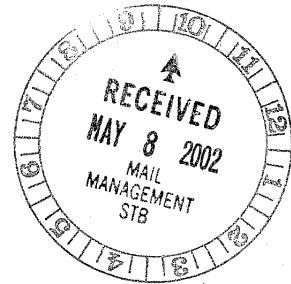


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. 42073



NEWELL WINDOW FURNISHINGS, INC. and NEWELL RUBBERMAID, INC.

v.

UNITED PARCEL SERVICE, INC., an Ohio Corporation, and UNITED

PARCEL SERVICE, INC. a New York Corporation

AFFIDAVIT OF HENRY F. HUCHEL

**ENTERED
Office of the Secretary
MAY - 8 2002
Part of
Public Record**

State of Utah)
) SS:
County of Weber)

Personally appeared before me an officer duly authorized by law to administer oaths, Henry F. Huchel, who, after first being duly sworn, deposes and states as follows:

1.

My name is Henry F. "Bud" Huchel. I am of legal age, am under no legal disability and am competent to testify regarding the matters set forth herein. The facts set forth herein are true and correct and are based on my personal knowledge. This affidavit is being given in support of the response filed contemporaneously herewith by Petitioners Newell Window Furnishings, Inc. and Newell Rubbermaid, Inc., including Levolor Home Fashions, a division of Newell Window Furnishings, Inc. (collectively "Levolor" or "Petitioners") in opposition to the Motion to Dismiss Petition filed by

Respondents United Parcel Service, Inc., an Ohio corporation, and United Parcel Service, Inc., a New York corporation (collectively "UPS" or "Respondents"), and for all other purposes permitted by law.

2.

I currently am employed as Group Traffic Manager of the Levolor Hardware Group, a group of companies within Petitioner Newell Rubbermaid Inc. I also have been employed by Levolor Home Fashions, a company within the Levolor Hardware Group, for nineteen (19) years in the position of Transportation Manager. In this capacity, I managed the shipping and receiving operations of all of Levolor's facilities located in Ogden, Utah, Salt Lake City, Utah, Westminster, California (two facilities), Waco, Texas, Bisbee, Arizona, South Holland, Illinois, Athens, Georgia, Rockaway, New Jersey, High Point, North Carolina and Shamokin, Pennsylvania. Levolor, generally and through these facilities, manufactures and ships window blinds throughout the United States.

3.

In addition to my experience from my employment with Levolor, I have attended numerous educational seminars, conferences and other trade association functions throughout my career that have focused on transportation and logistics issues. Given my work background and continuing education, I am knowledgeable about package express shipping, as well as other modes of transportation for packages like those shipped on behalf of Levolor on a daily basis. I also hold a Bachelor of Arts Degree in Earth Sciences from Montclair State University, which is located in Montclair, New Jersey.

4.

I have read the Affidavit of R. Curt Brown ("the Brown Affidavit") submitted by UPS in this proceeding, as well as all of the informal and formal pleadings filed with the Surface Transportation Board and the United States District Court for the Northern District of Georgia. During portions of this affidavit, I will address and reply to certain statements made in the Brown Affidavit, referring to the paragraph numbers that contain the statements made by Curt Brown, on behalf of UPS.

5.

From March 1997 through December 26, 2000, Levolor utilized the services of UPS for delivery of its products to commercial and residential customers. The shipment of Levolor's products by UPS was governed by a written agreement between the parties for the period from March 3, 1997 through October 25, 1998. This agreement included an addendum between the parties that allowed UPS to impose discounted additional handling charges on forty percent (40%) of Levolor's prepaid shipments. (See Exhibit A to Brown Affidavit.) The forty percent (40%) agreement was reached as an estimate, based on a study of Levolor's shipments, of the percentage of packages that exceeded sixty inches (60") in length, and which otherwise would incur an "additional handling charge" under the General Tariff. A similar agreement was entered into between UPS and Levolor regarding shipments consisting of product under Petitioners' Kirsch brand, whereby Levolor would be billed for additional handling charges on thirty-seven percent (37%) of Kirsch brand prepaid shipments.

6.

In paragraph 9 of the Brown Affidavit, UPS cites to the forty percent (40%) agreement for shipments in excess of sixty inches (60") in length. As stated in paragraph 10 of the Brown Affidavit, Levolor and UPS mutually modified the forty percent (40%) agreement in April 1997 to accommodate a change in one of Levolor's box sizes, which operated to decrease the number of packages subject to the agreement. With the addendum (see Exhibit C to Brown Affidavit), Levolor continued to pay a flat charge of \$2.00 on forty percent (40%) of its ground package shipments on which it owed charges to UPS. Indeed, throughout the term of the agreement, as modified (from March 3, 1997 through October 25, 1998), Levolor shipped every package on a "prepaid" basis, as it did not make "collect" shipments at this time. Therefore, Levolor paid the freight charges on all UPS shipments, including all of the additional handling charges negotiated among the parties as reflected in the agreement. (See Exhibits A and C to Brown Affidavit.)

7.

Elaborating on paragraph 12 of the Brown Affidavit, UPS notified Levolor that it was terminating the agreement (Exhibit A to Brown Affidavit, as modified by Exhibit C to Brown Affidavit), effective for all shipments made after October 25, 1998. UPS terminated the agreement for the sole purpose of increasing the \$2.00 additional handling charge in the letter agreement to the \$3.00 charge published in UPS' Tariff. Prior to issuing this termination letter on September 25, 1998 (see Exhibit D to Brown Affidavit), UPS had improperly back billed Levolor for approximately \$150,000.00 in increased additional handling charges that UPS claimed were due as a result of a

reduction in Levolor's weekly package volume. Since the \$2.00 additional handling charge rate specified in the agreement, as amended, was *not* tied to a volume commitment and was subject to modification *only* by mutual agreement of the parties, UPS' back billings and attempted applications of an increased rate were improper. Therefore, Levolor refused to pay the overcharges and corrected each invoice to the \$2.00 charge, per my letter to Ken Nigro, dated April 13, 1998. UPS then decided to unilaterally cancel the agreement that provided for the discounted \$2.00 charge.

