UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GLEN LUCAS and LUCAS EXPRESS, INC., *each individually and on behalf of a class of all similarly-situated persons,*

Plaintiff

v.

STEVENS VAN LINES, INC.

Defendant

Case No. 1:16-cv-2679

CLASS ACTION COMPLAINT
WITH JURY DEMAND

Plaintiffs Glen Lucas and Lucas Express, Inc. bring the following Class Action Complaint against Defendant Stevens Van Lines, Inc.

SUMMARY OF THE ACTION

1. Stevens Van Lines is a trucking and moving company regulated by federal law. The company contracts with over-the-road truckers ("owner-operators") to carry out most of its interstate hauling business. The agreements between Stevens and its owner-operators are governed by federal law. Under those agreements, Stevens is purportedly authorized to force-place certain insurance coverage on the owner-operator and to charge him the actual costs of that coverage.

2. This action arises from Stevens's unlawful conduct related to its insurance practices. This unlawful conduct includes the following:

(a) Stevens's agreements violate federal law because they do not make required disclosures about the company's insurance practices. These non-disclosures harm owner-operators by denying them information necessary to make an informed choice about whether to opt-out of Stevens's force-placed insurance regime. As a result, Stevens collects from owner-operators more than the actual costs of the owner-operator's coverage—and more than the cost of coverage the owner-operator could obtain on the open market.

(b) Stevens's insurance arrangements deprive owner-operators of important coverage benefits and otherwise impair owner-operators' rights as insureds. Stevens takes on high-deductible policies and handles all claims under the deductibles internally, using funds it collects from owner-operators: the internal claims handling is not done by a licensed adjuster or regulated insurance carrier, and there are no rights to appeal the company's unilateral coverage decisions. Stevens also fails to provide owner-operators an opportunity to make claims for certain benefits that should be made available to them under policies purchased using owner-operators' funds. Stevens does not disclose any of these arrangements, which deprives owner-operators of the opportunity to make an informed decision to opt-out of them.

(c) Stevens charges owner-operators more than the actual cost of coverage, and the company purchased a wide variety of insurance policies using owner-operators' funds. But both federal law and the written agreements between Stevens and owner-operators only permit the company to charge owner-operators the actual cost of coverage, and to purchase only certain specifically-enumerated types of insurance. Stevens does not disclose the actual costs of coverage for an individual owner-operator (or owner-operators in the aggregate), nor does the company disclose that it is charging owner-operators to fund the purchase of policies that are not identified in the written agreement. These non-disclosures deprive owner-operators of the opportunity to make an informed decision to opt-out of Stevens's insurance regime.

(d) Stevens purchases extensive insurance coverages to protect itself from a wide range of potential liabilities. Stevens pays for its own insurance coverages by passing on its own costs to owner-operators, and the company establishes a "loss reserve" in its general fund in order to pay claims that are within its deductibles. Stevens does not disclose to owner-operators that it is financing its own insurance coverage and deductible liabilities through the charges made to owner-operators. This non-disclosure prevents owner-operators from fairly considering whether to opt-out of Stevens's insurance regimes and charge-backs.

(e) Stevens pays a broker's fee of up to 20% of the total premium paid on a wide range of policies to a firm managed by a cousin of the Stevens family, who has been the

primary broker for decades, and passes this cost on in its entirety to owner-operators. Stevens does not disclose these facts, which prevents owner-operators from evaluating whether the insurance costs Stevens passes on to them are fair and appropriate.

(f) Stevens collects money from owner-operators allegedly as "insurance premiums" and deposits a substantial portion of that money in the company's general operating fund to cover the company's own future insurance liabilities and/or future payouts under the company's high-deductible insurance policies. This "future loss reserve is" not kept in escrow and unused funds in the reserve are not returned to owner-operators at the end of the policy period. These practices are not disclosed to owner-operators, who are therefore unable to vindicate their reserve and escrow rights.

CLASS-WIDE FACTUAL ALLEGATIONS

BACKGROUND AND CONTEXT

3. Defendant Stevens Van Lines is an "authorized carrier" under federal law. The company operates under its own Department of Transportation license, as well as under the DOT licenses of a number of wholly-owned subsidiaries. The company's primary business is moving and relocating people's belongings all across the country (*e.g.,* when a member of the military is reassigned to a new location). The company and its subsidiaries (collectively, "Stevens") employ truck and van drivers, as well as dispatchers, administrators, and management. Stevens owns and operates vans, tractors, trailers, and other vehicles, as well as offices, warehouses, garages, and storage facilities.

4. Most of Stevens's interstate trucking and moving activities are carried out by independent contractors, with whom the company enters into uniform written agreements. These independent contractors are truck drivers, most of whom have experience in the moving industry. Many of these truck drivers are away from home for long periods of time and for many nights throughout the year while working for Stevens, and are therefore geographically dispersed.

5. Stevens's independent contractors are also "owner-operators" under federal law. These owner-operators own (or have the exclusive rights over) one or more tractors, which they

lease back to Stevens for use in the company's business and in order to haul good under Stevens's authority.

6. Owner-operators lease their tractors to Stevens and enter into an independent contractor relationship by way of a uniform "Independent Contractor Agreement" or an identical of substantially-similar written agreement with a different name. That agreement (referred to in this complaint as the "Lease") is defined by federal law as a "lease" and required by federal law to contain certain provisions and disclosures.

7. Federal law requires minimum "Public Liability" insurance coverage be in place to cover the liability for bodily injury and property damage to third-persons that arises from the trucking activities undertaken on Stevens's behalf by owner-operators. In the industry, Public Liability coverage is often referred to as "PLPD," meaning "public liability and property damage insurance."

8. Federal law requires both Stevens and its owner-operators to maintain $750,000 in "Public Liability" insurance coverage while hauling household goods in interstate transit.

9. Although the Lease does not mention Public Liability or PLPD coverage, it does contain a provision regarding insurance. *See* Exhibit A, Lease between Mr. Lucas and Stevens, p. 4. That provision says that either (a) the owner-operator must secure "Auto Public Liability, Auto Property Liability, Auto Bodily Injury, General Liability, and Cargo Insurance upon his vehicle"; or (b) Stevens will "place such insurance with an authorized insurance carrier and charge the cost thereof to the account of the [owner-operator]." *Id.* The Lease requires that Stevens be covered under the insurance policies.

10. The Lease does not define "Auto Public Liability," "Auto Property Liability," "Auto Bodily Injury," "General Liability," or "Cargo."

11. Under the definitions established in federal regulations and by industry practice, "Auto Public Liability," "Auto Property Liability" and "Auto Bodily Injury" are the components of Public Liability or PLPD coverage.

12. Under the definitions established in federal regulations and by industry practice, Public Liability or PLPD coverage does not include "General Liability" insurance. Indeed, General Liability coverage insures Stevens's non-trucking-related business activities. As such, federal law does not require owner-operators to maintain General Liability coverage or to maintain insurance to cover non-trucking-related business activities.

13. Under the definitions established in federal regulations and by industry practice, Public Liability or PLPD coverage does not include "Cargo" insurance. Indeed, Cargo insurance covers damage to Stevens's customers' goods (*e.g.,* furniture) that are being moved from one location to another.

14. In practice, Stevens places insurance for owner-operators and charges them for it. (The few owner-operators who secure their own insurance and are *not* charged by Stevens for insurance are excluded from the Class.) The mechanism by which Stevens charges owner-operators for the costs of the forced-place insurance is a "charge-back." A charge-back is a standard practice in the trucking industry, and charge-backs are regulated by federal law—among other things, the Lease must make specific disclosures about the charge-backs which will be assessed to owner-operators.

15. Stevens makes two charge-backs to owner-operators for insurance. One is for "PLPD" and the other is for "Collision."

16. The Lease does not authorize Stevens to charge-back for Collision insurance. The Lease does not disclose how the Collision charge-back will be calculated or what amount the owner-operator will be charged back.

17. The Lease does not mention a PLPD charge-back, nor does it state which of the enumerated insurance coverages Stevens means to include in its PLPD charge-backs. The Lease does not disclose how the PLPD charge-back will be calculated or what amount the owner-operator will be charged back.

18. Stevens charges-back to owner-operators for PLPD each month. The amount of the charge-back is 4.5% of the owner-operator's gross revenue related to trucking activities that month.

19. Stevens charges-back to owner-operators for Collision each month. The amount of the charge-back is .5% of the owner-operator's gross revenue related to trucking activities that month.

20. The PLPD and Collision charge-backs appear in a document called a Monthly Settlement Statement that Stevens produces to each owner-operator each month.

21. Stevens collects hundreds of thousands of dollars from owner-operators through its PLPD and Collision charge-backs each year.

22. The amount of money Stevens collects from owner-operators under the PLPD and Collision charge-backs far exceeds the actual costs of obtaining the coverages for individual owner-operators authorized by the Leases.

23. The amount of money Stevens collects from owner-operators under the PLPD charge-back far exceeds the actual costs of obtaining the Public Liability coverages for owner-operators required by federal law.

24. The amount of money Stevens collects from owner-operators under the PLPD charge-back far exceeds the actual costs of obtaining "Auto Public Liability," "Auto Property Liability" and "Auto Bodily Injury" coverages for owner-operators.

25. The amount of money Stevens collects from owner-operators under the Collision charge-back far exceeds the actual costs of obtaining Collision insurance for individual owner-operators.

26. Stevens is using a substantial portion of the money collected from owner-operators through PLPD and/or Collision charge-backs to fund its own extensive insurance protections, including its purchase of policies and coverages which solely benefit Stevens and which are not associated with risks or liabilities arising from owner-operators' activities.

27. The actual costs of insuring an owner-operator for PLPD and Collision on the open market are much less than the amounts collected by Stevens through its charge-backs to owner-operators.

STEVENS'S LEASES VIOLATE FEDERAL LAW

28. Under 49 C.F.R. § 376.12(j), a lease between an authorized carrier and a "lessor" (*i.e.,* an owner-operator) must meet the following requirements:

(a) If the authorized carrier will make a charge-back to the lessor for any insurance for protection of the public, or for the operation of the leased equipment, the lease must specify the amount which will be charged-back to the lessor;

(b) If the lessor purchased any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease must specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor; and,

(c) If the lessor purchased insurance through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy that must include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

29. Stevens's Lease between itself and owner-operators violates 49 C.F.R. § 376.12(j) in the following respects:

(a) Although Stevens was going to (and did) make charge-backs for insurance, the Lease does not specify the amounts which would be charged-back;

(b) Although Stevens placed insurance for owner-operators, the Lease does not specify that Stevens would provide the owner-operator with a copy of each policy upon his or her request; and

(c) Although Stevens placed insurance for owner-operators, the Lease does not specify that Stevens would provide the owner-operator with a certificate of insurance for each policy, and which would include the required coverage information.

30. As a direct result of these non-disclosures, owner-operators are unable to compare the insurance costs they are being assessed by Stevens through the charge-backs with the actual costs of insurance on the open market.

31. As a direct result of these non-disclosures, owner-operators are unable to compare the insurance coverages and benefits provided by the Stevens force-placed policies with alternative insurance policies available in the open market.

32. As a direct result of these non-disclosures, owner-operators are unable to assert their contractual rights as insureds under the Stevens force-placed insurance policies.

STEVENS'S INSURANCE ARRANGEMENTS DEPRIVE OWNER-OPERATORS OF IMPORTANT RIGHTS AND BENEFITS

33. Stevens does not procure individual insurance policies for each owner-operator.

34. Stevens does not procure insurance coverage for owner-operators on an individual basis.

35. Stevens does not procure insurance policies or coverages for which an individual owner-operator is the "named insured."

36. Stevens is not charged by any insurance company a premium associated with any individual owner-operator.

37. Stevens purchases insurance policies and coverages for itself, naming the company as the named insured. It arranges for certain owner-operators to be listed as "additional insureds" when they are operating under Stevens's authority.

38. Stevens never discloses to owner-operators that it is not procuring individual insurance policies, but is instead adding owner-operators to certain of its own coverages under certain situations.

39. Stevens uses owner-operators' money to buy a Collision policy that covers dozens of Stevens-owned tractors, trailers, vans, and other vehicles. Stevens arranges for owner-operators or their tractors to be listed as "additional insureds" under that policy when the unit is being operated under Stevens's authority.

40. Stevens does not disclose to owner-operators that they have no Collision coverage when they are not operating under Stevens's authority.

41. Stevens's Collision policy has a $50,000 deductible. No owner-operator's tractor has a loss-value greater than $50,000.

42. Stevens does not disclose to owner-operators that the Collision policy has a $50,000 deductible.

43. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that the Collision policy has a $50,000 deductible.

44. Prior to charging-back money from owner-operators, Stevens does not disclose to the owner-operators that the Collision policy has a $50,000 deductible.

45. Stevens internally handles, adjusts, and pays owner-operators' claims for collision or property damage.

46. Stevens is not an insurance company.

47. Stevens is not licensed or authorized to do business as an insurance company in any state.

48. Stevens is not self-insured relative to collision damage.

49. Stevens does not employ licensed insurance or claims adjusters.

50. Stevens's employees act as claims handlers ("internal claims handlers") for collision or property damage claims made by owner-operators.

51. Stevens's internal claims handlers do not follow any written policy or procedures when handling or adjusting owner-operators' collision or property damage claims.

52. Stevens's internal claims handlers do not follow, consult, or comply with any terms or provisions of any insurance policies when handling or adjusting owner-operators' collision or property damage claims.

53. Stevens's internal claims handlers have not received adequate training on any policies or procedures relative to the handling or adjusting of owner-operators' collision or property damage claims.

54. Stevens alone determines whether it will reimburse an owner-operator for collision or property damage.

55. Stevens determines whether it will reimburse an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

56. Stevens alone determines how much, if any, it will reimburse an owner-operator for collision or property damage.

57. Stevens determines how much, if any, it will reimburse an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

58. Stevens does not provide owner-operators with any appeals process for its valuations of owner-operators' collision or property damage claims.

59. Stevens does not provide owner-operators with any appeals process for its denial of owner-operators' collision or property damage claims.

60. Stevens does not disclose this alternative, unauthorized, internal claims process to owner-operators.

61. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that their collision or property damage claims will be adjusted or handled through this alternative, unauthorized, internal claims process.

62. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that their collision or property damage claims will be adjusted or handled through this alternative, unauthorized, internal claims process.

63. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that their collision or property damage claims will not be handled or adjusted by licensed or independent insurance adjusters.

64. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that their collision or property damage claims will not be handled or adjusted by licensed or independent insurance adjusters.

65. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that Stevens alone will determine whether an owner-operator will be compensated for collision or property damage.

66. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that Stevens alone will determine whether an owner-operator will be compensated for collision or property damage.

67. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that Stevens will determine how much, if any, it will reimburse or compensate an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

68. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that Stevens will determine how much, if any, it will reimburse or compensate an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

69. Stevens funds the pay-outs it makes on Collision damage claims by using the money it collects from owner-operators through charge-backs. Thus, Stevens is using money collected from one owner-operator to pay the claims of one or more other owner-operators. Stevens does not disclose that it is using owner-operators' money in this way.

STEVENS CHARGES MORE THAN THE ACTUAL COSTS OF COVERAGE

70. The Lease only authorizes Stevens to charge-back to owner-operators the actual costs of the coverages enumerated in the Lease (*i.e.,* Stevens can only "charge the cost thereof").

71. The only cost of an insurance coverage is its premium.

72. Through the PLPD charge-back, Stevens charges owner operators more than the costs of the insurance premiums for the coverages enumerated in the Lease.

73. Stevens does not charge an individual owner-operator the actual cost to insure that individual owner-operator.

74. Through the PLPD charge-back, Stevens also charges all owner-operators the cost to insure Stevens itself.

75. Through the PLPD charge-back, Stevens also charges all owner-operators insurance coverages which solely benefit Stevens.

76. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages which are not enumerated in or authorized by the Lease.

77. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages which owner-operators are not required by state or federal laws to carry.

78. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages with coverage limits far greater than what state and federal laws require owner-operators to carry.

79. Stevens fully funds all of its own insurance policies or coverages with money taken from owner-operators through PLPD and Collision charge-backs.

