

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JUSTIN A. HOUZE	:	
	:	
Plaintiff,	:	
	:	No. 2:18-cv-01555-DSC
v.	:	
	:	
DEBO MOVING AND STORAGE, INC. and MAYFLOWER TRANSIT, LLC	:	
	:	
Defendants.	:	
	:	

**DEFENDANTS DEBO MOVING AND STORAGE, INC.’S AND MAYFLOWER
TRANSIT, LLC’S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendants, Debo Moving and Storage, Inc. and Mayflower Transit, LLC, by and through their attorneys, Weber Gallagher Simpson Stapleton Fires & Newby, LLP, file the following Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), and in support thereof, aver as follows:

I. STATEMENT OF FACTS

1. This lawsuit arises from plaintiff’s interstate shipment of his personal property. See generally Pl.’s Compl., ECF No. 1, Exh. 1.
2. Defendant Debo Moving and Storage provides moving services and is a disclosed household goods agent of defendant Mayflower Transit, LLC. Id. ¶¶ 2-3, 7.
3. Defendant Mayflower Transit also provides moving services and is an authorized interstate motor carrier. Id. ¶¶ 3, 7.
4. Plaintiff contends he hired defendants to load and transport his property from his prior residence in Butler, Pennsylvania to a new residence in South Carolina. Id. ¶¶ 6-7.

5. With specific regard to plaintiff's motorcycle, he contends he rode the motorcycle up the truck loading ramp, at the direction of defendants, and fell off of the ramp damaging his motorcycle. Id. ¶¶ 10-11.

6. Plaintiff also contends defendants did not pack the motorcycle in accordance with the parties' alleged agreement. Id. ¶¶ 8-9.

7. In addition to his motorcycle, plaintiff contends defendants damaged some of his other items. Id. ¶ 12.

8. In Counts I and II of the Complaint, plaintiff claims defendants were negligent and careless in their maintenance of the loading ramp and in their loading and transportation of his personal property. Id. ¶¶ 13-22. Plaintiff asserts defendants' negligence caused the damage to his personal property. Id. ¶¶ 16, 21.

9. In Counts III and IV, plaintiff alleges defendants breached their contract with plaintiff "in failing to take appropriate care not to damage [p]laintiff's property," in failing to reimburse plaintiff for his property damage, and in failing to store plaintiff's motorcycle as plaintiff contends the parties agreed to do so. Id. ¶¶ 23-32.

10. The final two counts of plaintiff's Complaint allege violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Act ("UTPCPA"). Specifically, plaintiff contends defendants breached the guaranteed Full Value Protection Plan by failing to pay for the repair or replacement of plaintiff's property and that such a breach violates the Pennsylvania UTPCPA. Id. ¶¶ 33-46.

II. PROCEDURAL HISTORY

11. Plaintiff filed his Complaint in the Court of Common Pleas, Beaver County on October 16, 2018. See generally id.

12. Defendant Debo Moving and Storage was served with plaintiff's Complaint on October 22, 2018.

13. Defendant Mayflower Transit was served on October 19, 2018.

14. Thereafter, on November 16, 2018, defendants filed a timely Notice of Removal to remove this case from the Court of Common Pleas, Beaver County to this Honorable Court on the basis of federal question jurisdiction. See Defs.' Notice of Removal, ECF No. 1.

III. STANDARD OF REVIEW

15. A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) challenges the legal sufficiency of the Complaint filed by the plaintiff.

16. A district court must conduct a two-part analysis when presented with a motion to dismiss for failure to state a claim. Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009).

17. First, the court must separate the factual and legal elements of the claim. Id. at 210-11.

18. Second, the court must determine if the facts as alleged are sufficient to support a "plausible claim for relief." Id. at 211.

19. As such, the complaint must "show" the plaintiff is entitled to relief, not just allege the plaintiff is entitled to relief. Id.

20. The determination for plausibility will be "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id.

IV. LEGAL ARGUMENT

A. *Defendant Debo Moving and Storage bears no Liability for Plaintiff's Claims*

21. Pursuant to 49 U.S.C. §13907(a), a motor carrier is liable for the acts or omissions of its agents which (1) relate to the transportation of household goods and (2) are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier. 49 U.S.C. §13907(a).

22. “Household goods” includes “personal effects and property used or to be used in a dwelling.” 49 U.S.C. §13907(e); 49 U.S.C. §10102(11) (in eff. Dec. 31, 1995).

23. The agent bears no liability if the transaction occurred pursuant to a valid bill of lading. See United Van Lines, LLC v. Lohr Printing, 2014 U.S. Dist. LEXIS 97557 at *19-20 (D.N.J., July 18, 2014).

24. The shipment in question included plaintiff’s personal effects and property used in plaintiff’s prior residence and to be used in a new residence. See Pl.’s Compl. at ¶¶ 6-7.

25. Plaintiff admits defendant Debo Moving and Storage acted with the authority of defendant Mayflower Transit. See id. ¶¶ 3, 7 (Defendant Mayflower “had responsibility for Defendant Debo”; “Plaintiff hired Defendant Debo and through Defendant Mayflower”).