8.

After UPS' unilateral decision to cancel the agreement, UPS' General Tariff and the Guide to UPS Services governed all shipments made after October 25, 1998. Additional handling charges, however, were governed by the letter agreement entered into by the parties on September 29, 1998, which continued to impose charges on forty percent (40%) of Levolor's prepaid shipments, *i.e.*, shipments on which Levolor received a bill from UPS. (See Exhibit I to Brown Affidavit.) In this regard, the parties clearly understood that Levolor would be charged the published additional handling rate on forty percent (40%) of its prepaid shipments (which encompassed all Levolor shipments at this time), as reflected "on each weekly UPS bill" issued to Levolor.

9.

As to the documents cited in paragraph 14 of the Brown Affidavit that UPS contends govern the rights and obligations of the parties, the only Service Guide that I ever received was dated 1995. I did not, however, receive a copy of any Consignee Billing Brochure until the negotiations over these billing disputes began. The Consignee Billing Brochure is not a part of the General Tariff or Guide to UPS Services, as

admitted by implication by UPS, as Curt Brown does not claim that the Consignee Billing Brochure is part of the General Tariff or any other document governing the relationship between UPS and Levolor after October 25, 1998.

10.

On or about June 1999, Levolor began to deliver all J.C. Penney shipments, via UPS, on a "collect" basis. J.C. Penney also agreed to assume responsibility for all associated freight charges. UPS thereafter operated under this agreement and accepted "collect" consignee billing of shipments delivered from Levolor's facilities to J.C. Penney. Moreover, Levolor owed no charges on these "collect" shipments and did not receive regular bills for them, as the parties agreed that J.C. Penney would be responsible for all charges pursuant to its agreements with UPS. Levolor furthermore made no attempt to bind J.C. Penney (assuming that it even could do so legally) to its forty percent (40%) additional handling charges agreement. Thus, Levolor did not receive a regular bill for the J.C. Penney "collect" shipments, was not obligated to pay for the freight charges on these shipments and, accordingly, did not owe any additional handling charges on these shipments.

11.

In paragraph 16 of the Brown Affidavit, UPS contends that the Consignee Billing Brochure specifies several qualifying conditions with which the shipper must comply in order to utilize consignee billing privileges. However, as stated previously, the Consignee Billing Brochure attached as Exhibit E to the Brown Affidavit is not part of the General Tariff, nor is it incorporated by reference into any other agreement between UPS and Levolor. Nevertheless, Levolor has met each of the conditions listed under

the "Qualifying Conditions" specified on the second page of the Consignee Billing Brochure in that:

- (a) J.C. Penney participates in UPS' consignee billing program under a contract with UPS;
- (b) J.C. Penney authorized Levolor to ship on a "collect" basis;
- (c) UPS provided Levolor with the appropriate consignee forms for all "collect" shipments;
- (d) Each J.C. Penney shipment was recorded and identified as "Third Party or Consignee Bill";
- (e) Levolor prepared and retained records showing all of the required information; and
- (f) Levolor utilizes UPS approved and commissioned software to record and identify shipments to UPS, utilizing valid UPS account numbers.

For the foregoing reasons, Levolor has not breached any agreement or Tariff provision regarding "consignee billing" shipments made on a "collect" basis to J.C. Penney and, furthermore, met the requirements of the Consignee Billing Brochure even though it is not binding on Levolor. Indeed, until UPS improperly attempted to impose overcharges on Levolor, UPS did not question the method by which consignee shipments were being made of Levolor products to J.C. Penney.

12.

In paragraph 17 of the Brown Affidavit, UPS alludes to the provision in the Service Guide that states that "*In the event of nonpayment by the receiver or third party, the charges will be reversed and billed back to the shipper*" (Emphasis added.)

However, UPS does not state or otherwise establish that it ever billed J.C. Penney for the additional handling charges that it now seeks to impose on Levolor, or that J.C. Penney ever refused to pay said charges. (See also paragraph 14 *infra*.) Therefore, UPS' claim against Levolor for unpaid additional handling charges on J.C. Penney "collect" shipments is barred by UPS' failure to comply with the conditions contained in its own Service Guide.

13.

While UPS, through paragraphs 14 through 22 of the Brown Affidavit, attempts to place an obligation on Levolor with respect to "collect" shipments, Levolor never agreed to pay additional handling charges on shipments for which it had no legal responsibility to pay. On "collect" shipments, Levolor was not the payor of freight charges and was not to be billed for these charges, absent non-payment by J.C. Penney. Levolor also had no legal authority to bind J.C. Penney to the terms contained in the letter agreement attached as Exhibit I to the Brown Affidavit. Any arrangement for additional handling charges on these "collect" shipments had to be negotiated strictly between UPS and J.C. Penney.

14.

As a matter of fact, UPS is pursuing an after-the-fact attempt to collect additional handling charges from Levolor on these "collect" shipments to compensate for its affirmative decision not to bill J.C. Penney for these charges. Indeed, J.C. Penney has informed me that UPS has not billed it for any of the charges that UPS now seeks to impose on Levolor. Instead, UPS agreed to apply a dollar-for-dollar *credit* against the additional handling charges, thus affirmatively negating the charge. For example, see

Exhibit A annexed hereto, which consists of a true and correct copy of two pages of a UPS bill to J.C. Penney, dated December 2, 2000, that shows four occasions on which UPS listed the \$5.00 additional handling charge, but then applied a \$5.00 credit on behalf of J.C. Penney in the "Incentive Credit" column. Levolor regularly received copies of bills from J.C. Penney like the one attached as Exhibit A for a variety of reasons, none of which are relevant to this proceeding. Given this evidence, which UPS chose not to disclose to the Surface Transportation Board ("the Board"), UPS clearly is attempting to wrongly impose additional handling charges on Levolor which UPS realizes it cannot collect from J.C. Penney.

15.