80. At all relevant times, the cost to an individual owner-operator in the open market for PLPD coverage was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

81. At all relevant times, the cost to an individual owner-operator in the open market for Collision coverage was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

82. At all relevant times, the cost to an individual owner-operator in the open market for the insurance coverages enumerated in the Lease was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

83. The method by which Stevens determined how much of its own insurance costs to pass on to owner-operators—that is, how much of the costs are actually attributable to the owner-operators' underwriting risks—is arbitrary:

(a) Stevens's insurance carriers calculate the premium costs for various insurance policies in different ways, which are disclosed to Stevens. For example, a General Liability coverage premium was calculated based on payroll of certain Stevens's employees and the square footage of the company's office space.

(b) Stevens does not use any accepted method of attempting to attribute the premium costs for its various insurance policies to individual owner-operators (or even to owner-operators in the aggregate). Instead, Stevens created an internal, arbitrary "PLPD calculation" which is performed by Lindsey Stevens, the Vice President of Finance.

(c) Stevens claims the "PLPD calculation" justifies the PLPD charge-back rate assessed to owner-operators, but the calculation is not limited to the premium costs of PLPD coverages. Rather, it includes non-PLPD coverages; *e.g.,* a Warehouse Policy, a Garage Liability Policy, and a $30-million Umbrella Policy—none of which are authorized by the Lease, required by federal law, or disclosed by Stevens to owner-operators.

(d) There is no rational relationship between the actual premium costs to Stevens for the PLPD coverages and the PLPD calculation. Rather, the company simply charges 4.5% of an owner-operator's monthly gross revenue for PLPD.

(e) Stevens has charged owner-operators 4.5% for PLPD for decades.

(f) Stevens has charged owner-operators 4.5% for PLPD regardless of increases or decreases in the insurance premiums paid by Stevens.

(g) Stevens has charged owner-operators 4.5% for PLPD regardless of increases or decreases in actual or projected claims payouts by Stevens.

(h) The 4.5% charge-back rate is not rationally related to, derived from, and does not constitute the actual cost of insurance premiums paid by Stevens on behalf of owner-operators for the coverages enumerated in the Lease.

(i) Stevens charges owner-operators 4.5% for PLPD because Stevens believes that is the maximum it can charge and still remain competitive with other companies seeking to enter lease agreements with owner-operators.

(j) Stevens charges owner-operators 4.5% for PLPD because Stevens believes that is the maximum it can charge without owner-operators complaining or terminating their Lease.

(k) There is no rational relationship between the actual premium costs to Stevens for the Collision coverage and the Collison charge-back rate. Rather, the company simply charges 0.5% of an owner-operator's monthly gross revenue for Collision.

(l) Stevens has charged owner-operators 0.5% for Collision for decades.

(m) Stevens has charged owner-operators 0.5% for Collision regardless of any increases or decreases in the insurance rates paid by Stevens.

(n) Stevens has charged owner-operators 0.5% for Collision regardless of any increases or decreases in actual or projected claims payouts by Stevens.

(o) The 0.5% charge-back rate for Collison is not rationally related to, derived from, and does not constitute the actual cost of insurance premiums paid by Stevens on behalf of owner-operators for Collision coverage.

(p) Stevens charges owner-operators 0.5% for Collision because Stevens believes that is the maximum it can charge and still remain competitive with other companies seeking to enter lease agreements with owner-operators.

(q) Stevens charges owner-operators 0.5% for Collision because Stevens believes that is the maximum it can charge without owner-operators complaining or terminating their Lease.

84. Stevens does not disclose to owner-operators the company's method of calculating the insurance costs attributable to or charged-back to owner-operators.

STEVENS FUNDS ITS OWN EXTENSIVE INSURANCE PROGRAM BY PASSING ON ITS OWN COSTS TO OWNER-OPERATORS

85. The funds collected by Stevens through the PLPD and Collision charge-backs ("charge-back withholdings") belong to the owner-operator.

86. Each owner-operator's chargeback withholdings constitute an escrow account.

87. The chargeback withholdings are required to be held in trust by Stevens for the sole purpose of acquiring for owner-operators the insurance coverages enumerated in the Lease.

88. Stevens has a fiduciary duty to owner-operators to maintain the chargeback withholdings in an escrow account for the sole purpose of acquiring for owner-operators the insurance coverages enumerated in the Lease.

89. Stevens deposited and continues to deposit the charge-back withholdings in the company's general account.

90. Stevens co-mingled and continues to co-mingled the charge-back withholdings with other funds.

91. Stevens co-mingled and continues to co-mingle the charge-back withholdings with Stevens's own money.

92. Stevens has used and continues to use a substantial portion of the charge-back withholdings for its own purposes.

93. Stevens has treated and continues to treat the charge-back withholdings as its own money.

94. Stevens has unlawfully converted and continues to unlawfully convert a substantial portion of the charge-back withholdings.

95. Stevens does not disclose to owner-operators that charge-back withholdings are deposited in the company's general account.

96. Stevens does not disclose to owner-operators that charge-back withholdings are co-mingled with other funds.

97. Stevens does not disclose to owner-operators that charge-back withholdings are co-mingled with Stevens's own money.

98. Stevens does not disclose to owner-operators that Stevens uses a substantial portion of the charge-back withholdings for its own purposes.

99. Stevens does not disclose to owner-operators that Stevens treats the charge-back withholdings as its own money.

100. Stevens does not disclose to owner-operators that Stevens unlawfully converts a substantial portion of the charge-back withholdings.

101. The charge-back withholdings deposited by Stevens in the company's general account earns interest.

102. The interest earned by Stevens on the charge-back withholdings is not returned or credited to owner-operators.

103. Stevens does not disclose to owner-operators that the charge-back withholdings have earned interest.

104. Stevens does not disclose to owner-operators that Stevens has earned interest on the charge-back withholdings which it has not returned to owner-operators.

105. Stevens uses the money collected through the charge-backs to purchase an extensive array of insurance policies which primarily benefit the company itself, including, among others, coverage for its own vehicles and employees, its garages and warehouses, and a $30-million umbrella policy:

(a) Stevens procures under- and un-insured motorist coverage, medpay coverage, and personal-injury protection coverage—all of which benefit Stevens and its employees. The company does not disclose these coverages to owner-operators, nor does it advise them of their ability to submit claims under these coverages.

(b) Stevens never provides owner-operators with copies of the policies or the terms, definitions, and exclusions of the policies. Thus, if an owner-operator seeks coverage, could seek coverage, submits a claim, or challenges the handling of a claim, Stevens "holds all

the cards" and puts itself in between the insurance carrier and its policy on the one hand and the owner-operator on the other. Stevens deprives owner-operators of the ability to meaningfully ascertain or assert their rights as insureds.

106. Stevens also uses the money collected from owner-operators to pay a large commission to its insurance broker, Aegis Insurance Services, which is as much as 20% of the premium. Aegis's President is Scott Stevens, a cousin of the family who founded and continue to operate Stevens Van Lines. Aegis has been the primary, if not exclusive, broker for Stevens for decades. Stevens does not disclose to owner-operators (a) that it is using their money to pay an insurance broker substantial commissions, (b) that Scott Stevens is a Stevens family member, or (c) that Aegis has been the broker for many years.

107. Stevens also uses the money collected from owner-operators to finance its own internal Collision claims regime (*i.e.,* the company's exposure to Collision claims by owner-operators for damages that are less than the $50,000 Collision policy deductible). When performing the arbitrary "PLPD calculation," Stevens includes an "estimated-loss" reserve. That is, rather than pass on the premium costs of insurance to owner-operators, Stevens is passing on *the company's own liability* for amounts within the deductible.

(a) Stevens does not return any portion of the estimated-loss reserve to owner-operators at the end of the policy period.

(b) Stevens does not return the portion of the estimated-loss reserve paid by an individual owner-operator to that individual operator if, at the end of the policy period, he did not exhaust that portion of the reserve by making his own claims.

(c) Stevens handles all Collision claims under the deductible itself. The company has a direct financial interest in paying-out to owner-operators as little as possible. This creates a clear conflict-of-interest. Stevens does not take adequate steps to address or disclose this conflict-of-interest.

108. Stevens obtained Auto Liability policies with limits far in excess of the federal minimum for PLPD. The costs of these higher-limit policies were more than the costs of

obtaining the federal minimum policies would have been. Stevens did not disclose that it was obtaining Auto Liability policies that were beyond PLPD.

THE PARTIES

109. Plaintiff Glen Lucas is an Ohio citizen who resides at 3452 Manchester Road, Akron, Ohio 44319.

110. Plaintiff Lucas Express, Inc., is an Ohio corporation owned and operated by Mr. Lucas related to his trucking activities. For simplicity's sake, this complaint refers to both plaintiffs as "Mr. Lucas."

111. Defendant Stevens Van Lines, Inc., is a Minnesota corporation with its principal executive offices at 527 Morley Drive, Saginaw, Michigan 48605.

JURISDICTIONAL ALLEGATIONS

112. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because the First Cause of Action raises a federal question under 49 U.S.C. § 14704 and 49 C.F.R. § 376.12, and the other causes of action are so related to the claims in the First Cause of Action that they are part of the same case or controversy under 28 U.S.C. § 1367(a). Moreover, this Court has subject matter jurisdiction over each cause of action under 28 U.S.C. § 1332(d)(2) because this is a proposed class action in which the amount in controversy exceeds $5,000,000 exclusive of interest and costs, and the members of the class of plaintiffs are citizens of different states from the home state(s) of the defendant.

113. This Court has personal jurisdiction over the defendant because it regularly transacts business in this state, enters into leasing arrangements with owners in this state, and otherwise has sufficient minimum contacts with this state to render the exercise of jurisdiction over it by this Court fair and appropriate.

114. This Court is a proper venue under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred within this judicial district, including the entering of a lease agreement with the plaintiff.

115. This Court is the proper division for this action under Local Rule 3.1(b)(3) because this case is a Related Case to *Britts v. Stevens Van Lines, Inc.,* No. 15-cv-01267, now pending before the Hon. Donald C. Nugent.

FACTUAL ALLEGATIONS OF THE LEAD PLAINTIFF

116. At all relevant times, Mr. Lucas was the "owner" of a motor vehicle under 49 C.F.R. § 376.2(d) because he had the right to exclusive use of the equipment.

117. On December 14, 2011, Mr. Lucas and Stevens entered an "Independent Contractor's Agreement" governing the Mr. Lucas's vehicle. *See* Exhibit A. That agreement constitutes a "lease" under 49 C.F.R. § 376.2(e) because Mr. Lucas granted the use of the equipment, with a driver, to Stevens. (The agreement is referred to in this complaint as the "Lease.")

118. Stevens assessed "monthly charges" to Mr. Lucas for insurance premiums for "PLPD" (*i.e.,* personal liability and property damage) insurance and "Collision" insurance. Stevens charged Mr. Lucas approximately $41,276.24 for insurance costs over the course of several years.

119. The PLPD and Collision insurance premium charge-backs are not authorized by the Lease. The amounts of the charge-backs and the method of calculating them are not disclosed by the Lease. Nor does the Lease disclose the premium costs assessed by the insurance carriers for which the owner-operator is being charged-back.

CLASS ALLEGATIONS

120. Mr. Lucas seeks to represent a class of all persons who entered a lease with Stevens and to whom Stevens made charge-backs for "PLPD" and/or "Collision" since June 24, 2009 (the "Class"). Excluded from the Class are the Court and its staff, counsel, and the immediate family members of the same. Plaintiff seeks equitable tolling of the statute of limitations given the defendant's fraudulent concealment. If such tolling is granted, the Class period should be revised to reflect such tolling.

121. The Class is so numerous that the joinder of all members is impracticable: Stevens is one of the largest authorized carriers for moving services in the country and has entered lease agreements with hundreds of owner-operators.

122. There are questions of law or fact common to the Class: *inter alia,* whether Stevens has improperly charged-back for PLPD and Collision insurance costs.

123. The representative plaintiff will fairly and adequately protect the interests of the class: Mr. Lucas has retained experienced counsel for the Class and is committed to placing the interests of the Class before his own individual interests.

124. A class action is appropriate under Fed. R. Civ. P. 23(b)(2) because Stevens has acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole: a declaration that the leases violate the TIL regulations and/or an injunction to bring the leases into conformity with the TIL regulations will apply generally to the Class.

125. A class action is appropriate under Fed. R. Civ. P. 23(b)(3) because the questions of law or fact common to Class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy: whether Stevens's charge-backs, insurance coverage arrangements, and disclosures about the same, are lawful, are the central issues in this case, and their resolution in favor of (or against) any one Class member would necessarily result in the same resolution for all Class members.

FIRST CAUSE OF ACTION

VIOLATION OF THE TRUTH-IN-LEASING REGULATIONS

126. Plaintiff re-alleges all of the facts asserted in paragraphs 1-126.

127. This cause of action is brought under 49 U.S.C. § 14704 for a violation of federal law and regulation (the "Truth-in-Leasing regulations").

128. Stevens's agreements violate federal law because they do not make required disclosures about the company's insurance practices. These non-disclosures harm owner-

operators by denying them information necessary to make an informed choice about whether to opt-out of Stevens's force-placed insurance regime. As a result, Stevens collects from owner-operators more than the actual costs of the owner-operator's coverage—and more than the cost of coverage the owner-operator could obtain on the open market.

129. Stevens's insurance arrangements deprive owner-operators of important coverage benefits and otherwise impair owner-operators' rights as insureds. Stevens takes on high-deductible policies and handles all claims under the deductibles internally, using funds it collects from owner-operators: the internal claims handling is not done by a licensed adjuster or regulated insurance carrier, and there are no rights to appeal the company's unilateral coverage decisions. Stevens also fails to provide owner-operators an opportunity to make claims for certain benefits that should be made available to them under policies purchased using owner-operators' funds. Stevens does not disclose any of these arrangements, which deprives owner-operators of the opportunity to make an informed decision to opt-out of them.

130. Stevens charges owner-operators more than the actual cost of coverage, and the company purchased a wide variety of insurance policies using owner-operators' funds. But both federal law and the written agreements between Stevens and owner-operators only permit the company to charge owner-operators the actual cost of coverage, and to purchase only certain specifically-enumerated types of insurance. Stevens does not disclose the actual costs of coverage for an individual owner-operator (or owner-operators in the aggregate), nor does the company disclose that it is charging owner-operators to fund the purchase of policies that are not identified in the written agreement. These non-disclosures deprive owner-operators of the opportunity to make an informed decision to opt-out of Stevens's insurance regime.

131. Stevens purchases extensive insurance coverages to protect itself from a wide range of potential liabilities. Stevens pays for its own insurance coverages by passing on its own costs to owner-operators, and the company establishes a "loss reserve" in its general fund in order to pay claims that are within its deductibles. Stevens does not disclose to owner-operators that it is financing its own insurance coverage and deductible liabilities through the charges made

to owner-operators. This non-disclosure prevents owner-operators from fairly considering whether to opt-out of Stevens's insurance regimes and charge-backs.

132. Stevens pays a broker's fee of up to 20% of the total premium paid on a wide range of policies to a firm managed by a cousin of the Stevens family, who has been the primary broker for decades, and passes this cost on in its entirety to owner-operators. Stevens does not disclose these facts, which prevents owner-operators from evaluating whether the insurance costs Stevens passes on to them are fair and appropriate.

133. Stevens collects money from owner-operators allegedly as "insurance premiums" and deposits a substantial portion of that money in the company's general operating fund to cover the company's own future insurance liabilities and/or future payouts under the company's high-deductible insurance policies. This "future loss reserve is" not kept in escrow and unused funds in the reserve are not returned to owner-operators at the end of the policy period. These practices are not disclosed to owner-operators, who are therefore unable to vindicate their reserve and escrow rights.

134. Defendant Stevens Van Lines is an "authorized carrier" under federal law. The company operates under its own Department of Transportation license, as well as under the DOT licenses of a number of wholly-owned subsidiaries. The company's primary business is moving and relocating people's belongings all across the country (*e.g.,* when a member of the military is reassigned to a new location). The company and its subsidiaries (collectively, "Stevens") employ truck and van drivers, as well as dispatchers, administrators, and management. Stevens owns and operates vans, tractors, trailers, and other vehicles, as well as offices, warehouses, garages, and storage facilities.

135. Most of Stevens's interstate trucking and moving activities are carried out by independent contractors, with whom the company enters into uniform written agreements. These independent contractors are truck drivers, most of whom have experience in the moving industry. Many of these truck drivers are away from home for long periods of time and for many nights throughout the year while working for Stevens, and are therefore geographically dispersed.

