p> <p>19 A. No.</p> <p>20 Q. Are you familiar with an artist by the name of</p> <p>21 Matt Hull, H-u-l-l?</p> <p>22 A. No.</p> <p>23 Q. An artist by the name of Boyko, B-o-y-k-o?</p> <p>24 A. Yes.</p> <p>25 Q. How are you familiar with Boyko?</p>                                                                                                                   |

14 (Pages 50 to 53)