Prior to the inception of the current billing disputes, Levolor unwittingly paid these additional handling charges, which appeared under the general heading of "Adjustments" without any further explanation. Levolor stopped paying these additional handling charges after conducting a detailed audit of UPS' billings after the current billing disputes began. By applying percentages representative of J.C. Penney traffic to all packages shipped by Levolor within specific time periods, Levolor calculated these charges as follows:

<u>Date Range</u>	<u>Packages Shipped</u>	<u>(J.C. Penney)</u>	<u>%</u>	<u>Over Billing</u>
7/99 to 1/00	530,173	174,957	33	\$279,931.00
2/00 to 4/00	171,550	77,198	45	\$154,395.00
5/00 to 8/00	150,289	97,688	65	\$195,375.00
9/00 to 11/4/00	66,487	43,216	65	<u>\$216,080.00</u>
Total				\$845,781.00

UPS has refused to refund these charges on demand.

16.

After Levolor terminated the forty percent (40%) and thirty-seven percent (37%) additional handling charges agreement applicable to Levolor and Kirsch prepaid shipments, effective November 6, 2000, Levolor's shipping system indicated when its packages exceeded sixty inches (60") in length, and Levolor paid \$5.00 on those shipments. UPS nevertheless continued to bill Levolor for another \$5.00 on forty percent (40%) of Levolor brand shipments and thirty-seven percent (37%) of Kirsch brand shipments. These duplicate surcharges were erroneously billed to, and paid by, Petitioners against account numbers 453542 (Kirsch Co. - Newell Window) and 88649W (Kirsch/Concept Plastic) between the dates of November 20, 2000 and June 16, 2001, and resulted in overcharges totaling \$369,129.00. While one additional handling charge per shipment was appropriate under the General Tariff, UPS improperly imposed a duplicate charge on Levolor in violation of the Tariff and UPS' published rates, and has refused to refund these charges on demand.

17.

With paragraphs 23 through 30 of the Brown Affidavit, UPS addresses the matter of residential delivery surcharges and alleges that Levolor failed to accurately report the number of packages on which a residential delivery surcharge should have been imposed pursuant to the applicable UPS Rate Chart. UPS further alleges that it relied on Levolor to identify residential versus commercial delivery locations, but does not cite to a single document (including the General Tariff or Service Guide) that shows that Levolor contractually agreed to perform this duty. In any event, the facts demonstrate

that Levolor is entitled to recover for overcharges imposed by UPS for residential delivery surcharges.

18.

In an attempt to identify residential deliveries on all of its shipments carried via UPS, Levolor instructed its shipping locations, between January 1998 and January 1999, to apply a residential delivery charge to all shipments except those that clearly were identifiable as being consigned to a commercial address. Levolor adopted this practice to avoid billing errors and annual back billings in large amounts. In addition, Levolor had bar code labels affixed to each shipping system that would indicate when a shipment was being consigned to a commercial address, such as Home Depot, Loews, True Value, etc. The shipping system, in turn, would apply a residential surcharge by default if the shipping clerk did not scan the bar code label. Each of these practices resulted in overpayments to UPS, as Levolor assessed a residential delivery surcharge on any questionable shipment. As a general matter, approximately forty-five percent (45%) of Levolor's business involves sales to commercial customers.

19.

As a result of the inability to accurately determine whether a specific order was consigned to a residential or commercial address, many of Levolor's shipments were sent as "residential," whereas in fact, they were delivered to a commercial address. Recognizing the lack of accuracy, UPS performed an audit of Levolor's shipments from its Ogden and Salt Lake City, Utah facilities for the period from January 1998 through October 1998. This audit uncovered approximately \$17,000.00 in erroneous applications of the residential surcharge, which UPS paid. Because all of Levolor's

shipping facilities operated in the same manner and served the same type of customers, I requested UPS to perform a similar audit for all of Levolor's other facilities. When I inquired about the status of the audit much later, Brian Williams of UPS informed me that it "washed".

20.

Based on Levolor's shipping patterns, we estimated that UPS would have overcharged Levolor approximately \$40,000.00 on our other facilities' shipments because of shipments improperly classified as residential instead of commercial. Despite issuing a number of requests to UPS, Levolor has never been provided with a copy of the "audit" that was supposed to have been performed and which allegedly produced a "wash" result. If an accurate audit were performed, it likely would reveal that UPS owes Levolor at least \$40,000.00 in overpayments of the residential surcharge. UPS, of course, can verify whether its surcharges were assessed properly from its driver records, but continues to withhold material information from Levolor so that UPS may retain these overcharges.

21.

In paragraphs 30 through 33 of the Brown Affidavit, UPS addresses its claim for alleged unpaid shipping charges. Without citing to any real facts or evidence, UPS claims that Levolor "modified" its approved shipping software so that it could re-open a previously transmitted manifest. These allegations are patently false and instead are intended to disguise the internal flaws within UPS' billing system.

22.

To provide context to this billing dispute, the charges at issue first appeared, in part, in July of 1999 when UPS sent Levolor a single bill for \$49,304.26 for shipments "delivered but not billed". A true and correct copy of this bill is annexed as Exhibit B hereto. The bill, which is typical of the bills received by Levolor from UPS for purported additional charges, contains three entries that state, without further detail, as follows:

**BILLING ADJUSTMENT FOR W/E 07/10/99
INCORRECT CHARGES BILLED
CHARGES FOR PACKAGES PREVIOUSLY UNBILLED**

UPS further failed to provide any supporting documentation or list of shipments which it claimed to be shipped, but not billed. While any responsible transportation manager would demand some credible supporting documentation before responding to bills like that attached as Exhibit B hereto, UPS expected Levolor to pay the \$49,304.26 on demand and without questioning the invoice. Without documentation, however, Levolor did not pay the alleged charges invoiced on Exhibit B.

23.

Demands for additional "balance due" charges continued to be presented by UPS in the same single-statement format and without back-up documentation. Finally, on February 17, 2000, Cal Stringham, UPS' representative for Utah, provided billing detail in the form of a binder and a computer disk for two of the six shipping locations (the Ogden and Salt Lake City, Utah facilities) for which back bills were submitted. Prior to February 17, 2000, UPS' back bills totaled \$153,087.09, and dated back to May 1998. The detail received on February 17, 2000 included the \$153,087.09, plus an

additional \$185,202.69 for which Levolor had not received any back billing yet. At this time, I first discovered that Levolor was being billed for the J.C. Penney shipments.