136. Stevens's independent contractors are also "owner-operators" under federal law. These owner-operators own (or have the exclusive rights over) one or more tractors, which they lease back to Stevens for use in the company's business and in order to haul good under Stevens's authority.

137. Owner-operators lease their tractors to Stevens and enter into an independent contractor relationship by way of a uniform "Independent Contractor Agreement" or an identical of substantially-similar written agreement with a different name. That agreement (referred to in this complaint as the "Lease") is defined by federal law as a "lease" and required by federal law to contain certain provisions and disclosures.

138. Federal law requires minimum "Public Liability" insurance coverage be in place to cover the liability for bodily injury and property damage to third-persons that arises from the trucking activities undertaken on Stevens's behalf by owner-operators. In the industry, Public Liability coverage is often referred to as "PLPD," meaning "public liability and property damage insurance."

139. Federal law requires both Stevens and its owner-operators to maintain $750,000 in "Public Liability" insurance coverage while hauling household goods in interstate transit.

140. Although the Lease does not mention Public Liability or PLPD coverage, it does contain a provision regarding insurance. *See* Exhibit A, Lease between Mr. Lucas and Stevens, p. 4. That provision says that either (a) the owner-operator must secure "Auto Public Liability, Auto Property Liability, Auto Bodily Injury, General Liability, and Cargo Insurance upon his vehicle"; or (b) Stevens will "place such insurance with an authorized insurance carrier and charge the cost thereof to the account of the [owner-operator]." *Id.* The Lease requires that Stevens be covered under the insurance policies.

141. The Lease does not define "Auto Public Liability," "Auto Property Liability," "Auto Bodily Injury," "General Liability," or "Cargo."

142. Under the definitions established in federal regulations and by industry practice, "Auto Public Liability," "Auto Property Liability" and "Auto Bodily Injury" are the components of Public Liability or PLPD coverage.

143. Under the definitions established in federal regulations and by industry practice, Public Liability or PLPD coverage does not include "General Liability" insurance. Indeed, General Liability coverage insures Stevens's non-trucking-related business activities. As such, federal law does not require owner-operators to maintain General Liability coverage or to maintain insurance to cover non-trucking-related business activities.

144. Under the definitions established in federal regulations and by industry practice, Public Liability or PLPD coverage does not include "Cargo" insurance. Indeed, Cargo insurance covers damage to Stevens's customers' goods (*e.g.,* furniture) that are being moved from one location to another.

145. In practice, Stevens places insurance for owner-operators and charges them for it. (The few owner-operators who secure their own insurance and are *not* charged by Stevens for insurance are excluded from the Class.) The mechanism by which Stevens charges owner-operators for the costs of the forced-place insurance is a "charge-back." A charge-back is a standard practice in the trucking industry, and charge-backs are regulated by federal law—among other things, the Lease must make specific disclosures about the charge-backs which will be assessed to owner-operators.

146. Stevens makes two charge-backs to owner-operators for insurance. One is for "PLPD" and the other is for "Collision."

147. The Lease does not authorize Stevens to charge-back for Collision insurance. The Lease does not disclose how the Collision charge-back will be calculated or what amount the owner-operator will be charged back.

148. The Lease does not mention a PLPD charge-back, nor does it state which of the enumerated insurance coverages Stevens means to include in its PLPD charge-backs. The Lease

does not disclose how the PLPD charge-back will be calculated or what amount the owner-operator will be charged back.

149. Stevens charges-back to owner-operators for PLPD each month. The amount of the charge-back is 4.5% of the owner-operator's gross revenue related to trucking activities that month.

150. Stevens charges-back to owner-operators for Collision each month. The amount of the charge-back is .5% of the owner-operator's gross revenue related to trucking activities that month.

151. The PLPD and Collision charge-backs appear in a document called a Monthly Settlement Statement that Stevens produces to each owner-operator each month. *See* Exhibit B, Example of a Monthly Settlement Statement for Mr. Lucas.

152. Stevens collects hundreds of thousands of dollars from owner-operators through its PLPD and Collision charge-backs each year.

153. The amount of money Stevens collects from owner-operators under the PLPD and Collision charge-backs far exceeds the actual costs of obtaining the coverages for individual owner-operators authorized by the Leases.

154. The amount of money Stevens collects from owner-operators under the PLPD charge-back far exceeds the actual costs of obtaining the Public Liability coverages for owner-operators required by federal law.

155. The amount of money Stevens collects from owner-operators under the PLPD charge-back far exceeds the actual costs of obtaining "Auto Public Liability," "Auto Property Liability" and "Auto Bodily Injury" coverages for owner-operators.

156. The amount of money Stevens collects from owner-operators under the Collision charge-back far exceeds the actual costs of obtaining Collision insurance for individual owner-operators.

157. Stevens is using a substantial portion of the money collected from owner-operators through PLPD and/or Collision charge-backs to fund its own extensive insurance

protections, including its purchase of policies and coverages which solely benefit Stevens and which are not associated with risks or liabilities arising from owner-operators' activities.

158. The actual costs of insuring an owner-operator for PLPD and Collision on the open market are much less than the amounts collected by Stevens through its charge-backs to owner-operators.

159. Under 49 C.F.R. § 376.12(j), a lease between an authorized carrier and a "lessor" (*i.e.,* an owner-operator) must meet the following requirements:

(a) If the authorized carrier will make a charge-back to the lessor for any insurance for protection of the public, or for the operation of the leased equipment, the lease must specify the amount which will be charged-back to the lessor;

(b) If the lessor purchased any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease must specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor; and,

(c) If the lessor purchased insurance through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy that must include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

160. Stevens's Lease between itself and owner-operators violates 49 C.F.R. § 376.12(j) in the following respects:

(a) Although Stevens was going to (and did) make charge-backs for insurance, the Lease does not specify the amounts which would be charged-back;

(b) Although Stevens placed insurance for owner-operators, the Lease does not specify that Stevens would provide the owner-operator with a copy of each policy upon his or her request; and

(c) Although Stevens placed insurance for owner-operators, the Lease does not specify that Stevens would provide the owner-operator with a certificate of insurance for each policy, and which would include the required coverage information.

161. As a direct result of these non-disclosures, owner-operators are unable to compare the insurance costs they are being assessed by Stevens through the charge-backs with the actual costs of insurance on the open market.

162. As a direct result of these non-disclosures, owner-operators are unable to compare the insurance coverages and benefits provided by the Stevens force-placed policies with alternative insurance policies available in the open market.

163. As a direct result of these non-disclosures, owner-operators are unable to assert their contractual rights as insureds under the Stevens force-placed insurance policies.

164. Stevens does not procure individual insurance policies for each owner-operator.

165. Stevens does not procure insurance coverage for owner-operators on an individual basis.

166. Stevens does not procure insurance policies or coverages for which an individual owner-operator is the "named insured."

167. Stevens is not charged by any insurance company a premium associated with any individual owner-operator.

168. Stevens purchases insurance policies and coverages for itself, naming the company as the named insured. It arranges for certain owner-operators to be listed as "additional insureds" when they are operating under Stevens's authority.

169. Stevens never discloses to owner-operators that it is not procuring individual insurance policies, but is instead adding owner-operators to certain of its own coverages under certain situations.

170. Stevens uses owner-operators' money to buy a Collision policy that covers dozens of Stevens-owned tractors, trailers, vans, and other vehicles. Stevens arranges for owner-

operators or their tractors to be listed as "additional insureds" under that policy when the unit is being operated under Stevens's authority.

171. Stevens does not disclose to owner-operators that they have no Collision coverage when they are not operating under Stevens's authority.

172. Stevens's Collision policy has a $50,000 deductible. No owner-operator's tractor has a loss-value greater than $50,000.

173. Stevens does not disclose to owner-operators that the Collision policy has a $50,000 deductible.

174. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that the Collision policy has a $50,000 deductible.

175. Prior to charging-back money from owner-operators, Stevens does not disclose to the owner-operators that the Collision policy has a $50,000 deductible.

176. Stevens internally handles, adjusts, and pays owner-operators' claims for collision or property damage.

177. Stevens is not an insurance company.

178. Stevens is not licensed or authorized to do business as an insurance company in any state.

179. Stevens is not self-insured relative to collision damage.

180. Stevens does not employ licensed insurance or claims adjusters.

181. Stevens's employees act as claims handlers ("internal claims handlers") for collision or property damage claims made by owner-operators.

182. Stevens's internal claims handlers do not follow any written policy or procedures when handling or adjusting owner-operators' collision or property damage claims.

183. Stevens's internal claims handlers do not follow, consult, or comply with any terms or provisions of any insurance policies when handling or adjusting owner-operators' collision or property damage claims.

184. Stevens's internal claims handlers have not received adequate training on any policies or procedures relative to the handling or adjusting of owner-operators' collision or property damage claims.

185. Stevens alone determines whether it will reimburse an owner-operator for collision or property damage.

186. Stevens determines whether it will reimburse an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

187. Stevens alone determines how much, if any, it will reimburse an owner-operator for collision or property damage.

188. Stevens determines how much, if any, it will reimburse an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

189. Stevens does not provide owner-operators with any appeals process for its valuations of owner-operators' collision or property damage claims.

190. Stevens does not provide owner-operators with any appeals process for its denial of owner-operators' collision or property damage claims.

191. Stevens does not disclose this alternative, unauthorized, internal claims process to owner-operators.

192. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that their collision or property damage claims will be adjusted or handled through this alternative, unauthorized, internal claims process.

193. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that their collision or property damage claims will be adjusted or handled through this alternative, unauthorized, internal claims process.

194. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that their collision or property damage claims will not be handled or adjusted by licensed or independent insurance adjusters.

195. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that their collision or property damage claims will not be handled or adjusted by licensed or independent insurance adjusters.

196. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that Stevens alone will determine whether an owner-operator will be compensated for collision or property damage.

197. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that Stevens alone will determine whether an owner-operator will be compensated for collision or property damage.

198. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that Stevens will determine how much, if any, it will reimburse or compensate an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

199. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that Stevens will determine how much, if any, it will reimburse or compensate an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

200. Stevens funds the pay-outs it makes on Collision damage claims by using the money it collects from owner-operators through charge-backs. Thus, Stevens is using money collected from one owner-operator to pay the claims of one or more other owner-operators. Stevens does not disclose that it is using owner-operators' money in this way.

201. The Lease only authorizes Stevens to charge-back to owner-operators the actual costs of the coverages enumerated in the Lease (*i.e.,* Stevens can only "charge the cost thereof").

202. The only cost of an insurance coverage is its premium.

203. Through the PLPD charge-back, Stevens charges owner operators more than the costs of the insurance premiums for the coverages enumerated in the Lease.

204. Stevens does not charge an individual owner-operator the actual cost to insure that individual owner-operator.

205. Through the PLPD charge-back, Stevens also charges all owner-operators the cost to insure Stevens itself.

206. Through the PLPD charge-back, Stevens also charges all owner-operators insurance coverages which solely benefit Stevens.

207. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages which are not enumerated in or authorized by the Lease.

208. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages which owner-operators are not required by state or federal laws to carry.

209. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages with coverage limits far greater than what state and federal laws require owner-operators to carry.

210. Stevens fully funds all of its own insurance policies or coverages with money taken from owner-operators through PLPD and Collision charge-backs.

211. At all relevant times, the cost to an individual owner-operator in the open market for PLPD coverage was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

212. At all relevant times, the cost to an individual owner-operator in the open market for Collision coverage was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

213. At all relevant times, the cost to an individual owner-operator in the open market for the insurance coverages enumerated in the Lease was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

214. The method by which Stevens determined how much of its own insurance costs to pass on to owner-operators—that is, how much of the costs are actually attributable to the owner-operators' underwriting risks—is arbitrary:

(a) Stevens's insurance carriers calculate the premium costs for various insurance policies in different ways, which are disclosed to Stevens. For example, a General Liability coverage premium was calculated based on payroll of certain Stevens's employees and the square footage of the company's office space.

(b) Stevens does not use any accepted method of attempting to attribute the premium costs for its various insurance policies to individual owner-operators (or even to owner-operators in the aggregate). Instead, Stevens created an internal, arbitrary "PLPD calculation" which is performed by Lindsey Stevens, the Vice President of Finance.

(c) Stevens claims the "PLPD calculation" justifies the PLPD charge-back rate assessed to owner-operators, but the calculation is not limited to the premium costs of PLPD coverages. Rather, it includes non-PLPD coverages; *e.g.,* a Warehouse Policy, a Garage Liability Policy, and a $30-million Umbrella Policy—none of which are authorized by the Lease, required by federal law, or disclosed by Stevens to owner-operators.

(d) There is no rational relationship between the actual premium costs to Stevens for the PLPD coverages and the PLPD calculation. Rather, the company simply charges 4.5% of an owner-operator's monthly gross revenue for PLPD.

(e) Stevens has charged owner-operators 4.5% for PLPD for decades.

(f) Stevens has charged owner-operators 4.5% for PLPD regardless of increases or decreases in the insurance premiums paid by Stevens.

(g) Stevens has charged owner-operators 4.5% for PLPD regardless of increases or decreases in actual or projected claims payouts by Stevens.

(h) The 4.5% charge-back rate is not rationally related to, derived from, and does not constitute the actual cost of insurance premiums paid by Stevens on behalf of owner-operators for the coverages enumerated in the Lease.

(i) Stevens charges owner-operators 4.5% for PLPD because Stevens believes that is the maximum it can charge and still remain competitive with other companies seeking to enter lease agreements with owner-operators.

(j) Stevens charges owner-operators 4.5% for PLPD because Stevens believes that is the maximum it can charge without owner-operators complaining or terminating their Lease.

(k) There is no rational relationship between the actual premium costs to Stevens for the Collision coverage and the Collison charge-back rate. Rather, the company simply charges 0.5% of an owner-operator's monthly gross revenue for Collision.

(l) Stevens has charged owner-operators 0.5% for Collision for decades.

(m) Stevens has charged owner-operators 0.5% for Collision regardless of any increases or decreases in the insurance rates paid by Stevens.

(n) Stevens has charged owner-operators 0.5% for Collision regardless of any increases or decreases in actual or projected claims payouts by Stevens.

(o) The 0.5% charge-back rate for Collison is not rationally related to, derived from, and does not constitute the actual cost of insurance premiums paid by Stevens on behalf of owner-operators for Collision coverage.

(p) Stevens charges owner-operators 0.5% for Collision because Stevens believes that is the maximum it can charge and still remain competitive with other companies seeking to enter lease agreements with owner-operators.

(q) Stevens charges owner-operators 0.5% for Collision because Stevens believes that is the maximum it can charge without owner-operators complaining or terminating their Lease.

215. Stevens does not disclose to owner-operators the company's method of calculating the insurance costs attributable to or charged-back to owner-operators.

216. The funds collected by Stevens through the PLPD and Collision charge-backs ("charge-back withholdings") belong to the owner-operator.

217. Each owner-operator's chargeback withholdings constitute an escrow account.

218. The chargeback withholdings are required to be held in trust by Stevens for the sole purpose of acquiring for owner-operators the insurance coverages enumerated in the Lease.

219. Stevens has a fiduciary duty to owner-operators to maintain the chargeback withholdings in an escrow account for the sole purpose of acquiring for owner-operators the insurance coverages enumerated in the Lease.

220. Stevens deposited and continues to deposit the charge-back withholdings in the company's general account.

221. Stevens co-mingled and continues to co-mingled the charge-back withholdings with other funds.

222. Stevens co-mingled and continues to co-mingle the charge-back withholdings with Stevens's own money.

223. Stevens has used and continues to use a substantial portion of the charge-back withholdings for its own purposes.

224. Stevens has treated and continues to treat the charge-back withholdings as its own money.

225. Stevens has unlawfully converted and continues to unlawfully convert a substantial portion of the charge-back withholdings.

226. Stevens does not disclose to owner-operators that charge-back withholdings are deposited in the company's general account.

227. Stevens does not disclose to owner-operators that charge-back withholdings are co-mingled with other funds.

228. Stevens does not disclose to owner-operators that charge-back withholdings are co-mingled with Stevens's own money.

229. Stevens does not disclose to owner-operators that Stevens uses a substantial portion of the charge-back withholdings for its own purposes.

230. Stevens does not disclose to owner-operators that Stevens treats the charge-back withholdings as its own money.

231. Stevens does not disclose to owner-operators that Stevens unlawfully converts a substantial portion of the charge-back withholdings.

