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July 29, 2002



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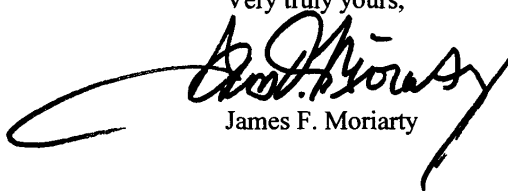
Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20453

Re: Docket No. 42073, Newell Window Furnishings, Inc. and
Newell Rubbermaid, Inc. v. United Parcel Service, Inc. (OH)
and United Parcel Service, Inc. (NY)

Dear Mr. Williams:

Pursuant to the Rules of the Surface Transportation Board, please find enclosed herewith an original and 10 copies of the Motion of United Parcel Service, Inc. (OH) and United Parcel Service, Inc. (NY) to Lodge Recent Federal Court Order in the above-captioned matter. We thank you for your attention to this matter. Please do not hesitate to contact us if you have any questions or require further information.

Very truly yours,



James F. Moriarty

Enclosures

ENTERED
Office of Proceedings

JUL 30 2002

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. 42073**



**NEWELL WINDOW FURNISHINGS, INC. AND
NEWELL RUBBERMAID, INC.**

v.

**UNITED PARCEL SERVICE, INC. (OH) AND
UNITED PARCEL SERVICE, INC. (NY)**

**MOTION OF UNITED PARCEL SERVICE, INC. (OH) AND
UNITED PARCEL SERVICE, INC. (NY)
TO LODGE RECENT FEDERAL COURT ORDER**

Pursuant to 49 U.S.C. § 11701(b), United Parcel Service, Inc. (OH) and United Parcel Service, Inc. (NY) (collectively "UPS") hereby move to lodge with the Surface Transportation Board a recent order of the United States District Court for the Northern District of Georgia, a copy of which is attached hereto as Exhibit "A."

By Order dated January 25, 2002, the Court had "stayed [UPS's lawsuit] for ninety (90) days, so that the Board could assist the court in determining whether four (4) rates billed by plaintiff are applicable in the case." (July 17, 2002 Order at 2-3; *see also* January 25, 2002 Order at 3-4.) But on July 17, 2002, the Court noted the expiration of the 90-day period and, as a result, dissolved the stay (effectively withdrawing that referral) and ordering that the "the parties should proceed in resolving the issues involved in this case in this court." (July 17, 2002 Order at 3.)

For this reason, and for the reasons stated and on the authorities cited in UPS's Motion to Dismiss Levolor's Petition for Declaratory Order and UPS's Reply in Support

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED PARCEL SERVICE, INC.,
an Ohio Corporation; UNITED
PARCEL SERVICE, INC., a New
York Corporation,

Plaintiffs,

v.

NEWELL WINDOW FURNISHINGS,
INC., a Delaware Corporation;
NEWELL RUBBERMAID, INC., a
Delaware Corporation,

Defendants.

NEWELL WINDOW FURNISHINGS,
INC., a Delaware Corporation;
NEWELL RUBBERMAID, INC., a
Delaware Corporation,

Counter-claimants,

v.

UNITED PARCEL SERVICE, INC.,
an Ohio Corporation; UNITED
PARCEL SERVICE, INC., a New
York Corporation,

Counter-defendants.

FILED IN CLERK'S OFFICE
U.S.D.C. - ATLANTA

JUL 17 2002

LUTHER D. THOMAS, CLERK
By: MD
Deputy Clerk

CIVIL ACTION
NO. 1:01-cv-1788-GET

O R D E R

The above-styled matter is presently before the court on plaintiff United Parcel Service's motion to proceed with court action [docket no. 15].

C

On June 8, 2001, plaintiff United Parcel Service, Inc. filed the instant action in the Superior Court of Fulton County, Georgia, alleging that defendants Newell Window Furnishings, Inc. and Newell Rubbermaid, Inc. owe plaintiff approximately \$900,000 for shipping defendants' products. On that same day, defendants filed a complaint with the United States Surface Transportation Board ("the Board") pursuant to 49 U.S.C. § 13710(a)(3)(B), requesting, *inter alia*, that the Board determine whether certain disputed charges billed by plaintiff are proper. On July 6, 2001, defendants removed this action to federal court pursuant to 28 U.S.C. §§ 1441 and 1446. On July 13, 2001, defendants filed their answer and asserted counterclaims, alleging, *inter alia*, that plaintiff has overcharged defendants by approximately \$575,000. In an Order dated January 25, 2002, the court stayed this action for ninety (90) days, so that the Board could assist the court in determining whether four (4) rates billed by plaintiff are applicable in this case. Plaintiff now moves to proceed with discovery in this case.

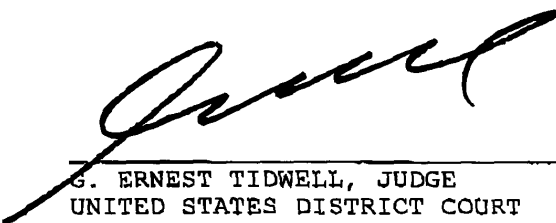
On March 27, 2002, defendants filed a Petition for Declaratory Order and Other Relief with the Board. On April 18, 2002, plaintiff filed a motion to dismiss defendants' petition. On April 25, 2002, the ninety (90)-day period expired. The Board, however, has neither ruled on plaintiff's motion to dismiss nor addressed the issues referred to it by the court. It appears to the court that the issues pending before the Board will not be resolved

expeditiously. Therefore, the parties should proceed in resolving the issues involved in this case in this court. Accordingly, plaintiff's motion to proceed with court action [docket no. 15] is GRANTED. The parties are DIRECTED to proceed with discovery in this case. The stay is DISSOLVED.

Summary

Plaintiff United Parcel Service's motion to proceed with court action [docket no. 15] is GRANTED. The parties are DIRECTED to proceed with discovery in this case. The stay is DISSOLVED.

SO ORDERED, this 17 day of July, 2002.



G. ERNEST TIDWELL, JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the within and foregoing UPS's Motion to Lodge Recent Federal Court Order upon opposing counsel by depositing same in the United States Mail in a properly addressed envelope with adequate postage, thereon, as follows:

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This 29th day of July, 2002.



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