24.

In April 2000, Levolor also discovered that, between February and April 2000, UPS was not billing Levolor for all of the packages it had shipped on behalf of Levolor. This discrepancy was discovered when we compared the package count on UPS' Delivery Service Bills with the corresponding UPS documents maintained in Levolor's facilities. Levolor then informed UPS of the discrepancy so that it could investigate the source of the problem. After conducting research, UPS ultimately discovered that the second daily electronic manifest transmission issued by Levolor was being rejected as a duplicate of the first manifest transmission issued earlier in the day.

25.

To understand the facts underlying this problem, UPS required that its drivers receive a Pick-Up Record listing a summary of packages each time they picked up products from Levolor's facilities. While Levolor's facilities operated on a two-shift schedule, with the first shift ending at 5:00 p.m. and the second shift ending near midnight, UPS only made pick-ups between 3:00 p.m. and 5:00 p.m., and refused to make another pick-up at the end of Levolor's second shift. Regardless of UPS' pick-up policy, Levolor followed customary practice in the venetian blind manufacturing industry requiring that its customers be invoiced on the same day that goods are manufactured. Levolor accordingly prepared updated Pick-Up Records reflecting the packages manufactured by the second shift, but no UPS driver was available to physically receive these Pick-Up Records until the next day. In an attempt to satisfy its business needs

and UPS' Pick-Up Records requirement, Levolor transmitted two electronic transmissions each day -- the first at approximately 5:00 p.m., when UPS' driver arrived, and the second at the end of the second shift. These electronic transmissions were dated and sent to UPS every day. Moreover, a hard copy of each day's second Pick-Up Record was handed to UPS' driver on the following day, along with a hard copy of the Pick-Up Record for that day. Thus, Levolor handed hard copy documents to UPS' drivers for approximately three months (from February through April 2000), as back up for the electronic transmissions sent to UPS.

26.

Unbeknownst to Levolor, when UPS received the second electronic manifest transmission, its system rejected the second manifest as a duplicate of the first manifest. Because of this system flaw, UPS did not bill Levolor for the new shipments listed on the second transmission for a period of the three months between February and April 2000, totaling \$272,635.00, which includes an unknown amount for J.C. Penney "collect" shipments which is not owed by Levolor. UPS could have discovered this problem earlier if it had checked the hard copies of the Pick-Up Records given to its drivers or conducted periodic reviews of its system operations. Thereafter, UPS agreed to accept one manifest transmission from Levolor, at the end of the second shift, that lists all shipments made on that day, instead of demanding that its drivers be given a Pick-Up Record at or before 5:00 p.m. No change was made to the existing shipping systems or software to resolve this problem.

27.

While UPS now attempts to label this manifest problem as Levolor's improper modification of UPS-approved shipping software, (see Brown Affidavit, ¶ 32), Levolor did nothing to modify any software provided by UPS. Levolor also did not misrepresent or attempt to conceal any of its shipments so as to avoid freight charges. Instead, Levolor provided UPS with two electronic manifest transmissions every day, along with hard copy documentation reflecting all shipments carried by UPS. UPS clearly could have prepared accurate bills even in the event of a software or hardware problem, but did not do so.

28.

In addition to the foregoing, Levolor explained its invoicing requirements and customary business practices to representatives of the "Clipper Ship" shipping system on which the UPS approved software resides. "Clipper Ship" is an electronic shipping and manifesting system owned by Federal Express which can be used to ship and manifest packages via all small package and air express carriers. Levolor used the "Clipper Ship" system, which unquestionably is authorized by UPS, because it does not ship exclusively via UPS. Per its discussions with "Clipper Ship" representatives, Levolor sent two daily electronic transmissions to UPS under the same Pick-Up Record number and date. This procedure enabled Levolor to invoice its customers on the day of manufacture *and* allowed the shipping system to generate the Pick-Up Record required by UPS for driver signature. From my experience, however, UPS' drivers often did not sign or take these Pick-Up Records, or otherwise use them to verify the package count at the time of pick-up. Instead, UPS' drivers routinely dropped an empty "Pup"

trailer and then retrieved the "Pup" that Levolor pre-loaded with its shipments. The drivers never unloaded the "Pup" trailer to count the packages pre-loaded by Levolor and, therefore, did not verify the count or otherwise use the transmission. Thus, UPS' insistence that Levolor provide a 5:00 p.m. Pick-Up Record effectively was meaningless.

29.

Through paragraph 32 of the Brown Affidavit, UPS claims that it "never received any modified manifests, and thus could not and has never invoiced for those packages, which UPS delivered on Levolor's behalf." This statement is flatly wrong, as UPS received electronic manifest transmissions that reflected all shipments of Levolor's products, along with hard copies reflecting the Pick-Up Record. UPS simply failed to correct its internal system flaw (the rejection of the second electronic manifest transmission as a duplicate of the first transmission) or otherwise use the hard copy information provided by Levolor when preparing its invoices. Contrary to Curt Brown's reference to "UPS's requirements," (see Brown Affidavit, ¶¶ 32, 34), UPS has not cited to, and cannot cite to, a single requirement contained in the General Tariff or any other document governing the relationship among the parties that precludes Levolor from submitting a second daily electronic manifest transmission.

30.

Even with these problems caused solely by UPS' own failures, Levolor always has been willing to pay for shipments *upon* receiving adequate shipment detail and not based on unsupported requests such as those represented by the bill attached hereto as Exhibit B. UPS, however, has not been able to provide document detail in a manner

sufficient to enable Levolor to verify whether a given shipment was unbilled and/or unpaid. Representatives of Levolor, UPS and Kewill E Commerce, UPS' approved software designer, discussed this problem before Levolor met with UPS in North Carolina in September of 2000 regarding the outstanding billing disputes discussed herein. On July 14, 2000, I received an e-mail from Ron Stacy of Kewill, a true and correct copy of which is annexed as Exhibit C hereto, stating: "This E-mail is to confirm that the format of the PLD file being produced by PowerShip mc adheres to the PLD specifications supplied by UPS. All reference data is appropriately represented." Levolor thus interpreted this message as confirming the propriety of its method of transmitting electronic data to UPS during the period in question.