232. The charge-back withholdings deposited by Stevens in the company's general account earns interest.

233. The interest earned by Stevens on the charge-back withholdings is not returned or credited to owner-operators.

234. Stevens does not disclose to owner-operators that the charge-back withholdings have earned interest.

235. Stevens does not disclose to owner-operators that Stevens has earned interest on the charge-back withholdings which it has not returned to owner-operators.

236. Stevens uses the money collected through the charge-backs to purchase an extensive array of insurance policies which primarily benefit the company itself, including, among others, coverage for its own vehicles and employees, its garages and warehouses, and a $30-million umbrella policy:

(a) Stevens procures under- and un-insured motorist coverage, medpay coverage, and personal-injury protection coverage—all of which benefit Stevens and its employees. The company does not disclose these coverages to owner-operators, nor does it advise them of their ability to submit claims under these coverages.

(b) Stevens never provides owner-operators with copies of the policies or the terms, definitions, and exclusions of the policies. Thus, if an owner-operator seeks coverage, could seek coverage, submits a claim, or challenges the handling of a claim, Stevens "holds all the cards" and puts itself in between the insurance carrier and its policy on the one hand and the owner-operator on the other. Stevens deprives owner-operators of the ability to meaningfully ascertain or assert their rights as insureds.

237. Stevens also uses the money collected from owner-operators to pay a large commission to its insurance broker, Aegis Insurance Services, which is as much as 20% of the premium. Aegis's President is Scott Stevens, a cousin of the family who founded and continue to operate Stevens Van Lines. Aegis has been the primary, if not exclusive, broker for Stevens for decades. Stevens does not disclose to owner-operators (a) that it is using their money to pay

an insurance broker substantial commissions, (b) that Scott Stevens is a Stevens family member, or (c) that Aegis has been the broker for many years.

238. Stevens also uses the money collected from owner-operators to finance its own internal Collision claims regime (*i.e.,* the company's exposure to Collision claims by owner-operators for damages that are less than the $50,000 Collision policy deductible). When performing the arbitrary "PLPD calculation," Stevens includes an "estimated-loss" reserve. That is, rather than pass on the premium costs of insurance to owner-operators, Stevens is passing on *the company's own liability* for amounts within the deductible.

(a) Stevens does not return any portion of the estimated-loss reserve to owner-operators at the end of the policy period.

(b) Stevens does not return the portion of the estimated-loss reserve paid by an individual owner-operator to that individual operator if, at the end of the policy period, he did not exhaust that portion of the reserve by making his own claims.

(c) Stevens handles all Collision claims under the deductible itself. The company has a direct financial interest in paying-out to owner-operators as little as possible. This creates a clear conflict-of-interest. Stevens does not take adequate steps to address or disclose this conflict-of-interest.

239. Stevens obtained Auto Liability policies with limits far in excess of the federal minimum for PLPD. The costs of these higher-limit policies were more than the costs of obtaining the federal minimum policies would have been. Stevens did not disclose that it was obtaining Auto Liability policies that were beyond PLPD.

240. As a result of Stevens' violations, as detailed herein, Mr. Lucas and the Class are entitled to declaratory, injunctive, and equitable relief, including disgorgement; actual damages; as well as attorney's fees as a cost of the action under 49 U.S.C. §14704(e).

<u>SECOND CAUSE OF ACTION</u>

BREACH OF CONTRACT

241. Plaintiff re-alleges all of the facts asserted in paragraphs 1-240.

242. This cause of action is brought under the common law for breach of contract.

243. The Leases between Stevens and Class members, including Mr. Lucas, are contracts.

244. Stevens's agreements violate federal law because they do not make required disclosures about the company's insurance practices. These non-disclosures harm owner-operators by denying them information necessary to make an informed choice about whether to opt-out of Stevens's force-placed insurance regime. As a result, Stevens collects from owner-operators more than the actual costs of the owner-operator's coverage—and more than the cost of coverage the owner-operator could obtain on the open market.

245. Stevens's insurance arrangements deprive owner-operators of important coverage benefits and otherwise impair owner-operators' rights as insureds. Stevens takes on high-deductible policies and handles all claims under the deductibles internally, using funds it collects from owner-operators: the internal claims handling is not done by a licensed adjuster or regulated insurance carrier, and there are no rights to appeal the company's unilateral coverage decisions. Stevens also fails to provide owner-operators an opportunity to make claims for certain benefits that should be made available to them under policies purchased using owner-operators' funds. Stevens does not disclose any of these arrangements, which deprives owner-operators of the opportunity to make an informed decision to opt-out of them.

246. Stevens charges owner-operators more than the actual cost of coverage, and the company purchased a wide variety of insurance policies using owner-operators' funds. But both federal law and the written agreements between Stevens and owner-operators only permit the company to charge owner-operators the actual cost of coverage, and to purchase only certain specifically-enumerated types of insurance. Stevens does not disclose the actual costs of coverage for an individual owner-operator (or owner-operators in the aggregate), nor does the company disclose that it is charging owner-operators to fund the purchase of policies that are not identified in the written agreement. These non-disclosures deprive owner-operators of the opportunity to make an informed decision to opt-out of Stevens's insurance regime.

247. Stevens purchases extensive insurance coverages to protect itself from a wide range of potential liabilities. Stevens pays for its own insurance coverages by passing on its own costs to owner-operators, and the company establishes a "loss reserve" in its general fund in order to pay claims that are within its deductibles. Stevens does not disclose to owner-operators that it is financing its own insurance coverage and deductible liabilities through the charges made to owner-operators. This non-disclosure prevents owner-operators from fairly considering whether to opt-out of Stevens's insurance regimes and charge-backs.

248. Stevens pays a broker's fee of up to 20% of the total premium paid on a wide range of policies to a firm managed by a cousin of the Stevens family, who has been the primary broker for decades, and passes this cost on in its entirety to owner-operators. Stevens does not disclose these facts, which prevents owner-operators from evaluating whether the insurance costs Stevens passes on to them are fair and appropriate.

249. Stevens collects money from owner-operators allegedly as "insurance premiums" and deposits a substantial portion of that money in the company's general operating fund to cover the company's own future insurance liabilities and/or future payouts under the company's high-deductible insurance policies. This "future loss reserve is" not kept in escrow and unused funds in the reserve are not returned to owner-operators at the end of the policy period. These practices are not disclosed to owner-operators, who are therefore unable to vindicate their reserve and escrow rights.

250. Defendant Stevens Van Lines is an "authorized carrier" under federal law. The company operates under its own Department of Transportation license, as well as under the DOT licenses of a number of wholly-owned subsidiaries. The company's primary business is moving and relocating people's belongings all across the country (*e.g.,* when a member of the military is reassigned to a new location). The company and its subsidiaries (collectively, "Stevens") employ truck and van drivers, as well as dispatchers, administrators, and management. Stevens owns and operates vans, tractors, trailers, and other vehicles, as well as offices, warehouses, garages, and storage facilities.

251. Most of Stevens's interstate trucking and moving activities are carried out by independent contractors, with whom the company enters into uniform written agreements. These independent contractors are truck drivers, most of whom have experience in the moving industry. Many of these truck drivers are away from home for long periods of time and for many nights throughout the year while working for Stevens, and are therefore geographically dispersed.

252. Stevens's independent contractors are also "owner-operators" under federal law. These owner-operators own (or have the exclusive rights over) one or more tractors, which they lease back to Stevens for use in the company's business and in order to haul good under Stevens's authority.

253. Owner-operators lease their tractors to Stevens and enter into an independent contractor relationship by way of a uniform "Independent Contractor Agreement" or an identical of substantially-similar written agreement with a different name. That agreement (referred to in this complaint as the "Lease") is defined by federal law as a "lease" and required by federal law to contain certain provisions and disclosures.

254. Federal law requires minimum "Public Liability" insurance coverage be in place to cover the liability for bodily injury and property damage to third-persons that arises from the trucking activities undertaken on Stevens's behalf by owner-operators. In the industry, Public Liability coverage is often referred to as "PLPD," meaning "public liability and property damage insurance."

255. Federal law requires both Stevens and its owner-operators to maintain $750,000 in "Public Liability" insurance coverage while hauling household goods in interstate transit.

256. Although the Lease does not mention Public Liability or PLPD coverage, it does contain a provision regarding insurance. *See* Exhibit A, Lease between Mr. Lucas and Stevens, p. 4. That provision says that either (a) the owner-operator must secure "Auto Public Liability, Auto Property Liability, Auto Bodily Injury, General Liability, and Cargo Insurance upon his vehicle"; or (b) Stevens will "place such insurance with an authorized insurance carrier and

charge the cost thereof to the account of the [owner-operator]." *Id.* The Lease requires that Stevens be covered under the insurance policies.

257. The Lease does not define "Auto Public Liability," "Auto Property Liability," "Auto Bodily Injury," "General Liability," or "Cargo."

258. Under the definitions established in federal regulations and by industry practice, "Auto Public Liability," "Auto Property Liability" and "Auto Bodily Injury" are the components of Public Liability or PLPD coverage.

259. Under the definitions established in federal regulations and by industry practice, Public Liability or PLPD coverage does not include "General Liability" insurance. Indeed, General Liability coverage insures Stevens's non-trucking-related business activities. As such, federal law does not require owner-operators to maintain General Liability coverage or to maintain insurance to cover non-trucking-related business activities.

260. Under the definitions established in federal regulations and by industry practice, Public Liability or PLPD coverage does not include "Cargo" insurance. Indeed, Cargo insurance covers damage to Stevens's customers' goods (*e.g.,* furniture) that are being moved from one location to another.

261. In practice, Stevens places insurance for owner-operators and charges them for it. (The few owner-operators who secure their own insurance and are *not* charged by Stevens for insurance are excluded from the Class.) The mechanism by which Stevens charges owner-operators for the costs of the forced-place insurance is a "charge-back." A charge-back is a standard practice in the trucking industry, and charge-backs are regulated by federal law—among other things, the Lease must make specific disclosures about the charge-backs which will be assessed to owner-operators.

262. Stevens makes two charge-backs to owner-operators for insurance. One is for "PLPD" and the other is for "Collision."

263. The Lease does not authorize Stevens to charge-back for Collision insurance. The Lease does not disclose how the Collision charge-back will be calculated or what amount the owner-operator will be charged back.

264. The Lease does not mention a PLPD charge-back, nor does it state which of the enumerated insurance coverages Stevens means to include in its PLPD charge-backs. The Lease does not disclose how the PLPD charge-back will be calculated or what amount the owner-operator will be charged back.

265. Stevens charges-back to owner-operators for PLPD each month. The amount of the charge-back is 4.5% of the owner-operator's gross revenue related to trucking activities that month.

266. Stevens charges-back to owner-operators for Collision each month. The amount of the charge-back is .5% of the owner-operator's gross revenue related to trucking activities that month.

267. The PLPD and Collision charge-backs appear in a document called a Monthly Settlement Statement that Stevens produces to each owner-operator each month. *See* Exhibit B, Example of a Monthly Settlement Statement for Mr. Lucas.

268. Stevens collects hundreds of thousands of dollars from owner-operators through its PLPD and Collision charge-backs each year.

269. The amount of money Stevens collects from owner-operators under the PLPD and Collision charge-backs far exceeds the actual costs of obtaining the coverages for individual owner-operators authorized by the Leases.

270. The amount of money Stevens collects from owner-operators under the PLPD charge-back far exceeds the actual costs of obtaining the Public Liability coverages for owner-operators required by federal law.

271. The amount of money Stevens collects from owner-operators under the PLPD charge-back far exceeds the actual costs of obtaining "Auto Public Liability," "Auto Property Liability" and "Auto Bodily Injury" coverages for owner-operators.

272. The amount of money Stevens collects from owner-operators under the Collision charge-back far exceeds the actual costs of obtaining Collision insurance for individual owner-operators.

273. Stevens is using a substantial portion of the money collected from owner-operators through PLPD and/or Collision charge-backs to fund its own extensive insurance protections, including its purchase of policies and coverages which solely benefit Stevens and which are not associated with risks or liabilities arising from owner-operators' activities.

274. The actual costs of insuring an owner-operator for PLPD and Collision on the open market are much less than the amounts collected by Stevens through its charge-backs to owner-operators.

275. Under 49 C.F.R. § 376.12(j), a lease between an authorized carrier and a "lessor" (*i.e.,* an owner-operator) must meet the following requirements:

(a) If the authorized carrier will make a charge-back to the lessor for any insurance for protection of the public, or for the operation of the leased equipment, the lease must specify the amount which will be charged-back to the lessor;

(b) If the lessor purchased any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease must specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor; and,

(c) If the lessor purchased insurance through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy that must include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

276. Stevens's Lease between itself and owner-operators violates 49 C.F.R. § 376.12(j) in the following respects:

(a) Although Stevens was going to (and did) make charge-backs for insurance, the Lease does not specify the amounts which would be charged-back;

(b) Although Stevens placed insurance for owner-operators, the Lease does not specify that Stevens would provide the owner-operator with a copy of each policy upon his or her request; and

(c) Although Stevens placed insurance for owner-operators, the Lease does not specify that Stevens would provide the owner-operator with a certificate of insurance for each policy, and which would include the required coverage information.

277. As a direct result of these non-disclosures, owner-operators are unable to compare the insurance costs they are being assessed by Stevens through the charge-backs with the actual costs of insurance on the open market.

278. As a direct result of these non-disclosures, owner-operators are unable to compare the insurance coverages and benefits provided by the Stevens force-placed policies with alternative insurance policies available in the open market.

279. As a direct result of these non-disclosures, owner-operators are unable to assert their contractual rights as insureds under the Stevens force-placed insurance policies.

280. Stevens does not procure individual insurance policies for each owner-operator.

281. Stevens does not procure insurance coverage for owner-operators on an individual basis.

282. Stevens does not procure insurance policies or coverages for which an individual owner-operator is the "named insured."

283. Stevens is not charged by any insurance company a premium associated with any individual owner-operator.

284. Stevens purchases insurance policies and coverages for itself, naming the company as the named insured. It arranges for certain owner-operators to be listed as "additional insureds" when they are operating under Stevens's authority.

285. Stevens never discloses to owner-operators that it is not procuring individual insurance policies, but is instead adding owner-operators to certain of its own coverages under certain situations.

286. Stevens uses owner-operators' money to buy a Collision policy that covers dozens of Stevens-owned tractors, trailers, vans, and other vehicles. Stevens arranges for owner-operators or their tractors to be listed as "additional insureds" under that policy when the unit is being operated under Stevens's authority.

287. Stevens does not disclose to owner-operators that they have no Collision coverage when they are not operating under Stevens's authority.

288. Stevens's Collision policy has a $50,000 deductible. No owner-operator's tractor has a loss-value greater than $50,000.

289. Stevens does not disclose to owner-operators that the Collision policy has a $50,000 deductible.

290. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that the Collision policy has a $50,000 deductible.

291. Prior to charging-back money from owner-operators, Stevens does not disclose to the owner-operators that the Collision policy has a $50,000 deductible.

292. Stevens internally handles, adjusts, and pays owner-operators' claims for collision or property damage.

293. Stevens is not an insurance company.

294. Stevens is not licensed or authorized to do business as an insurance company in any state.

295. Stevens is not self-insured relative to collision damage.

296. Stevens does not employ licensed insurance or claims adjusters.

297. Stevens's employees act as claims handlers ("internal claims handlers") for collision or property damage claims made by owner-operators.

298. Stevens's internal claims handlers do not follow any written policy or procedures when handling or adjusting owner-operators' collision or property damage claims.

299. Stevens's internal claims handlers do not follow, consult, or comply with any terms or provisions of any insurance policies when handling or adjusting owner-operators' collision or property damage claims.

300. Stevens's internal claims handlers have not received adequate training on any policies or procedures relative to the handling or adjusting of owner-operators' collision or property damage claims.

301. Stevens alone determines whether it will reimburse an owner-operator for collision or property damage.

302. Stevens determines whether it will reimburse an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

303. Stevens alone determines how much, if any, it will reimburse an owner-operator for collision or property damage.

304. Stevens determines how much, if any, it will reimburse an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

305. Stevens does not provide owner-operators with any appeals process for its valuations of owner-operators' collision or property damage claims.

306. Stevens does not provide owner-operators with any appeals process for its denial of owner-operators' collision or property damage claims.