26. The moving documents reviewed and signed by plaintiff make clear that defendant Debo Moving and Storage acted subject to the authority of defendant Mayflower Transit with respect to the interstate transportation of plaintiff’s personal property. See id. at Exh. A (identifying the document to be executed by plaintiff as “Mayflower Transit eAcceptance Document” and listing the company as “Debo Mayflower”); see also Credit Card Authorization Form, Household Goods Detail of Actual Charges, Order for Service and Estimated Cost of

Service Addendum, Estimate, Itemized Customer Survey/Inventory, Carrier Packing & Crating Summary, Additional Services Performed, High Value Inventory, Motor Vehicle/Boat/Motorcycle Descriptive Inventory, Household Goods Descriptive Inventory, and Inventory Control Form, attached hereto collectively as Exh. A (listing “Mayflower Transit LLC” as the motor carrier); see also Bill of Lading, attached hereto as Exh. B.

27. Plaintiff’s shipment was pursuant to a valid Bill of Lading. See Exh. B.

28. Therefore, defendant Debo Moving and Storage is relieved of liability for plaintiff’s claims.

B. The Carmack Amendment Preempts Plaintiff’s State Law Claims

29. Plaintiff’s state law claims against defendants for negligence, breach of contract and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (“UTPCPA”) are preempted by the Carmack Amendment and should, therefore, be dismissed.

30. “The Court has consistently described the Amendment’s preemptive force as exceedingly broad—broad enough to embrace ‘all losses resulting from any failure to discharge a carrier’s duty as to any part of the agreed transportation.’” Certain Underwriters at Interest at Lloyd’s of London v. United Parcel Serv. of Am., Inc., 762 F.3d 332, 335-36 (3d Cir. 2014).

31. The liability of motor carriers regulated by the Surface Transportation Board for loss and damage arising from an interstate shipment is exclusively governed by the Carmack Amendment. 49 U.S.C. 14706 et seq.; Adams Express Co. v. Croninger, 226 U.S. 491, 505-6 (1913).

32. The Carmack Amendment preempts “all manner and type of claims” seeking recovery for losses arising from interstate shipping, including “negligence, breach of contract,

breach of fiduciary duty, fraud, conversion, misrepresentation, and claims alleging the violation of state consumer fraud statutes.” Id. at 336 n.3.

1. Negligence Claims

33. Plaintiff contends he hired defendants to pack and transport his personal property from Pennsylvania to South Carolina. See Pl.’s Compl. at ¶¶ 7-12

34. Plaintiff alleges defendants were negligent and careless in their maintenance of a moving ramp used to load items into the moving truck and in their loading and transporting of plaintiff’s personal property. Id. at ¶¶ 13-22.

35. Plaintiff contends defendants’ negligence caused damage to plaintiff’s property. Id. at ¶¶ 16, 21.

36. As such, plaintiff seeks damages for defendants’ alleged failure to discharge their transportation duties.

37. Therefore, the Carmack Amendment preempts plaintiff’s negligence claims asserted in Counts I and II of the Complaint.

2. Breach of Contract Claims

38. Plaintiff contends defendants breached the contract with plaintiff by “failing to take appropriate care not to damage [p]laintiff’s property,” in failing to reimburse plaintiff for the property damage, and in failing to store plaintiff’s motorcycle as the plaintiff alleges the parties had previously agreed. Id. ¶¶ 23-32.

39. Thus, plaintiff’s breach of contract claims seek damages for defendants’ alleged failure to discharge their transportation duties.

40. Accordingly, the Carmack Amendment preempts plaintiff’s breach of contract claims asserted in Counts III and IV of the Complaint.

3. UTPCPA Claims

41. The final two counts of plaintiff's Complaint concern the Pennsylvania UTPCPA. See id. ¶¶ 33-46.

42. Specifically, plaintiff contends defendants owe him Full Value Protection coverage but have failed and/or refused to pay for the repair or replacement of plaintiff's damaged property.

43. Plaintiff asserts defendants' failure to repair or replace his property constitutes a breach of the defendants' guarantee and a violation of the Pennsylvania UTPCPA. Id.

44. Plaintiff's allegations copy those asserted by the plaintiff in Kendrick v. South Hills Movers, Inc., 2014 U.S. Dist. LEXIS 155847 (W.D. Pa., Nov. 4, 2014), which arose from the plaintiff's interstate shipment of personal property.

45. In Kendrick, the plaintiff alleged the defendant's failure to honor the "Full Replacement Value Protection" provided for in the contract violated the Pennsylvania UTPCPA. Id. at *1-4.

46. The defendant, a moving company, filed a Motion to Dismiss arguing the Carmack Amendment preempted the plaintiff's UTPCPA claims. Id.

47. The Court granted the defendant's Motion finding the only harm suffered by the plaintiff was the damage and/or destruction of his personal property. Id. at *8-10. Thus, the Court concluded, the plaintiff's claims "lie at the heart of Carmack Amendment preemption." Id. at *9.

48. The only loss giving rise to plaintiff's claims under the Pennsylvania UTPCPA is the damage and/or destruction of his personal property.