31.

With paragraph 34 of the Brown Affidavit, UPS admits that J.C. Penney agreed to pay for all shipping charges associated with Levolor packages assuming, of course, that J.C. Penney received appropriate documentation supporting the charges. UPS then attempts to blame Levolor for the lack of adequate detail by stating that Levolor was required to extract the information recorded on its manifests from its computer hard drives. (See Brown Affidavit, ¶ 35.) UPS makes this assertion in apparent disregard of the fact that it was in possession of the very information requested by J.C. Penney *and* the fact that Levolor's shipping information resided on the hard drives of the Federal Express "Clipper Ship" system commissioned by UPS.

32.

Nevertheless, Levolor participated in several conferences with UPS' Information Systems personnel in an attempt to get UPS to accept the shipment detail provided by

Levolor on the J.C. Penney packages in question. Levolor also agreed to re-transmit its electronic file of shipping data. At one point during these conferences, we were advised that UPS' representatives thought that they could modify the carrier's systems to accept Levolor's information as transmitted, but Brian Williams refused to do so. Instead, Brian Williams wanted to send UPS personnel into Levolor's facilities to extract data from the Clipper Ship system. Levolor refused this request because the Clipper Ship system contained confidential information, including Levolor's rates with UPS' competitors.

33.

At a meeting with UPS held on September 25, 2000 in High Point, North Carolina, Levolor, in good faith, agreed to request that Federal Express prepare a data file for the period from February to April, 2000 in the specific format requested by UPS. The UPS format, however, required an extraordinary amount of time and technical expertise to extract, including three hours of technician time alone to download all shipments at a given Levolor facility. Federal Express then had to sort the downloaded information and delete all of the non-UPS shipment information for each of the ten facilities. The resulting information was prepared for each location and Levolor, in turn, sent the file to Brian Williams after having been told that Federal Express, a competitor of UPS, expended approximately 100 hours to develop this data file.

34.

Upon receipt of the Federal Express file, Brian Williams requested that the same file be generated for the balance of remainder of the year 2000. When this request was passed along to Federal Express, it refused to devote additional time to the UPS project. Levolor then offered to re-transmit all of its data from February through April

2000 in the format contained in its systems, but Brian Williams refused to provide the necessary programming support required for Levolor to do so.

35.

Levolor's position throughout this dispute has been simple -- because UPS delivered the consigned packages to J.C. Penney, it should be able to produce records that confirm that the shipments in question were delivered and remain unpaid. Indeed, as UPS admits that its drivers produce records on the DIAD systems, it should be able to reproduce those records and prove delivery to J.C. Penney. If and when UPS does so, *and* bills J.C. Penney for those shipments, as requested by J.C. Penney, UPS will be paid for whatever charges are due from J.C. Penney. Levolor simply has gone out of its way to work with UPS to resolve this problem caused exclusively by UPS' own failures, only to be stonewalled at every step of the way.

36.

Levolor had the ability to re-transmit all shipping information to UPS in order for UPS to meet J.C. Penney's conditions set forth its "Manual Charge" notice, which imposed a one-year limit on charges claimed to be due from J.C. Penney. (See Exhibit D annexed hereto.) Brian Williams, however, informed Levolor that UPS would not accept Levolor's data in its existing format.

37.

In paragraph 36 of the Brown Affidavit, UPS states that it "has never refused to provide detail in support of its bills and has shared with Levolor information necessary to explain the reconciliation performed by the finance department for the Levolor accounts." UPS then cites to five (5) dates on which it provided the alleged sufficient

detail. (See Brown Affidavit, ¶ 36.) In every instance, however, the information provided by UPS fell well short of substantiating its claims. For example,

(a) In response to Levolor's request for shipment detail issued in July 1999 in order to verify UPS' financial demands, UPS presented several proposals to Levolor in November 1999. One of the proposals was to withdraw all back billings (which, in actuality, were due to improper, unsubstantiated billing that reached \$153,000.00 at that time) in exchange for the return of Levolor's business to UPS. Levolor did not accept this proposal and UPS did not have any specific shipment detail to present;

(b) In April 2000, to the best of my recollection, Levolor discussed the duplicate Pick-Up Record problem with UPS, but did not receive any documentation from UPS;

(c) On September 25, 2000, representatives of Levolor and UPS met in another effort to settle UPS' back billing claim and Levolor's overcharges claims. Levolor then was presented with a copy of a "Time Line" and a electronic disc that summed the total packages and purported reason for the back bills. Despite several conferences with UPS, we could not match-up the specific amounts contained on the "Time Line" and disc to our invoices because the date ranges on the "Time Line" did not have corresponding shipment detail on the discs;

(d) On March 25, 2001, Levolor again agreed to meet with UPS in Chicago. During this meeting, UPS presented summaries of accounts alleged to be due, but without any specific shipment detail. Levolor also questioned the accuracy of UPS' "Time Line" Chart, which later was proven to be inaccurate. Although a

settlement was not reached at that time, Levolor agreed to toll the statute of limitations and install UPS' "World Ship" system in all of its facilities for the sole purpose of handling J.C. Penney shipments. All of Levolor's shipments to other customers continued to be manifested on the Federal Express Clipper Ship system; and

(e) The exchange that took place in May 2001 consisted of telephone conversations concerning a new "Time Line" and the fact that we still could not match UPS' financial demands to its invoices. UPS then explained that the reason that their total financial demand of \$900,000.00 did not match their invoices was that they applied \$558,000.00 in credits to certain invoices because certain invoices were time barred. UPS, of course, could not tell us which invoices were credited and again was not able to substantiate its demand of \$900,000.00. Brian Williams moreover told me that the reason that UPS applied these credits was to make its Daily Outstanding Receivables Report "look better." In short, UPS wanted Levolor to pay approximately \$900,000.00 without providing supporting documentation capable of allowing Levolor to verify that it owes this amount.