307. Stevens does not disclose this alternative, unauthorized, internal claims process to owner-operators.

308. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that their collision or property damage claims will be adjusted or handled through this alternative, unauthorized, internal claims process.

309. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that their collision or property damage claims will be adjusted or handled through this alternative, unauthorized, internal claims process.

310. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that their collision or property damage claims will not be handled or adjusted by licensed or independent insurance adjusters.

311. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that their collision or property damage claims will not be handled or adjusted by licensed or independent insurance adjusters.

312. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that Stevens alone will determine whether an owner-operator will be compensated for collision or property damage.

313. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that Stevens alone will determine whether an owner-operator will be compensated for collision or property damage.

314. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that Stevens will determine how much, if any, it will reimburse or compensate an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

315. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that Stevens will determine how much, if any, it will reimburse or compensate an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

316. Stevens funds the pay-outs it makes on Collision damage claims by using the money it collects from owner-operators through charge-backs. Thus, Stevens is using money collected from one owner-operator to pay the claims of one or more other owner-operators. Stevens does not disclose that it is using owner-operators' money in this way.

317. The Lease only authorizes Stevens to charge-back to owner-operators the actual costs of the coverages enumerated in the Lease (*i.e.,* Stevens can only "charge the cost thereof").

318. The only cost of an insurance coverage is its premium.

319. Through the PLPD charge-back, Stevens charges owner operators more than the costs of the insurance premiums for the coverages enumerated in the Lease.

320. Stevens does not charge an individual owner-operator the actual cost to insure that individual owner-operator.

321. Through the PLPD charge-back, Stevens also charges all owner-operators the cost to insure Stevens itself.

322. Through the PLPD charge-back, Stevens also charges all owner-operators insurance coverages which solely benefit Stevens.

323. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages which are not enumerated in or authorized by the Lease.

324. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages which owner-operators are not required by state or federal laws to carry.

325. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages with coverage limits far greater than what state and federal laws require owner-operators to carry.

326. Stevens fully funds all of its own insurance policies or coverages with money taken from owner-operators through PLPD and Collision charge-backs.

327. At all relevant times, the cost to an individual owner-operator in the open market for PLPD coverage was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

328. At all relevant times, the cost to an individual owner-operator in the open market for Collision coverage was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

329. At all relevant times, the cost to an individual owner-operator in the open market for the insurance coverages enumerated in the Lease was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

330. The method by which Stevens determined how much of its own insurance costs to pass on to owner-operators—that is, how much of the costs are actually attributable to the owner-operators' underwriting risks—is arbitrary:

(a) Stevens's insurance carriers calculate the premium costs for various insurance policies in different ways, which are disclosed to Stevens. For example, a General Liability coverage premium was calculated based on payroll of certain Stevens's employees and the square footage of the company's office space.

(b) Stevens does not use any accepted method of attempting to attribute the premium costs for its various insurance policies to individual owner-operators (or even to owner-operators in the aggregate). Instead, Stevens created an internal, arbitrary "PLPD calculation" which is performed by Lindsey Stevens, the Vice President of Finance.

(c) Stevens claims the "PLPD calculation" justifies the PLPD charge-back rate assessed to owner-operators, but the calculation is not limited to the premium costs of PLPD coverages. Rather, it includes non-PLPD coverages; *e.g.,* a Warehouse Policy, a Garage Liability Policy, and a $30-million Umbrella Policy—none of which are authorized by the Lease, required by federal law, or disclosed by Stevens to owner-operators.

(d) There is no rational relationship between the actual premium costs to Stevens for the PLPD coverages and the PLPD calculation. Rather, the company simply charges 4.5% of an owner-operator's monthly gross revenue for PLPD.

(e) Stevens has charged owner-operators 4.5% for PLPD for decades.

(f) Stevens has charged owner-operators 4.5% for PLPD regardless of increases or decreases in the insurance premiums paid by Stevens.

(g) Stevens has charged owner-operators 4.5% for PLPD regardless of increases or decreases in actual or projected claims payouts by Stevens.

(h) The 4.5% charge-back rate is not rationally related to, derived from, and does not constitute the actual cost of insurance premiums paid by Stevens on behalf of owner-operators for the coverages enumerated in the Lease.

(i) Stevens charges owner-operators 4.5% for PLPD because Stevens believes that is the maximum it can charge and still remain competitive with other companies seeking to enter lease agreements with owner-operators.

(j) Stevens charges owner-operators 4.5% for PLPD because Stevens believes that is the maximum it can charge without owner-operators complaining or terminating their Lease.

(k) There is no rational relationship between the actual premium costs to Stevens for the Collision coverage and the Collison charge-back rate. Rather, the company simply charges 0.5% of an owner-operator's monthly gross revenue for Collision.

(l) Stevens has charged owner-operators 0.5% for Collision for decades.

(m) Stevens has charged owner-operators 0.5% for Collision regardless of any increases or decreases in the insurance rates paid by Stevens.

(n) Stevens has charged owner-operators 0.5% for Collision regardless of any increases or decreases in actual or projected claims payouts by Stevens.

(o) The 0.5% charge-back rate for Collison is not rationally related to, derived from, and does not constitute the actual cost of insurance premiums paid by Stevens on behalf of owner-operators for Collision coverage.

(p) Stevens charges owner-operators 0.5% for Collision because Stevens believes that is the maximum it can charge and still remain competitive with other companies seeking to enter lease agreements with owner-operators.

(q) Stevens charges owner-operators 0.5% for Collision because Stevens believes that is the maximum it can charge without owner-operators complaining or terminating their Lease.

331. Stevens does not disclose to owner-operators the company's method of calculating the insurance costs attributable to or charged-back to owner-operators.

332. The funds collected by Stevens through the PLPD and Collision charge-backs ("charge-back withholdings") belong to the owner-operator.

333. Each owner-operator's chargeback withholdings constitute an escrow account.

334. The chargeback withholdings are required to be held in trust by Stevens for the sole purpose of acquiring for owner-operators the insurance coverages enumerated in the Lease.

335. Stevens has a fiduciary duty to owner-operators to maintain the chargeback withholdings in an escrow account for the sole purpose of acquiring for owner-operators the insurance coverages enumerated in the Lease.

336. Stevens deposited and continues to deposit the charge-back withholdings in the company's general account.

337. Stevens co-mingled and continues to co-mingled the charge-back withholdings with other funds.

338. Stevens co-mingled and continues to co-mingle the charge-back withholdings with Stevens's own money.

339. Stevens has used and continues to use a substantial portion of the charge-back withholdings for its own purposes.

340. Stevens has treated and continues to treat the charge-back withholdings as its own money.

341. Stevens has unlawfully converted and continues to unlawfully convert a substantial portion of the charge-back withholdings.

342. Stevens does not disclose to owner-operators that charge-back withholdings are deposited in the company's general account.

343. Stevens does not disclose to owner-operators that charge-back withholdings are co-mingled with other funds.

344. Stevens does not disclose to owner-operators that charge-back withholdings are co-mingled with Stevens's own money.

345. Stevens does not disclose to owner-operators that Stevens uses a substantial portion of the charge-back withholdings for its own purposes.

346. Stevens does not disclose to owner-operators that Stevens treats the charge-back withholdings as its own money.

347. Stevens does not disclose to owner-operators that Stevens unlawfully converts a substantial portion of the charge-back withholdings.

348. The charge-back withholdings deposited by Stevens in the company's general account earns interest.

349. The interest earned by Stevens on the charge-back withholdings is not returned or credited to owner-operators.

350. Stevens does not disclose to owner-operators that the charge-back withholdings have earned interest.

351. Stevens does not disclose to owner-operators that Stevens has earned interest on the charge-back withholdings which it has not returned to owner-operators.

352. Stevens uses the money collected through the charge-backs to purchase an extensive array of insurance policies which primarily benefit the company itself, including, among others, coverage for its own vehicles and employees, its garages and warehouses, and a $30-million umbrella policy:

(a) Stevens procures under- and un-insured motorist coverage, medpay coverage, and personal-injury protection coverage—all of which benefit Stevens and its employees. The company does not disclose these coverages to owner-operators, nor does it advise them of their ability to submit claims under these coverages.

(b) Stevens never provides owner-operators with copies of the policies or the terms, definitions, and exclusions of the policies. Thus, if an owner-operator seeks coverage, could seek coverage, submits a claim, or challenges the handling of a claim, Stevens "holds all

the cards" and puts itself in between the insurance carrier and its policy on the one hand and the owner-operator on the other. Stevens deprives owner-operators of the ability to meaningfully ascertain or assert their rights as insureds.

353. Stevens also uses the money collected from owner-operators to pay a large commission to its insurance broker, Aegis Insurance Services, which is as much as 20% of the premium. Aegis's President is Scott Stevens, a cousin of the family who founded and continue to operate Stevens Van Lines. Aegis has been the primary, if not exclusive, broker for Stevens for decades. Stevens does not disclose to owner-operators (a) that it is using their money to pay an insurance broker substantial commissions, (b) that Scott Stevens is a Stevens family member, or (c) that Aegis has been the broker for many years.

354. Stevens also uses the money collected from owner-operators to finance its own internal Collision claims regime (*i.e.,* the company's exposure to Collision claims by owner-operators for damages that are less than the $50,000 Collision policy deductible). When performing the arbitrary "PLPD calculation," Stevens includes an "estimated-loss" reserve. That is, rather than pass on the premium costs of insurance to owner-operators, Stevens is passing on *the company's own liability* for amounts within the deductible.

(a) Stevens does not return any portion of the estimated-loss reserve to owner-operators at the end of the policy period.

(b) Stevens does not return the portion of the estimated-loss reserve paid by an individual owner-operator to that individual operator if, at the end of the policy period, he did not exhaust that portion of the reserve by making his own claims.

(c) Stevens handles all Collision claims under the deductible itself. The company has a direct financial interest in paying-out to owner-operators as little as possible. This creates a clear conflict-of-interest. Stevens does not take adequate steps to address or disclose this conflict-of-interest.

355. Stevens obtained Auto Liability policies with limits far in excess of the federal minimum for PLPD. The costs of these higher-limit policies were more than the costs of

obtaining the federal minimum policies would have been. Stevens did not disclose that it was obtaining Auto Liability policies that were beyond PLPD.

356. Stevens's acts and omissions set forth herein constitute breach of contract. Mr. Lucas and Class members performed their obligations under their contracts.

357. As a result of Stevens's breaches of contract, Mr. Lucas and the Class are entitled to damages and other appropriate relief.

THIRD CAUSE OF ACTION

FRAUD

358. Plaintiff re-alleges all of the facts asserted in paragraphs 1-357.

359. This cause of action is brought under the common law for fraud.

360. Stevens's agreements violate federal law because they do not make required disclosures about the company's insurance practices. These non-disclosures harm owner-operators by denying them information necessary to make an informed choice about whether to opt-out of Stevens's force-placed insurance regime. As a result, Stevens collects from owner-operators more than the actual costs of the owner-operator's coverage—and more than the cost of coverage the owner-operator could obtain on the open market.

361. Stevens's insurance arrangements deprive owner-operators of important coverage benefits and otherwise impair owner-operators' rights as insureds. Stevens takes on high-deductible policies and handles all claims under the deductibles internally, using funds it collects from owner-operators: the internal claims handling is not done by a licensed adjuster or regulated insurance carrier, and there are no rights to appeal the company's unilateral coverage decisions. Stevens also fails to provide owner-operators an opportunity to make claims for certain benefits that should be made available to them under policies purchased using owner-operators' funds. Stevens does not disclose any of these arrangements, which deprives owner-operators of the opportunity to make an informed decision to opt-out of them.

362. Stevens charges owner-operators more than the actual cost of coverage, and the company purchased a wide variety of insurance policies using owner-operators' funds. But both

federal law and the written agreements between Stevens and owner-operators only permit the company to charge owner-operators the actual cost of coverage, and to purchase only certain specifically-enumerated types of insurance. Stevens does not disclose the actual costs of coverage for an individual owner-operator (or owner-operators in the aggregate), nor does the company disclose that it is charging owner-operators to fund the purchase of policies that are not identified in the written agreement. These non-disclosures deprive owner-operators of the opportunity to make an informed decision to opt-out of Stevens's insurance regime.

363. Stevens purchases extensive insurance coverages to protect itself from a wide range of potential liabilities. Stevens pays for its own insurance coverages by passing on its own costs to owner-operators, and the company establishes a "loss reserve" in its general fund in order to pay claims that are within its deductibles. Stevens does not disclose to owner-operators that it is financing its own insurance coverage and deductible liabilities through the charges made to owner-operators. This non-disclosure prevents owner-operators from fairly considering whether to opt-out of Stevens's insurance regimes and charge-backs.

364. Stevens pays a broker's fee of up to 20% of the total premium paid on a wide range of policies to a firm managed by a cousin of the Stevens family, who has been the primary broker for decades, and passes this cost on in its entirety to owner-operators. Stevens does not disclose these facts, which prevents owner-operators from evaluating whether the insurance costs Stevens passes on to them are fair and appropriate.

365. Stevens collects money from owner-operators allegedly as "insurance premiums" and deposits a substantial portion of that money in the company's general operating fund to cover the company's own future insurance liabilities and/or future payouts under the company's high-deductible insurance policies. This "future loss reserve is" not kept in escrow and unused funds in the reserve are not returned to owner-operators at the end of the policy period. These practices are not disclosed to owner-operators, who are therefore unable to vindicate their reserve and escrow rights.

366. Defendant Stevens Van Lines is an "authorized carrier" under federal law. The company operates under its own Department of Transportation license, as well as under the DOT licenses of a number of wholly-owned subsidiaries. The company's primary business is moving and relocating people's belongings all across the country (*e.g.,* when a member of the military is reassigned to a new location). The company and its subsidiaries (collectively, "Stevens") employ truck and van drivers, as well as dispatchers, administrators, and management. Stevens owns and operates vans, tractors, trailers, and other vehicles, as well as offices, warehouses, garages, and storage facilities.

367. Most of Stevens's interstate trucking and moving activities are carried out by independent contractors, with whom the company enters into uniform written agreements. These independent contractors are truck drivers, most of whom have experience in the moving industry. Many of these truck drivers are away from home for long periods of time and for many nights throughout the year while working for Stevens, and are therefore geographically dispersed.

368. Stevens's independent contractors are also "owner-operators" under federal law. These owner-operators own (or have the exclusive rights over) one or more tractors, which they lease back to Stevens for use in the company's business and in order to haul good under Stevens's authority.

369. Owner-operators lease their tractors to Stevens and enter into an independent contractor relationship by way of a uniform "Independent Contractor Agreement" or an identical of substantially-similar written agreement with a different name. That agreement (referred to in this complaint as the "Lease") is defined by federal law as a "lease" and required by federal law to contain certain provisions and disclosures.

370. Federal law requires minimum "Public Liability" insurance coverage be in place to cover the liability for bodily injury and property damage to third-persons that arises from the trucking activities undertaken on Stevens's behalf by owner-operators. In the industry, Public Liability coverage is often referred to as "PLPD," meaning "public liability and property damage insurance."

371. Federal law requires both Stevens and its owner-operators to maintain $750,000 in "Public Liability" insurance coverage while hauling household goods in interstate transit.

372. Although the Lease does not mention Public Liability or PLPD coverage, it does contain a provision regarding insurance. *See* Exhibit A, Lease between Mr. Lucas and Stevens, p. 4. That provision says that either (a) the owner-operator must secure "Auto Public Liability, Auto Property Liability, Auto Bodily Injury, General Liability, and Cargo Insurance upon his vehicle"; or (b) Stevens will "place such insurance with an authorized insurance carrier and charge the cost thereof to the account of the [owner-operator]." *Id.* The Lease requires that Stevens be covered under the insurance policies.

373. The Lease does not define "Auto Public Liability," "Auto Property Liability," "Auto Bodily Injury," "General Liability," or "Cargo."

374. Under the definitions established in federal regulations and by industry practice, "Auto Public Liability," "Auto Property Liability" and "Auto Bodily Injury" are the components of Public Liability or PLPD coverage.

375. Under the definitions established in federal regulations and by industry practice, Public Liability or PLPD coverage does not include "General Liability" insurance. Indeed, General Liability coverage insures Stevens's non-trucking-related business activities. As such, federal law does not require owner-operators to maintain General Liability coverage or to maintain insurance to cover non-trucking-related business activities.

376. Under the definitions established in federal regulations and by industry practice, Public Liability or PLPD coverage does not include "Cargo" insurance. Indeed, Cargo insurance covers damage to Stevens's customers' goods (*e.g.,* furniture) that are being moved from one location to another.

377. In practice, Stevens places insurance for owner-operators and charges them for it. (The few owner-operators who secure their own insurance and are *not* charged by Stevens for insurance are excluded from the Class.) The mechanism by which Stevens charges owner-operators for the costs of the forced-place insurance is a "charge-back." A charge-back is a

standard practice in the trucking industry, and charge-backs are regulated by federal law—among other things, the Lease must make specific disclosures about the charge-backs which will be assessed to owner-operators.

378. Stevens makes two charge-backs to owner-operators for insurance. One is for "PLPD" and the other is for "Collision."

379. The Lease does not authorize Stevens to charge-back for Collision insurance. The Lease does not disclose how the Collision charge-back will be calculated or what amount the owner-operator will be charged back.

380. The Lease does not mention a PLPD charge-back, nor does it state which of the enumerated insurance coverages Stevens means to include in its PLPD charge-backs. The Lease does not disclose how the PLPD charge-back will be calculated or what amount the owner-operator will be charged back.

381. Stevens charges-back to owner-operators for PLPD each month. The amount of the charge-back is 4.5% of the owner-operator's gross revenue related to trucking activities that month.

382. Stevens charges-back to owner-operators for Collision each month. The amount of the charge-back is .5% of the owner-operator's gross revenue related to trucking activities that month.

383. The PLPD and Collision charge-backs appear in a document called a Monthly Settlement Statement that Stevens produces to each owner-operator each month. *See* Exhibit B, Example of a Monthly Settlement Statement for Mr. Lucas.

384. Stevens collects hundreds of thousands of dollars from owner-operators through its PLPD and Collision charge-backs each year.

385. The amount of money Stevens collects from owner-operators under the PLPD and Collision charge-backs far exceeds the actual costs of obtaining the coverages for individual owner-operators authorized by the Leases.

386. The amount of money Stevens collects from owner-operators under the PLPD charge-back far exceeds the actual costs of obtaining the Public Liability coverages for owner-operators required by federal law.

387. The amount of money Stevens collects from owner-operators under the PLPD charge-back far exceeds the actual costs of obtaining "Auto Public Liability," "Auto Property Liability" and "Auto Bodily Injury" coverages for owner-operators.

388. The amount of money Stevens collects from owner-operators under the Collision charge-back far exceeds the actual costs of obtaining Collision insurance for individual owner-operators.

389. Stevens is using a substantial portion of the money collected from owner-operators through PLPD and/or Collision charge-backs to fund its own extensive insurance protections, including its purchase of policies and coverages which solely benefit Stevens and which are not associated with risks or liabilities arising from owner-operators' activities.

390. The actual costs of insuring an owner-operator for PLPD and Collision on the open market are much less than the amounts collected by Stevens through its charge-backs to owner-operators.

391. Under 49 C.F.R. § 376.12(j), a lease between an authorized carrier and a "lessor" (*i.e.,* an owner-operator) must meet the following requirements:

(a) If the authorized carrier will make a charge-back to the lessor for any insurance for protection of the public, or for the operation of the leased equipment, the lease must specify the amount which will be charged-back to the lessor;

(b) If the lessor purchased any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease must specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor; and,

(c) If the lessor purchased insurance through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for

each such policy that must include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable.

392. Stevens's Lease between itself and owner-operators violates 49 C.F.R. § 376.12(j) in the following respects:

(a) Although Stevens was going to (and did) make charge-backs for insurance, the Lease does not specify the amounts which would be charged-back;

(b) Although Stevens placed insurance for owner-operators, the Lease does not specify that Stevens would provide the owner-operator with a copy of each policy upon his or her request; and

(c) Although Stevens placed insurance for owner-operators, the Lease does not specify that Stevens would provide the owner-operator with a certificate of insurance for each policy, and which would include the required coverage information.

393. As a direct result of these non-disclosures, owner-operators are unable to compare the insurance costs they are being assessed by Stevens through the charge-backs with the actual costs of insurance on the open market.

394. As a direct result of these non-disclosures, owner-operators are unable to compare the insurance coverages and benefits provided by the Stevens force-placed policies with alternative insurance policies available in the open market.

395. As a direct result of these non-disclosures, owner-operators are unable to assert their contractual rights as insureds under the Stevens force-placed insurance policies.

396. Stevens does not procure individual insurance policies for each owner-operator.

397. Stevens does not procure insurance coverage for owner-operators on an individual basis.

398. Stevens does not procure insurance policies or coverages for which an individual owner-operator is the "named insured."

399. Stevens is not charged by any insurance company a premium associated with any individual owner-operator.

400. Stevens purchases insurance policies and coverages for itself, naming the company as the named insured. It arranges for certain owner-operators to be listed as "additional insureds" when they are operating under Stevens's authority.

401. Stevens never discloses to owner-operators that it is not procuring individual insurance policies, but is instead adding owner-operators to certain of its own coverages under certain situations.

402. Stevens uses owner-operators' money to buy a Collision policy that covers dozens of Stevens-owned tractors, trailers, vans, and other vehicles. Stevens arranges for owner-operators or their tractors to be listed as "additional insureds" under that policy when the unit is being operated under Stevens's authority.

403. Stevens does not disclose to owner-operators that they have no Collision coverage when they are not operating under Stevens's authority.

404. Stevens's Collision policy has a $50,000 deductible. No owner-operator's tractor has a loss-value greater than $50,000.

405. Stevens does not disclose to owner-operators that the Collision policy has a $50,000 deductible.

406. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that the Collision policy has a $50,000 deductible.

407. Prior to charging-back money from owner-operators, Stevens does not disclose to the owner-operators that the Collision policy has a $50,000 deductible.

408. Stevens internally handles, adjusts, and pays owner-operators' claims for collision or property damage.

409. Stevens is not an insurance company.

410. Stevens is not licensed or authorized to do business as an insurance company in any state.

411. Stevens is not self-insured relative to collision damage.

412. Stevens does not employ licensed insurance or claims adjusters.

413. Stevens's employees act as claims handlers ("internal claims handlers") for collision or property damage claims made by owner-operators.

414. Stevens's internal claims handlers do not follow any written policy or procedures when handling or adjusting owner-operators' collision or property damage claims.

415. Stevens's internal claims handlers do not follow, consult, or comply with any terms or provisions of any insurance policies when handling or adjusting owner-operators' collision or property damage claims.

416. Stevens's internal claims handlers have not received adequate training on any policies or procedures relative to the handling or adjusting of owner-operators' collision or property damage claims.

417. Stevens alone determines whether it will reimburse an owner-operator for collision or property damage.

418. Stevens determines whether it will reimburse an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

419. Stevens alone determines how much, if any, it will reimburse an owner-operator for collision or property damage.

420. Stevens determines how much, if any, it will reimburse an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

421. Stevens does not provide owner-operators with any appeals process for its valuations of owner-operators' collision or property damage claims.

422. Stevens does not provide owner-operators with any appeals process for its denial of owner-operators' collision or property damage claims.

423. Stevens does not disclose this alternative, unauthorized, internal claims process to owner-operators.

424. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that their collision or property damage claims will be adjusted or handled through this alternative, unauthorized, internal claims process.

425. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that their collision or property damage claims will be adjusted or handled through this alternative, unauthorized, internal claims process.

426. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that their collision or property damage claims will not be handled or adjusted by licensed or independent insurance adjusters.

427. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that their collision or property damage claims will not be handled or adjusted by licensed or independent insurance adjusters.

428. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that Stevens alone will determine whether an owner-operator will be compensated for collision or property damage.

429. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that Stevens alone will determine whether an owner-operator will be compensated for collision or property damage.

430. Prior to force-placing Collision insurance on owner-operators, Stevens does not disclose to the owner-operators that Stevens will determine how much, if any, it will reimburse or compensate an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

431. Prior to charging-back money from owner-operators for Collision insurance, Stevens does not disclose to the owner-operators that Stevens will determine how much, if any, it will reimburse or compensate an owner-operator for collision or property damage without regard for any terms or provisions of any insurance policies.

432. Stevens funds the pay-outs it makes on Collision damage claims by using the money it collects from owner-operators through charge-backs. Thus, Stevens is using money collected from one owner-operator to pay the claims of one or more other owner-operators. Stevens does not disclose that it is using owner-operators' money in this way.

433. The Lease only authorizes Stevens to charge-back to owner-operators the actual costs of the coverages enumerated in the Lease (*i.e.,* Stevens can only "charge the cost thereof").

434. The only cost of an insurance coverage is its premium.

435. Through the PLPD charge-back, Stevens charges owner operators more than the costs of the insurance premiums for the coverages enumerated in the Lease.

436. Stevens does not charge an individual owner-operator the actual cost to insure that individual owner-operator.

437. Through the PLPD charge-back, Stevens also charges all owner-operators the cost to insure Stevens itself.

438. Through the PLPD charge-back, Stevens also charges all owner-operators insurance coverages which solely benefit Stevens.

439. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages which are not enumerated in or authorized by the Lease.

440. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages which owner-operators are not required by state or federal laws to carry.

441. Through the PLPD charge-back, Stevens also charges all owner-operators for insurance coverages with coverage limits far greater than what state and federal laws require owner-operators to carry.

442. Stevens fully funds all of its own insurance policies or coverages with money taken from owner-operators through PLPD and Collision charge-backs.

443. At all relevant times, the cost to an individual owner-operator in the open market for PLPD coverage was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

444. At all relevant times, the cost to an individual owner-operator in the open market for Collision coverage was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

445. At all relevant times, the cost to an individual owner-operator in the open market for the insurance coverages enumerated in the Lease was less than the amount Stevens was charging-back to the owner-operator to allegedly obtain such coverage through Stevens.

446. The method by which Stevens determined how much of its own insurance costs to pass on to owner-operators—that is, how much of the costs are actually attributable to the owner-operators' underwriting risks—is arbitrary:

(a) Stevens's insurance carriers calculate the premium costs for various insurance policies in different ways, which are disclosed to Stevens. For example, a General Liability coverage premium was calculated based on payroll of certain Stevens's employees and the square footage of the company's office space.

(b) Stevens does not use any accepted method of attempting to attribute the premium costs for its various insurance policies to individual owner-operators (or even to owner-operators in the aggregate). Instead, Stevens created an internal, arbitrary "PLPD calculation" which is performed by Lindsey Stevens, the Vice President of Finance.

(c) Stevens claims the "PLPD calculation" justifies the PLPD charge-back rate assessed to owner-operators, but the calculation is not limited to the premium costs of PLPD coverages. Rather, it includes non-PLPD coverages; *e.g.,* a Warehouse Policy, a Garage Liability Policy, and a $30-million Umbrella Policy—none of which are authorized by the Lease, required by federal law, or disclosed by Stevens to owner-operators.

(d) There is no rational relationship between the actual premium costs to Stevens for the PLPD coverages and the PLPD calculation. Rather, the company simply charges 4.5% of an owner-operator's monthly gross revenue for PLPD.

(e) Stevens has charged owner-operators 4.5% for PLPD for decades.

(f) Stevens has charged owner-operators 4.5% for PLPD regardless of increases or decreases in the insurance premiums paid by Stevens.

(g) Stevens has charged owner-operators 4.5% for PLPD regardless of increases or decreases in actual or projected claims payouts by Stevens.

(h) The 4.5% charge-back rate is not rationally related to, derived from, and does not constitute the actual cost of insurance premiums paid by Stevens on behalf of owner-operators for the coverages enumerated in the Lease.

(i) Stevens charges owner-operators 4.5% for PLPD because Stevens believes that is the maximum it can charge and still remain competitive with other companies seeking to enter lease agreements with owner-operators.

(j) Stevens charges owner-operators 4.5% for PLPD because Stevens believes that is the maximum it can charge without owner-operators complaining or terminating their Lease.

(k) There is no rational relationship between the actual premium costs to Stevens for the Collision coverage and the Collison charge-back rate. Rather, the company simply charges 0.5% of an owner-operator's monthly gross revenue for Collision.

(l) Stevens has charged owner-operators 0.5% for Collision for decades.

(m) Stevens has charged owner-operators 0.5% for Collision regardless of any increases or decreases in the insurance rates paid by Stevens.

(n) Stevens has charged owner-operators 0.5% for Collision regardless of any increases or decreases in actual or projected claims payouts by Stevens.

(o) The 0.5% charge-back rate for Collison is not rationally related to, derived from, and does not constitute the actual cost of insurance premiums paid by Stevens on behalf of owner-operators for Collision coverage.

(p) Stevens charges owner-operators 0.5% for Collision because Stevens believes that is the maximum it can charge and still remain competitive with other companies seeking to enter lease agreements with owner-operators.

(q) Stevens charges owner-operators 0.5% for Collision because Stevens believes that is the maximum it can charge without owner-operators complaining or terminating their Lease.

447. Stevens does not disclose to owner-operators the company's method of calculating the insurance costs attributable to or charged-back to owner-operators.

448. The funds collected by Stevens through the PLPD and Collision charge-backs ("charge-back withholdings") belong to the owner-operator.

449. Each owner-operator's chargeback withholdings constitute an escrow account.

450. The chargeback withholdings are required to be held in trust by Stevens for the sole purpose of acquiring for owner-operators the insurance coverages enumerated in the Lease.

451. Stevens has a fiduciary duty to owner-operators to maintain the chargeback withholdings in an escrow account for the sole purpose of acquiring for owner-operators the insurance coverages enumerated in the Lease.

452. Stevens deposited and continues to deposit the charge-back withholdings in the company's general account.

453. Stevens co-mingled and continues to co-mingled the charge-back withholdings with other funds.

454. Stevens co-mingled and continues to co-mingle the charge-back withholdings with Stevens's own money.

455. Stevens has used and continues to use a substantial portion of the charge-back withholdings for its own purposes.

456. Stevens has treated and continues to treat the charge-back withholdings as its own money.

457. Stevens has unlawfully converted and continues to unlawfully convert a substantial portion of the charge-back withholdings.

458. Stevens does not disclose to owner-operators that charge-back withholdings are deposited in the company's general account.

459. Stevens does not disclose to owner-operators that charge-back withholdings are co-mingled with other funds.

460. Stevens does not disclose to owner-operators that charge-back withholdings are co-mingled with Stevens's own money.

461. Stevens does not disclose to owner-operators that Stevens uses a substantial portion of the charge-back withholdings for its own purposes.

462. Stevens does not disclose to owner-operators that Stevens treats the charge-back withholdings as its own money.

463. Stevens does not disclose to owner-operators that Stevens unlawfully converts a substantial portion of the charge-back withholdings.

464. The charge-back withholdings deposited by Stevens in the company's general account earns interest.

465. The interest earned by Stevens on the charge-back withholdings is not returned or credited to owner-operators.

466. Stevens does not disclose to owner-operators that the charge-back withholdings have earned interest.

467. Stevens does not disclose to owner-operators that Stevens has earned interest on the charge-back withholdings which it has not returned to owner-operators.

468. Stevens uses the money collected through the charge-backs to purchase an extensive array of insurance policies which primarily benefit the company itself, including, among others, coverage for its own vehicles and employees, its garages and warehouses, and a $30-million umbrella policy:

(a) Stevens procures under- and un-insured motorist coverage, medpay coverage, and personal-injury protection coverage—all of which benefit Stevens and its employees. The company does not disclose these coverages to owner-operators, nor does it advise them of their ability to submit claims under these coverages.

(b) Stevens never provides owner-operators with copies of the policies or the terms, definitions, and exclusions of the policies. Thus, if an owner-operator seeks coverage, could seek coverage, submits a claim, or challenges the handling of a claim, Stevens "holds all the cards" and puts itself in between the insurance carrier and its policy on the one hand and the owner-operator on the other. Stevens deprives owner-operators of the ability to meaningfully ascertain or assert their rights as insureds.

469. Stevens also uses the money collected from owner-operators to pay a large commission to its insurance broker, Aegis Insurance Services, which is as much as 20% of the premium. Aegis's President is Scott Stevens, a cousin of the family who founded and continue to operate Stevens Van Lines. Aegis has been the primary, if not exclusive, broker for Stevens for decades. Stevens does not disclose to owner-operators (a) that it is using their money to pay an insurance broker substantial commissions, (b) that Scott Stevens is a Stevens family member, or (c) that Aegis has been the broker for many years.