38.

In paragraph 37 of the Brown Affidavit, UPS states that "Levolor informed UPS that, for future shipments, it would not pay for any consignee or third-party packages, even if Levolor failed to provide the information necessary for UPS to bill the consignee or third-party." Neither I nor anyone at Levolor involved in these disputes with UPS has ever made such a statement, at least to the best of my knowledge. As previously

mentioned, Levolor has never refused to pay any charges that UPS was able to substantiate. On the contrary, Levolor worked with UPS in good faith and accepted and implemented recommended actions, including the installation of UPS' "World Ship" systems that are programmed to preclude the use of any other carrier competing with UPS. Levolor also agreed to toll the statutes of limitations with respect to UPS' statutory and regulatory violations in an effort to bring resolution to these disputes. In return, UPS maintained an uncompromising approach throughout all negotiating sessions, relying instead on its market power to attempt to extract unsubstantiated overcharges from Levolor.

39.

On December 22, 2000, I was told by Curt Brown that it was his decision to stop picking up shipments at all of Levolor's facilities. Contrary to the after-the-fact explanation stated in paragraph 37 of his affidavit, Curt Brown never discussed discontinuing credit on behalf of Levolor. His message was crystal clear – shipments by UPS at Levolor's facilities were being stopped. Consistent with this message, when Levolor opened on December 27, 2000 after the Christmas holiday, UPS did not make its regular daily pick-up, including its pick-up of J.C. Penney "collect" shipments, and provided no further explanation of its conduct.

40.

Furthermore, the first time that I ever heard about "credit" or resuming service on a "cash" basis was after Levolor informed UPS that it was violating the federal statute requiring common carriers to render service on reasonable request. UPS then changed its story in an effort to reconcile its conduct within the framework of applicable law.

Levolor also has always maintained an excellent credit rating, leaving UPS with no justification to suspend credit service, especially considering Item 560 of the General Tariff permits the extension of credit to good risks.

41.

Faced with UPS' discontinuance of service, Levolor was forced to negotiate alternative parcel delivery services for one of its largest customers or face potentially disastrous financial repercussions. Until reaching a temporary resolution of the service problem with UPS in late March 2001, Levolor incurred additional costs of shipping packages totaling \$122,000.00 between December 27, 2000 and March 25, 2001.

42.

In addition to discontinuing service, UPS also suspended the processing of the majority of Levolor's loss and damage claims without any valid excuse. At last count, UPS failed to acknowledge 2,115 of the 2,306 loss and damage claims duly filed by Levolor, which represent \$173,057.57 of the total \$188,249.00 owed to Levolor on this aspect of the dispute alone. While Levolor does not ask the Board to determine the merits of each of these loss and damage claims, it may determine that UPS has violated applicable law and initiate a general investigation into UPS' coercive billing practices.

43.

Specifically, UPS repeatedly violated 49 C.F.R. § 370 by stopping the processing of Levolor's loss and damage claims once these billing disputes began. On at least seventy-five percent (75%) of Levolor's claims, UPS failed to acknowledge them within 30 days of receipt as required by 49 C.F.R. § 370.5.

44.

UPS also developed a pattern of denying claims out of Levolor's locations in Athens, Georgia, High Point, North Carolina and South Holland, Illinois. For example, representatives of UPS' national accounts office in Chicago would send letters regarding claims submitted by Levolor's High Point, North Carolina facility stating: "We are unable to honor your claim due to the fact that this claim falls under the terms of our (UPS) agreement with your organization." Yet, Levolor had no such agreement with UPS. Certain of these letters would go on to state that "this information was reviewed with Angel Archuletta" on a specific date. Angel Archuletta, however, had been terminated months before the date referenced on the letter. UPS likewise claimed to have spoken with Corelynn Kempke on a date when she was on maternity leave. Therefore, UPS' declination letters were based on false information and were not supported by any reasonable investigation of the facts.

45.

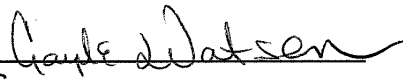
On June 8, 2001, Levolor filed a complaint with the Board addressing the vast majority of the issues raised herein and in its formal Petition for Declaratory Order and Other Relief filed with the Board on March 28, 2002. As a result of UPS' overcharges and other forms of unlawful conduct, Levolor has been damaged in an amount in excess of \$1,673,828.23. (See Exhibit E annexed hereto.) Levolor therefore reiterates its request that the Board apply its expertise to the billing disputes presented in its Petition, as requested by the United States District Court for the Northern District of Georgia in its referral order.

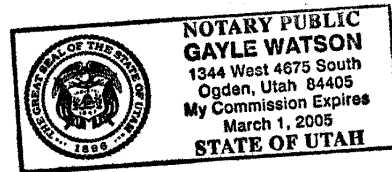
FURTHER AFFIANT SAYETH NOT.



Henry F. Huchel

Subscribed and sworn to before me
on this the 6 day of May, 2002.