470. Stevens also uses the money collected from owner-operators to finance its own internal Collision claims regime (*i.e.,* the company's exposure to Collision claims by owner-operators for damages that are less than the $50,000 Collision policy deductible). When performing the arbitrary "PLPD calculation," Stevens includes an "estimated-loss" reserve. That is, rather than pass on the premium costs of insurance to owner-operators, Stevens is passing on *the company's own liability* for amounts within the deductible.

(a) Stevens does not return any portion of the estimated-loss reserve to owner-operators at the end of the policy period.

(b) Stevens does not return the portion of the estimated-loss reserve paid by an individual owner-operator to that individual operator if, at the end of the policy period, he did not exhaust that portion of the reserve by making his own claims.

(c) Stevens handles all Collision claims under the deductible itself. The company has a direct financial interest in paying-out to owner-operators as little as possible.

This creates a clear conflict-of-interest. Stevens does not take adequate steps to address or disclose this conflict-of-interest.

471. Stevens obtained Auto Liability policies with limits far in excess of the federal minimum for PLPD. The costs of these higher-limit policies were more than the costs of obtaining the federal minimum policies would have been. Stevens did not disclose that it was obtaining Auto Liability policies that were beyond PLPD.

472. Stevens misrepresentations and omissions of material facts, set forth herein, constitute fraud. As a direct and proximate result of Stevens's fraud, Mr. Lucas and the Class have sustained damages.

473. Given Stevens's fraud, the imposition of punitive damages is warranted.

474. Given Stevens's fraudulent conduct, the statute of limitations applicable to each cause of action pled in this complaint should be equitably tolled.

PRAYER FOR RELIEF

Therefore, the plaintiff seeks judgment against the defendant as follows:

A. An order certifying this action as a class action under Federal Rule of Civil Procedure 23;

B. An order appointing the named plaintiff as the class representative;

C. An order appointing undersigned counsel as class counsel;

D. Damages in excess of $5,000,000 on each cause of action;

E. Punitive damages as allowed by law;

F. Attorney's fees under 49 U.S.C. § 14704(e) or any other applicable provision of statutory or common law;

G. Costs of suit;

H. Pre- and post-judgment interest;

I. Declaratory, equitable, and injunctive relief;

J. And order tolling the statute of limitations; and

K. Such other relief as this Court finds just and proper.

JURY DEMAND

The plaintiff demands a trial by jury.

Respectfully submitted,

s/ Drew Legando

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Counsel for Plaintiff

270-542

INDEPENDENT CONTRACTOR'S AGREEMENT

THIS AGREEMENT, made and entered into this 14 day of Dec, 2011, by and between STEVENS VAN LINES, INC., a Minnesota Corporation, hereinafter referred to as CARRIER, and Glen Lucas, Lucas Express 162 W., now located at, South St. State of Akron, OH 44311, hereafter referred to as CONTRACTOR.

WITNESSETH: that

WHEREAS, CARRIER is a transporter of household goods by motor vehicle lawfully engaged in the business of transporting goods, wares, and merchandise for hire upon the public highways through the United States, Canada and Alaska, under the trade name of STEVENS VAN LINES, INC.

WHEREAS, CONTRACTOR is the owner or lessee of the motor-powered vehicle described and desires from time to time to use such motor-powered vehicle or replacement thereof in the services of the CARRIER in its business as a transporter of goods, wares, and merchandise.

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WHEREAS, CONTRACTOR is and/or employs persons who are qualified and licensed to operate vehicles used in the business of CARRIER.

AND, WHEREAS, it is deemed mutually advantageous by the parties to join together in order that contracts entered into by CARRIER with third parties will be fulfilled in part by CONTRACTOR, operating as an INDEPENDENT CONTRACTOR.

NOW, THEREFORE, in consideration of the above premises and the mutual promises, covenants, provisions and conditions hereinafter contained, the partied hereto agree as follows:

1. EQUIPMENT AND IDENTIFICATION

A. THE CONTRACTOR will furnish services hereunder to the CARRIER through use of the vehicle described above, and/or such other vehicle or vehicles as may be approved by CARRIER. Any such vehicle shall, before such use be painted at the CONTRACTOR'S expense, in accordance with the standard CARRIER'S colors as designated by the carrier, and will be repainted at the CONTRACTOR'S expense whenever, in the opinion of the CARRIER, there is need therefore.

2. HAULING

As respect to any shipping contract or bill of lading entered into by the CARRIER with a consignor or consignee, upon agreement of the CARRIER and the CONTRACTOR for

the latter to undertake responsibility in respect thereof, the CONTRACTOR shall deliver these to its destination in accordance with such shipping contract or bill of lading, and unload such goods, wares and merchandise: and in connection therewith comply with all the rules and regulations and instruction of such contract or bill of lading and the DOT and any and all other regulatory bodies having jurisdiction over CARRIER'S operation.

A. The CONTRACTOR shall be held liable for the materials and inside equipment of the trailer assigned to him to transport. Each CONTRACTOR shall be obligated to count and inspect all inside equipment of trailer designated to him signing inventory as to count and condition of equipment. Periodically, inventory and inspection surveys shall be initiated with the ultimate condition that CONTRACTOR shall replace, at his cost, any shortages incurred while he has custody of the trailer.

B. The CARRIER shall be responsible for any ordinary wear and tear of trailer except that in cases involving negligence of the part of the CONTRACTOR, then in those instances, it shall be the CONTRACTOR'S responsibility to defray the cost of repair or replacement

C. It shall be the responsibility of the CONTRACTOR to preserve, safeguard, and maintain the tires on the trailer unit, normal wear and tear excepted, and to recommend to CARRIER their repair, replacement or adjustment when appropriate. Each tire utilized on the trailer unit shall be marked at CARRIER'S option in accordance with CARRIER'S serial number, records or performance and maintenance being recorded and kept at the general offices of the CARRIER. These tires shall be accounted for, and in event of blow-out or other causes for replacement, shall be turned in at designated points for salvage or for recording date by the CARRIER. The cost of replaced trailer tires will be paid by CARRIER except CONTRACTOR will be responsible for damages caused by his negligence.

D. The CONTRACTOR agrees to adhere to, and abide by all the rules, regulation and procedures as prescribed by the Department of Transportation and any and all other regulatory bodies, Federal and State, having jurisdiction in the premises. In addition, CONTRACTOR represents that he has read and is familiar with the rules and regulations of the CARRIER in respect to its operation and ***specifically the Federal Motor Carrier Safety Regulations, the Stevens Van Lines, Inc., driver handbook and the DOD handbook.*** The CONTRACTOR agrees to adhere and abide by them so long as they do not interfere with CONTRACTOR'S status as an independent contractor. The CONTRACTOR acknowledges that as the driver of his vehicle he is responsible for his driving decisions and performance

and therefore subject and liable for any penalties or fines resulting from failure to comply with Federal, State and Local Laws and ordinances.

3. **LABOR**

CONTRACTOR will, without expense to the CARRIER, provide all labor necessary in the performance of activities contracted for by CONTRACTOR under this agreement and CONTRACTOR will hire, direct, pay, control, and discharge all of CONTRACTOR'S employees, and will report and pay any taxes levied by reason of CONTRACTOR'S employment of such employees, including Federal Income Tax Withholding, Social Security Tax, Unemployment Compensation Tax , and all levies and assessments of similar character howsoever denominated.

4. **PACKING**

CONTRACTOR will pack and crate and provide all containers and material required therefore, knock down when appropriate, load and haul all goods, wares, and merchandise and, upon delivery, will unload, and unpack, uncrate, assemble the items knocked down, and place the same in accordance with the applicable shipping contract or bill of lading and in accordance with CARRIER'S tariffs and standards and the duties and obligations imposed upon CARRIER by public authority.

5. **DRIVING**

While in the service of CARRIER, CONTRACTOR will neither assign, require, nor permit any non-qualified person to drive any vehicle while it is being operated in the service of the CARRIER under this AGREEMENT; nor will he use any non-qualified vehicle in such service. For this purpose a person or vehicle will be considered "qualified" if, and only if, and for so long as they have been approved in writing for service hereunder by ***a representative of Stevens Worldwide Van Lines, Inc., Licensing and Logs Department.*** However, the CONTRACTOR may permit a co-driver, qualified in accordance with applicable Department of Transportation Regulations and qualified in the Stevens system, to act as relief driver so long as qualified driver remains personally on the subject vehicle. Pending notice to the contrary, the vehicle(s) described in the preamble to the AGREEMENT is (are) hereby declared qualified.

6. **INSURANCE**

A. The CONTRACTOR will provide, at his own expense, Auto Public Liability, Auto Property Liability, Auto Bodily Injury, General Liability and Cargo Insurance upon his vehicle in such limits and with such deductibles as may in the opinion of the CARRIER be considered necessary for the protection of the interest concerned, and in no event to be less than the requirements of State and Federal laws; or, if not provided, this AGREEMENT for each of these purposes authorizes the CARRIER to place such insurance with an authorized insurance

carrier and charge the cost thereof to the account of the CONTRACTOR. Such insurance shall jointly cover the liability of the CARRIER and the CONTRACTOR as their respective interests appear. Nothing herein shall be construed as relieving the CARRIER of its responsibility to the public and to the Department of Transportation with respect to the filing of Certificates of Insurance.

B. It is expressly understood by the CONTRACTOR that in no event does the CARRIER assume any liability of any nature whatsoever to the CONTRACTOR for any loss or damage which may result from fire, theft, collision or other casualty.

C. It is anticipated that CARRIER may be able to offer CONTRACTOR insurance coverages obtained with CARRIER'S assistance. If available, such coverage may be obtained by CONTRACTOR on its request and at its expense. CARRIER agrees that premiums thereafter shall be charged to CONTRACTOR on a monthly basis and that the rate thereof shall be increased only upon at least a thirty (30) day's written notice.

7. **WORKER'S COMPENSATION**

CONTRACTOR will, without expense to the CARRIER, provide Worker's Compensation and Employer's Liability Insurance as required by applicable Federal and State Law, or otherwise comply with such applicable law respecting such type of liability, for individuals whom CONTRACTOR employs to provide CONTRACTOR'S service under this AGREEMENT. CONTRACTOR will, upon request by the CARRIER, furnish CARRIER with evidence satisfactory to CARRIER of compliance with the provision of this paragraph. CONTRACTOR will also supply carrier with proof of Occupational Health Insurance coverage covering CONTRACTOR in case of injury or accident. Said coverage to be in amounts satisfactory to CARRIER.

8. **LIMITED INDEMNITY**

If for any reason CARRIER shall become liable or obligated to pay the wages of CONTRACTOR'S employees; or pay Federal Income Tax Withholding, Social Security Tax, Unemployment Compensation Tax, or any other levies or assessments of similar character, by reason of CONTRACTOR'S employment of employees, or to make Workers Compensation or Employer's Liability or other similar payments arising out of injury to or death of any CONTRACTOR'S employees, CONTRACTOR will indemnify CARRIER for the amount thereof, including all expenses and reasonable attorney fees incident thereto,

9. **BONDING**

CONTRACTOR agrees to provide, at CONTRACTOR'S expense, a fidelity bond to CARRIER covering the faithful performance by CONTRACTOR and CONTRACTOR'S employees in an amount not less than Ten Thousand Dollars ($10,000.00) for each such employee. Contractor further agrees to provide CARRIER with evidence of such bonding acceptable to CARRIER, which shall provide that immediate notice will be given to CARRIER in the event of the cancellation of any such bond. In lieu of above, CARRIER will charge CONTRACTOR'S ACCOUNT $350.00 per year for a bonding fee.

10. **RESERVE**

As security for CONTRACTOR'S performance hereunder, CONTRACTOR will deposit or accumulate with CARRIER, and at all times maintain with carrier a claims and equipment cash reserve in the amount of Three Thousand Dollars ($3,000.00). Said cash reserve shall be deposited with CARRIER before CONTRACTOR commences service hereunder, or in the alternative, CARRIER may permit said cash reserve to be accumulated or, as applicable, replenished by deduction by CARRIER from amounts otherwise due CONTRACTOR hereunder in the amount of Two Hundred Dollars ($200.00) per month or Four Hundred Dollars ($400.00) per month during the months of June, July, and August; said deductions to continue until the accumulation or replenishment of said case reserve. Any amounts in such reserve may at CARRIER'S discretion, with written notice to CONTRACTOR, be applied towards satisfaction of CONTRACTOR'S obligations hereunder to CARRIER. Five percent annual rate simple interest will be paid on the cash reserve deposited with the CARRIER and credited to CONTRACTOR'S account each year. CONTRACTOR will be entitled to an explanation of all transactions involving the cash reserve at any time. A final accounting and credit will be given to the CONTRACTOR forty-five days after his termination, providing all revenue documents have been turned in; all of CARRIER'S equipment in CONTRACTOR'S possession has been accounted for; all logs, permits, leases, registrations, and any other operating documents that have Stevens name on them have been submitted to the CARRIER; and CONTRACTOR'S claims expense have been identified.

11. **COLLECTIONS**

CONTRACTOR will collect and promptly remit to CARRIER all amounts deposited or prepaid by CARRIER'S consignors or consignees and any and all monies otherwise due CARRIER and all monies for which CARRIER is responsible, in amounts as shown on bills in CARRIER'S name for any goods which CONTRACTOR delivers, or which otherwise come into CONTRACTOR'S possession, and will turn into CARRIER all of said monies, together with necessary support papers properly executed, immediately after delivery under this AGREEMENT, or as otherwise may be directed by CARRIER. CONTRACTOR expressly agrees that said monies are the exclusive property of the

CARRIER, regardless of the status of the account between CARRIER and CONTRACTOR and that the retention or use by CONTRACTOR or any part thereof for any purpose whatsoever, other than to turn over to CARRIER as herein provided or as otherwise authorized in writing by CARRIER is a misappropriation of CARRIER'S property, whether done by CONTRACTOR directly or by any of CONTRACTOR'S agents, servants, or employees. In the event such collections are not remitted to CARRIER within three (3) business days after delivery, to be determined by postmark. CONTRACTOR agrees to pay a ***late*** charge of five percent (5%) of the amount not so remitted.

12. **CLAIMS**

CONTRACTOR will reimburse CARRIER for all amounts for which CARRIER may become liable to CONTRACTOR'S shippers, consignors, or consignees and pay in settlement of claims for loss or damage to goods, wares, and merchandise occurring while same are in CONTRACTOR'S custody or possession under the provisions of this AGREEMENT. If Cargo Insurance is not in effect, CONTRACTOR'S responsibility hereunder shall be unlimited. However, if Cargo Insurance is in effect, the CONTRACTOR will be charged for the actual cost or replacement of article, not to exceed One Hundred Fifty Dollars ($150.00) per shipment with the exception of lost or missing items. If CONTRACTOR'S claims as a percentage of linehaul (total claims liability divided by total linehaul) exceed 3.5% CONTRACTOR will be charged actual amount of cargo claim up to Three Hundred Dollars ($300.00) with the exceptions of lost or missing items. This is an acknowledged penalty for excessive claims experience. **IF** there are lost items, the maximum charge to the CONTRACTOR will be increased by an additional Seven Hundred Fifty Dollars ($750.00) per shipment (not to exceed the value of the lost items.) However, should negligence by CONTRACTOR be shown, CONTRACTOR will be responsible for the entire amount of the paid claim. Also, CONTRACTOR'S maximum claim liability may be adjusted if the major carrier changed their claim chargeback rules. CONTRACTOR'S property damage claim chargeback will be a maximum liability of One Thousand Dollars ($1,000.00) per occurrence. CONTRACTOR will be given a written explanation and itemization of each claim.

13. **MAINTENANCE**

The CONTRACTOR will keep each qualified vehicle used in providing service hereunder, and each trailer entrusted to CONTRACTOR hereunder, in good mechanical condition at all times, and in compliance with the safety provision of each state and of the United States Department of Transportation and immediately make mechanical correction or meet the requirements necessary to the proper operation of said vehicle and trailer. The CONTRACTOR will pay for all repairs of each such vehicle and will not incur any obligation in the name of the CARRIER, nor open any charge accounts in the name of the CARRIER, whether for the repair, maintenance, or operation of such vehicle, or otherwise. CARRIER will pay for repairs to the trailer, except, CONTRACTOR will be responsible for and pay for all repairs caused by his or her negligence.