Notary Public



My Commission Expires: 3-1-05

A

Sent by:
Received Mar-31-99 06:24pm
APR-26-2002 15:09

APR-03-99 12:21PM from 5205318057
LEVOLOR from 8016211760 + 5205318057

Page 1



United Parcel Service

801621
Delivery Service Invoice
Invoice date December 2, 2000
Invoice number 0000E124W149D
Shipper number E124W1
Page 294 of 654

EKN

5-22

Inbound

Third Party (continued)

Pickup Date	Pickup Receipt	Entry	Tracking Number	Service	Zip Code	Zone	Weight	Published Charge	Incentive Credit	Billad Charge
11/20	4404644821	14	12756840090478971	Ground Residential Third Party	70637	8	37	9.90		9.90
1st ref: X25072 Sender: LEVOLOR HOME FASHIONS 2826 GHOLSON RD WACO TX 76704				2nd ref: 41425198 Receiver: LARRY PUEBLIER 3477 RIVERSIDE RD EVANGELINE LA 70637						
15	12756840090478980			Ground Residential Third Party	07751	8	30	14.89		14.89
Sender: LEVOLOR HOME FASHIONS 2826 GHOLSON RD WACO TX 76704				Receiver: LAZANO MOLLINEA 812 FRANKLIN PLACE MORGANVILLE NJ 07751						
16	12756840090478905			Ground Residential Third Party	07751	6	70	24.57		24.57
Sender: LEVOLOR HOME FASHIONS 2826 GHOLSON RD WACO TX 76704				Receiver: LAZANO MOLLINEA 812 FRANKLIN PLACE MORGANVILLE NJ 07751						
1st ref: X25072 Sender: LEVOLOR HOME FASHIONS 2826 GHOLSON RD WACO TX 76704				2nd ref: 99800467 Receiver: MARY PERRILL 1 E 4TH ST PETERSON IA 51047						
20	12756840090479041			Ground Residential Third Party	10604	6	13	7.82		7.82
1st ref: X25072 Sender: LEVOLOR HOME FASHIONS 2826 GHOLSON RD WACO TX 76704				2nd ref: 02028025 Receiver: DONNA VIRGIN 182 HORN DALE LANE DOVER DE 19904						
22	12756840090479049			Ground Residential Third Party	78413	8	70	13.93	-0.47	13.46
1st ref: X25072 Sender: LEVOLOR HOME FASHIONS 2826 GHOLSON RD WACO TX 76704				2nd ref: 24500000 Receiver: TRAVIS BERTHO 7005 ORLAND AVE LUSBOCK TX 75015						

1061-1 (1/99)

** TOTAL PAGE.02 HHV

Sent by:

Apr-03-99 12:21PM

from 5205318057

Page 2

Received Mar-31-99 00:24PM
APR-26-2002 15:09

LEVOLOR

from 8016211760 + 5205318057

8016211760

Page 2
P.03

United Parcel Service

Delivery Service Invoice

Invoice date December 2, 2000

Invoice number 0000E124W1490

Shipper number E124W1

Page 202 of 254

Inbound

Third Party (continued)

Flight Date	Pickup Record	Entry	Tracking Number	Service	ZIP Code	Zone	Weight	Published Charge	Incentive Credit	Billed Charge
11/25	005826174	190	123418590300361954	Ground Residential Third Party	87193	5	0	8.43	-0.29	5.14
1st ref: 2223 Sender: LEVOLOR CORPORATION 1330 W 3300 S OGDEN UT 84401-336 Receiver: JULIE CONWAY 540 EAST SHOWWALTER ROSE HILL KS 67133										
195	123418590300342026			Ground Residential Third Party	44001	7	60	16.73		16.73
1st ref: 2108286 Sender: LEVOLOR CORPORATION 1330 W 3300 S OGDEN UT 84401-336 2nd ref: X19026 Receiver: NADINE HOMKA 10842 GORE ORPHANAGE RD AMHURST OH 44001										
197	123418590300342034			Ground Residential Third Party	55125	5	10	6.16	-0.43	5.73
1st ref: 51051790 Sender: LEVOLOR CORPORATION 1330 W 3300 S OGDEN UT 84401-336 2nd ref: X00507 Receiver: MARK A ZUKER 8581 CONCH WEALTHY RD WOODBURY MN 55165										
200	123418590300382051			Ground Residential Third Party	59001	4	6	6.35	-0.30	4.90
1st ref: 24551904 Sender: LEVOLOR CORPORATION 1330 W 3300 S OGDEN UT 84401-336 2nd ref: X22416 Receiver: ROBIN KROGSTAD 132 N HAVEN DR KALISPELL MT 59901										
201	123418590300382070			Ground Residential Third Party	06488	8	10	8.89		8.89
1st ref: 20067302 Sender: LEVOLOR CORPORATION 1330 W 3300 S OGDEN UT 84401-336 2nd ref: X02566 Receiver: LILA BENTLEY 7460 HERRITAGE VILLAGE SOUTHURY CT 06488										
202	123418590300382089			Ground Residential Third Party	66529	5	8	6.90	-0.53	6.37
1st ref: 00768164 Sender: LEVOLOR CORPORATION 1330 W 3300 S OGDEN UT 84401-336 2nd ref: X18043 Receiver: DENNIS MILBRANDY 405 N TENTH Breckenridge MN 56520										
203	123418590300382098			Ground Residential Third Party	55376	5	25	13.61		13.61
1st ref: 2132623 Sender: LEVOLOR CORPORATION 1330 W 3300 S OGDEN UT 84401-336 2nd ref: X00507 Receiver: NEVIS WILEY 133816 LOUISIANA AVE S SAVAGE MN 56578										
204	123418590300382185			Ground Residential Third Party	53617	3	5	4.71	-0.55	4.16
1st ref: 23040216 Sender: LEVOLOR CORPORATION 1330 W 3300 S OGDEN UT 84401-336 2nd ref: X00127 Receiver: JUDY CASH R 1890 CHERRY LANE EMMETT ID 83617										
Delivery Area Surcharge								1.50	-1.50	0.00
Total								7.40	-2.03	5.37
Additional Handling								5.00	-5.00	0.00
Total								12.91	-5.00	12.61
Delivery Area Surcharge								1.50	-1.50	0.00
Total								6.21	-1.85	4.36

TOTAL P.07

B

Sent by:

Apr-03-99 12:21 PM

from 5205318057

Page 3

Received Mar-31-99 10:36 PM
APR-26-2002 19:21

from 8016211760 + 5205318057

LEVOLOR

8016211



United Parcel Service

Period Ending
July 17, 1999
Shipper 134-58W
Invoice 000013458W-200
Page 17 of 26

Adjustments (Continued)