14. OPERATION COSTS - INCLUDING LICENSES AND PERMITS

CONTRACTOR will pay or cause to be paid all the costs of operating CONTRACTOR'S vehicles including without limitation the cost of pick-up and hold, fuel, oil, tires, lubricants, garaging, repairs, labor and cost of all bridge, tunnel, ferry, road and other similar tolls incident to the ownership and operation of such vehicle, including taxes on all or any of such items and including all permits, licenses, certificates, and franchises necessary to operate a vehicle in the service of the CARRIER.

A. It shall be the responsibility of the CONTRACTOR to furnish the CARRIER sufficient notice (not less than three weeks) of his or her intention to seek qualification of any vehicle so that necessary applications and proper registration of said vehicle can be made to properly qualify it in the CARRIER'S service. The CONTRACTOR shall be obligated to pay any additional fees or costs incurred in the process of qualifying such vehicle.

15. TAXES

CONTRACTOR will pay or cause to be paid all taxes incident to the ownership and operation of all vehicles and other property used by CONTRACTOR in providing service hereunder.

16. SHIPPING AND SERVICE CONTRACTS

A. All contracts and/or bills of lading for the hauling of goods, wares, and merchandise and/or other services shall be between the CARRIER and the shipper or consignor. In the event the CONTRACTOR has the opportunity to haul goods, wares, and merchandise for another carrier, he will in each specific instance, notify the DESIGNATED OFFICE of the CARRIER prior to loading and furnish sufficient detail to enable the CARRIER to contract for the handling of such shipment in CARRIER's own name. DESIGNATED OFFICE is defined as that office from which CONTRACTOR is dispatched.

B. It is expressly understood and agreed that the CONTRACTOR represents the CARRIER only to the extent authorized by the terms of this AGREEMENT and not otherwise.

C. Further, it is definitely understood and agreed that while in the service of CARRIER, the CONTRACTOR will comply with and abide by all Federal, State, Local and various other restrictions placed on CARRIER.

17. **OTHER HAULING**

The CONTRACTOR has the right to haul goods, wares, and merchandise for any person in addition to those under contract with the CARRIER, provided that:

A. No such haulage shall make use of any trailer, base plate or permit of CARRIER.

B. No such haulage shall be included within scope of any General Liability, Auto Public Liability, and Auto Property Damage and Bodily Injury and Cargo Insurance coverage purchased by CARRIER for CONTRACTOR hereunder or by CONTRACTOR through CARRIER hereunder.

C. No such haulage shall make use of any property showing a visible reference to CARRIER'S name, DOT number, State numbers or permits.

18. **CONTRACTOR LEGAL COMPLIANCE**

The CONTRACTOR expressly agrees to comply with all Federal and State Laws and the ordinances of each and every city, village, and municipality into and through which his vehicles may be operated, hereunder and also, the rules and regulations of any governmental agency having jurisdiction over the highways of any State or Province of the operation of said vehicle, including all laws, ordinances, rules, and regulations relating to licensing, speed, safety devices, and equipment, weight, tonnage, width, height, length, etc.

19. **CHARGES**

The CARRIER may charge to the CONTRACTOR'S account any and all expenses incurred by the CARRIER for the express benefit of the contractor.

20. **REMUNERATION**

A. The CONTRACTOR shall be credited with and is entitled to receive from the CARRIER in full payment for all services furnished hereunder an amount determined in accordance with the INDEPENDENT CONTRACTOR'S RATE SCHEDULE, a current copy of which is attached to this AGREEMENT and incorporated herein by referenced and furnished to the CONTRACTOR along with a copy of this INDEPENDENT CONTRACTOR'S AGREEMENT, an additional copy of which is on file in the DESIGNATED OFFICE of the CARRIER and available for inspection by the contractor, and which amount is designated in such INDEPENDENT CONTRACTOR'S RATE SCHEDULE as the contractor's income. It is further agreed that the CARRIER will provide 30 days written notice to CONTRACTOR of any changes to the Rate Schedule or of any changes to the Rules and Regulations.

B. CONTRACTOR is entitled to a rated copy of all bills of lading he/she has serviced. CONTRACTOR may obtain said copy from the CARRIER when turning in the shipping papers. All balances due to CONTRACTOR in accordance with CONTRACTOR'S Agreement hereinafter referred to as "INDEPENDENT CONTRACTOR'S RATE SCHEDULE" will be credited to the account of said CONTRACTOR by the last day of each month on those shipments which have been delivered and the shipping papers have been received and cleared through the DESIGNATED OFFICE prior to the last day of the month.

C. CARRIER agrees to advance CONTRACTOR sums of money during the month provided such advances do not exceed 26% of the CONTRACTOR'S loaded linehaul. Such advances will be deducted in determining net commission payable to CONTRACTOR.

21. **ACCIDENTS; (WORKERS COMPENSATION, CARGO, PL/PD, AUTO AND GENERAL LIABILITY)**

CONTRACTOR will notify DESIGNATED OFFICE of the CARRIER by telephone within two hours after occurrence of any accident to report all details pertaining to the accident to enable CARRIER to conform with the requirements of public authorities and CARRIER'S insurers. In addition, CONTRACTOR will notify the CARRIER in writing within five days of the date of accident, conveying all details pertaining to the accident in accordance with CARRIER'S current practice of reporting any accident involving any haulage under CARRIER'S name by an independent contractor of CARRIER and of any situation or occurrence with CONTRACTOR'S knowledge which affects, or is likely to affect, the interest of CARRIER, including any damage to, loss of, or delay in delivery of cargo in the custody or possession of CONTRACTOR.

22. **REPORTS**

CONTRACTOR will report to CARRIER, in the manner and as requested by CARRIER, all data in connection with CARRIER'S business and CONTRACTOR'S performance under this AGREEMENT in sufficient form and detail to enable CARRIER to make all reports required by law, and will keep CARRIER informed daily of his whereabouts and of the contents of the vehicle to enable CARRIER to satisfy the needs of its customers.

23. **COMMUNICATIONS**

Each party hereto, respecting activities pursuant to this AGREEMENT, shall prepay the cost of its communications whether or not such communications are required by this AGREEMENT, and neither party shall be required to accept any communication charges, collect, except solely such telegraphic or telephonic communications to CARRIER from CONTRACTOR in charge of a vehicle in operation in CARRIER'S business under this AGREEMENT which occur because of specific and individual requests or instructions to such drivers from CARRIER'S dispatchers, or are so required

by dispatching procedure of CARRIER. CARRIER will credit CONTRACTOR with the cost of any communication it received from CONTRACTOR which in the opinion of the CARRIER should not be assumed by CONTRACTOR because of the unusual nature of such communication, provided written evidence of the cost thereof, acceptable to CARRIER, and written request for such credit is submitted by CONTRACTOR to CARRIER within five (5) days from the date of any such communication . Should CARRIER, for any reason , accept a non-exempted communication from CONTRACTOR charges collect, CARRIER shall have the right to debit CONTRACTOR with the cost thereof. A monthly charge for utilization of CARRIER'S WATS line by CONTRACTOR will be debited to CONTRACTOR'S account.

24. **PRACTICES AND PROCEDURES**

CONTRACTOR will comply with the practices and procedures of CARRIER in conducting all business under this AGREEMENT in a manner consistent with CARRIER'S responsibility as a common carrier by motor vehicle and the obligations assumed herein by CONTRACTOR.

25. **PETS**

CONTRACTOR acknowledges that they are aware of CARRIER'S policy concerning pets. The CONTRACTOR is to maintain control of pets at all times, that the pet must be kept in the tractor or other suitable enclosure at all times, while at the residence of a customer. CONTRACTOR will be responsible to maintain a health record of the pet in the cab at all times that consists of at least the current vaccination, shot and immunization records and that said record will be reviewed at random by CARRIER appointed authorities. CONTRACTOR agrees to be solely responsible for any and all actual and administrative costs associated with pets which may include, but not be limited to, legal defense, medical expenses, maintenance costs, and detention or delay costs. CONTRACTOR further acknowledges that CARRIER will assess a $500.00 penalty for any incidents reported in which CONTRACTOR has not maintained control of their pet as outlined above.

26. **GENERAL INDEMNITY**

Except as and to the extent expressly provided to the contrary in this AGREEMENT, CONTRACTOR will indemnify CARRIER for any loss, damage or expense whatsoever which CARRIER may sustain or become liable for as a result of any act or acts, or failure to act, as provided in this AGREEMENT, of CONTRACTOR, his servants, employees or representatives excepting any amount thereof for which CARRIER is compensated under any applicable insurance or otherwise.

27. **INTENT**

CONTRACTOR has a substantial investment in his equipment. It is expressly understood and agreed by the parties hereto and it is the intent of the parties hereto, that CONTRACTOR is an independent contractor only and neither CONTRACTOR nor

CONTRACTOR'S employees are employees of CARRIER. While CONTRACTOR and his employees must be acquainted with CARRIER's methods of operating and endeavor to comply therewith as a part of the terms of this AGREEMENT, it is understood and agreed that CARRIER has not the right to, and will not, control or endeavor to control the manner, or prescribe the method, of CONTRACTOR'S performance of its duties hereunder.

In particular, subject to all applicable provision of law and regulations, in providing service hereunder CONTRACTOR shall have unfettered discretion as respects:

A. Selection of haulage routes,
B. Selection, maintenance operation and scheduling of qualified vehicles,
C. Selection, training, scheduling and compensation of qualified persons,
D. Acceptance or rejection of any shipment offered by CARRIER'S,
E. Selection and engagement, when necessary, of auxiliary personnel required for loading or unloading shipment; and,
F. All other aspects of the conduct by CONTRACTOR of his business in compliance with applicable legal requirements and his duties hereunder.

28. **NON-ASSIGNABILITY**

This AGREEMENT, and the rights and privileges granted hereunder to CONTRACTOR, may not be sold, assigned, or transferred in whole or in part, whether by operation of law or otherwise, without the written consent of CARRIER.

29. **REMEDIES FOR BREACH BY CONTRACTOR**

A. In the event the CONTRACTOR shall breach any of the conditions imposed by Sections 5, 13, 18, 21, 22 or 24 herein, CONTRACTOR shall promptly pay to the CARRIER the sum of One Hundred Dollars ($100.00) for breach aforesaid or monetary sums as defined in written corporate policies at the time of the breach; said payment to be considered liquidated damages. Further, in the event of any such breach, CARRIER shall have the right to suspend the operation of this contract for a period not to exceed thirty (30 days. The remedies afforded by this Section shall be in addition to all other remedies provided herein, and by law. It is understood, the above provisions of Section 28 are intended to require the CONTRACTOR to perform hereunder as to enable the CARRIER to remain in compliance with all Federal, State, and Local laws, ordinances and regulations, including, but not limited to, the regulations of the D.O.T.

B. Further, in the event CONTRACTOR fails to obtain a properly completed DD 1840 on a DOD shipment, and/or a DD 1840 on a DOD shipment is not received so that said DD 1840 can be transmitted to the proper military base by the CARRIER within 30 calendar days from the date of delivery, then no linehaul revenue will be distributed for that shipment.

30. **WAIVER**

The waiver by CARRIER of any breach of this AGREEMENT by CONTRACTOR shall not constitute a waiver respecting any such future or other breaches thereof by CONTRACTOR, and this AGREEMENT shall continue in effect according to its provisions.

31. **TERMINATION**

CONTRACTOR may terminate this AGREEMENT by written notice sent by certified mail to CARRIER at their DESIGNATED OFFICE, stating therein the date of termination; provided however, that CONTRACTOR shall, under the provisions of this AGREEMENT, complete the delivery of any goods, ware, and merchandise and the performance of other activities commenced hereunder prior to such date of termination. CARRIER may terminate this AGREEMENT with same effect, either orally and confirmed in writing or by written notice thereof, sent certified mail, return receipt requested, to the last known address of CONTRACTOR.

32. **OBLIGATIONS UPON TERMINATION**

In the event of termination of this AGREEMENT by either party:

A. CONTRACTOR'S right and privileges to use the name, registered design and color scheme of CARRIER shall cease immediately and CONTRACTOR shall discontinue such use for any purpose whatsoever, CONTRACTOR will immediately remove or obliterate, at his expense, from all of CONTRACTOR'S vehicles CARRIER'S numbers and the numbers and lettering identifying the certificate and permits granted to CARRIER by governmental authority, and CONTRACTOR will also remove or obliterate the name, registered design and color scheme of CARRIER and any and all reference to CARRIER from vehicle owned by CONTRACTOR and from all other vehicles under his control.

B. CONTRACTOR will deliver to CARRIER all bills of lading and other forms, advertising materials, and literature obtained by CONTRACTOR through or furnished by CARRIER and any licenses, registration plates, identifying insignia cards, or papers obtained by or on behalf of CARRIER in furtherance of CONTRACTOR'S service hereunder. CONTRACTOR will also execute and deliver to the CARRIER all documents and papers which may be required to effect a transfer of, or to secure from the governmental agencies involved, a refund for such licenses and registrations, and upon failure or refusal of CONTRACTOR to cooperate promptly with CARRIER, CARRIER may, at its

option, charge to CONTRACTOR the amount of any refund to which CARRIER might otherwise be entitled, or the cost of replacing such items for their unexpired terms.

C. CARRIER shall have the right to defer partial or final settlement with CONTRACTOR, until such time as CONTRACTOR shall have complied fully with all of the applicable provisions of this AGREEMENT. The claim reserve of Three Thousand Dollars ($3,000.00) described in Section 10 hereof will be maintained for a minimum of 45 days after termination.

D. Upon termination of this AGREEMENT, CONTRACTOR shall return all material and equipment ***owned by the carrier*** to CARRIER'S DESIGNATED OFFICE, at which time it will be inspected, counted and ***compared to original inventory taken*** before a release is given to CONTRACTOR. CONTRACTOR will also return all permits, licenses, registrations, plates, authorities, certificates of insurance, and logs. ***CONTRACTOR will be responsible for all costs incurred by the CARRIER in the recovery of any CARRIER owned equipment and the movement of said equipment to CARRIER'S designated office.***

33.___This **AGREEMENT** shall supersede, replace or take precedence over any prior Agreements of similar character between the parties hereto.

34.___**ENTIRETY**

It is expressly understood and agreed between the parties hereto that no verbal arrangements, understanding, or agreements of any kind or character inconsistent herewith have been or are entered into, and that all arrangements and agreements between the parties hereto are incorporated in this AGREEMENT and this AGREEMENT and all provisions contained herein, shall be interpreted according to the laws of the State of Michigan and the United States of America. It is mutually agreed between the parties that this AGREEMENT is not subject to change by amendment unless such amendment is reduced to writing and fully executed by the parties or their agents.

35.___**RECORDS**

A. CARRIER shall maintain supporting documentation and completed settlement sheets on all shipments handled by CONTRACTOR for CARRIER.

B. The CARRIER shall furnish to CONTRACTOR a statement of the CONTRACTOR'S account with CARRIER every month. Upon receipt of the statement, the CONTRACTOR shall have 120 days in which to dispute any item in writing, contained in the statement. At the expiration of 120 days, the statement of CONTRACTOR'S account with CARRIER shall be accepted by

CONTRACTOR as being the statement of true condition of his account except for the specific items objected to by the CONTRACTOR as set forth herein.

36. **TERM**

This **AGREEMENT** shall remain in full force and effect for the period commencing the 14 day of December, 20 11, and ending when terminated by either party pursuant to Section 30.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as follows:

(FOR THE CONTRACTOR)

In the County of SAGINAW, State of MICHIGAN, City of SAGINAW this 14 day of December, 20 11.

(WITNESS)

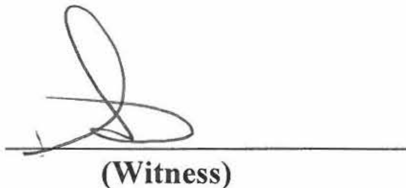
(CONTRACTOR)

385 78 9302
Social Security Number

(CARRIER)

In the County of SAGINAW, State of MICHIGAN, City of SAGINAW this 14 day of December, 20 11.

STEVENS WORLDWIDE VAN LINES, INC.



(Witness)

BY:

(Carrier Representative)

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: Stevens Van Lines Hit with Non-Disclosure Suit Over Insurance Coverage