Miscellaneous Detail

Explanation	Charge
Over Max Size Charge	15.00
Tracking # 1213458W0510084162 Shipped Week Ending 7/10/99	
ADDITIONAL HANDLING CHARGES FOR 994 GROUND PACKAGES 40X44.00 PER CONTRACT W/E 07/10	1,592.00
REQUESTS FOR PROOF OF DELIVERY 07-08-99 QUANTITY 11	No Charge
REQUESTS FOR PROOF OF DELIVERY 07-13-99 QUANTITY 1	No Charge
REQUESTS FOR PROOF OF DELIVERY 07-14-99 QUANTITY 3	No Charge
UNAUTHORIZED CB PACKAGE CHARGE TO: KIRSCH REED INDUS PARK PAKING PA 17860 DELIVERY DATE: 07-12-99 ZONE: 084 WT: 136 TRACKING #: C2036752791	57.92
UNAUTHORIZED CB PACKAGE CHARGE TO: JC PENNEY 3236 KIRK HWY WILMINGTON DE 19808 DELIVERY DATE: 07-13-99 ZONE: 064 WT: 9 TRACKING #: C2036752979	9.52

BILLING ADJUSTMENT FOR W/E 07/10/99
INCORRECT CHARGES BILLED
CHARGES FOR PACKAGES PREVIOUSLY UNBILLED

39,503.28

BILLING ADJUSTMENT FOR W/E 07/10/99
INCORRECT CHARGES BILLED
CHARGES FOR PACKAGES PREVIOUSLY UNBILLED

4,358.66

BILLING ADJUSTMENT FOR W/E 07/10/99
INCORRECT CHARGES BILLED
CHARGES FOR PKGS PREVIOUSLY UNBILLED

442.32

49,304.26

Total

51,612.70

Premium Services

Saturday Delivery

Delivery	Tracking No.	Charge
07-10	K376 4916 128	18.00
07-10	K376 4916 137	18.00

TOTAL P.G.

C

Sent by: Received Apr-03-99 04:12pm from 8016211760 + 5205318057
APR-29-2002 12:57 LEVOLOR 8016211760 Page 1/1

Huchel, Bud

From: Stacy, Ron [ron.stacy@kewill.com]
Sent: Friday, July 14, 2000 3:07 PM
To: bud.huchel@levolor.com
Cc: dotocle@shiprps.com
Subject: UPS PLD file

This E-mail is to confirm that the format of the PLD file being produced by PowerShip mc adheres to the PLD specification supplied by UPS. All reference data is appropriately represented.

Ron Stacy
Product Manager
Kewill E Commerce
100 Nickerson Road
Marlborough, Massachusetts, USA 01752
Telephone: 508.787.1827
Facsimile: 508.229.4404
E-mail: ron.stacy@Kewill.com
Web Page: <http://www.kewill.com>

7/6/01

D

Sent by:

Apr-07-99 03:52pm

from 5205318057>

Page 1 / 1

Received Mar-31-99 10:36pm
APR-26-2002 19:21

from 8016211780 -> 5205318057
LEVOLOR

8016211780 Page
P.02

Detail Required by JCPenney for a Manual Charge

An email stating what caused the problem. You must include the time frame that it happened and the date that the situation was corrected. The shipments must NOT be older than 1 year from date presented to JCPenney. As per the contract between UPS and JCPenney,

1. Must be in an electronic format. Excel spreadsheet is fine. Email to tbrooks@ups.com
2. Store Name and Store Number
3. Address with City, State and Zip Code packages were delivered to.
4. "1Z" tracking numbers
5. P.O. Number
6. Weight of each package
7. Zone of each package
8. Service Level of each package

Once all detail is received, the charges will be presented to JCPenney to verify that these charges belong to them. They will also verify that they have not been billed for them. This will usually take 10 working days. Once JCPenney accepts or denies the charges you will be notified.

Tareza Brooks
JCPenney CRG Team
972-431-1813

E

SUMMARY OF DAMAGES INCURRED BY PETITIONERS

I. Outstanding freight claims:

Outstanding freight claims incurred to date total **\$188,249.19**, which represent lost use of these funds which are improperly being withheld by UPS.

II. "Additional Handling Charges" billed to, and paid by, Levolor for J.C. Penney shipments:

Levolor was billed for, and subsequently paid, additional handling charges for J.C. Penney shipments for which it was not responsible in the amount of **\$845,781.00**.

III. Double-billed additional handling charges paid by Levolor:

Petitioners are entitled to recover **\$369,129.00** in overcharges based on UPS' practice of continuing to assess \$5.00 per shipment surcharges on 37% of the packages shipped by Kirsch, and for packages that exceeded sixty (60) inches in length.

IV. Commercial shipments erroneously billed as residential:

Based on the expected results of a complete audit of all Levolor facilities, Petitioners are entitled to a refund of approximately **\$40,000.00** for shipments delivered to commercial addresses that were incorrectly marked as residential.

V. Damages from unjustified suspension of service:

Petitioners incurred **\$122,000.00** in additional charges after UPS suspended service to Levolor, which sum represents the difference between UPS and Fed Ex Ground charges on J.C. Penney shipments.

VI. Attorney's fees and expenses:

Petitioners have incurred attorneys' fees and expenses in excess of
\$108,669.04 to date.

TOTAL DAMAGES TO DATE: In excess of **\$1,673,828.23**, exclusive of
prejudgment interest and other sums that continue to accrue

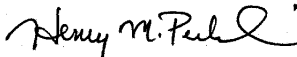
CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing **AFFIDAVIT OF HENRY F. HUCHEL** by overnight mail, via Federal Express delivery, with sufficient postage affixed thereon, addressed as follows:

Cari K. Dawson, Esq.
Alston & Bird LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424

James F. Moriarity, Esq.
Fleischman and Walsh, LLP
1400 Sixteenth Street
Washington, DC 20036

This the 7th day of May, 2002.



Henry M. Perlowski

Arnall Golden Gregory LLP
2800 One Atlantic Center
1201 West Peachtree Street, N.E.
Atlanta, GA 30309-3450
(404) 873-8500

Attorney for Petitioners Newell Window
Furnishings, Inc. and Newell Rubbermaid, Inc.