49. Thus, the Carmack Amendment preempts plaintiff's Pennsylvania UTPCPA claims asserted in Counts V and VI of the Complaint.

WHEREFORE, defendants Debo Moving and Storage, Inc. and Mayflower Transit, LLC, respectfully request this Honorable Court dismiss plaintiff's Complaint with prejudice.

Respectfully submitted,

**WEBER GALLAGHER SIMPSON
STAPLETON FIRES & NEWBY LLP**



By: _____

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Date: November 21, 2018

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JUSTIN A. HOUZE	:	
	:	
Plaintiff,	:	
	:	No. 2:18-cv-01555-DSC
v.	:	
	:	
DEBO MOVING AND STORAGE, INC. and	:	
MAYFLOWER TRANSIT, LLC	:	
	:	
Defendants.	:	

**DEFENDANTS DEBO MOVING AND STORAGE, INC.’S AND MAYFLOWER
TRANSIT, LLC’S MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Defendants, Debo Moving and Storage, Inc. and Mayflower Transit, LLC, by and through their attorneys, Weber Gallagher Simpson Stapleton Fires & Newby, LLP, hereby file this brief in support of its Motion to Dismiss plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) and state:

I. PRELIMINARY STATEMENT

The basis for defendants’ Motion to Dismiss plaintiff’s Complaint is two-fold.

First, defendant Debo Moving and Storage bears no liability for plaintiff’s alleged damages and, as such, plaintiff cannot state a claim against defendant Debo Moving and Storage upon which relief can be granted. As plaintiff acknowledges, defendant Debo Moving and Storage acted pursuant to the authority of defendant Mayflower Transit in its transportation of plaintiff’s household goods. Additionally, the transportation was subject to a valid bill of lading. Thus, pursuant to 49 U.S.C. §13907(a), defendant Debo Moving and Storage is relieved of all liability for plaintiff’s damages.

Second, the Carmack Amendment preempts plaintiff's negligence, breach of contract, and Pennsylvania Unfair Trade Practices and Consumer Protection Act claims. This is bedrock transportation law and has been confirmed repeatedly by the Supreme Court of the United States (see, e.g., Adams Express v. Croninger, 226 U.S. 491, 505-6 (1913); Atchison, T. & S.F. Ry. Co. v. Harold, 241 U.S. 371, 377-78 (1916); Georgia, Florida & Alabama Ry. Co. v. Blish Milling Co., 241 U.S. 190, 196 (1916)). The Court of Appeals for the Third Circuit has also interpreted the Carmack Amendment as preempting "all state law claims for compensation of the loss of or damage to goods shipped by a ground carrier in interstate commerce." See Certain Underwriters at Interest at Lloyd's of London v. United Parcel Serv. of Am., Inc., 762 F.3d 332, 332 (3d Cir. 2014). Plaintiff's Complaint makes clear that his claims against defendants seek compensation for the damage and/or destruction of the items shipped by defendants from Pennsylvania to South Carolina. Therefore, the Carmack Amendment preempts plaintiff's state law claims and, as such, plaintiff's Complaint does not state a claim against defendants upon which relief can be granted.

II. STATEMENT OF FACTS

This lawsuit arises from plaintiff's interstate shipment of his personal property. See generally Pl.'s Compl., ECF No. 1, Exh. 1. Defendant Debo Moving and Storage provides moving services and is a disclosed household goods agent of defendant Mayflower Transit, LLC. Id. ¶¶ 2-3, 7. Defendant Mayflower Transit also provides moving services and is authorized as an interstate motor carrier by the Federal Motor Carrier Safety Administration. Id. ¶¶ 3, 7.

Plaintiff contends he hired defendants to load and transport his property from his prior residence in Butler, Pennsylvania to a new residence in South Carolina. Id. ¶¶ 6-7. Plaintiff takes particular issue with the loading and transporting of his Harley Davidson motorcycle.

Plaintiff alleges defendants required him to ride the motorcycle up a loading ramp and into the moving truck. As plaintiff did so, he fell off of the ramp allegedly damaging his motorcycle and injuring him. Id. ¶¶ 8-11. In addition to his motorcycle, plaintiff contends defendants damaged some of his other items. Id. ¶ 12.

Plaintiff claims defendants were negligent and careless in their maintenance of the loading ramp and in their loading and transportation of his personal property. Id. ¶¶ 13-22. Plaintiff asserts defendants' negligence caused the damage to his personal property. Id. ¶¶ 16, 21.

Plaintiff also alleges defendants breached their contract with plaintiff "in failing to take appropriate care not to damage [p]laintiff's property," in failing to reimburse plaintiff for his property damage, and in failing to store plaintiff's motorcycle as plaintiff contends the parties agreed to do so. Id. ¶¶ 23-32.

The final two counts of plaintiff's Complaint arise under the Pennsylvania Unfair Trade Practices and Consumer Protection Act ("UTPCPA"). Specifically, plaintiff contends defendants breached the guaranteed Full Value Protection Plan by failing to pay for the repair or replacement of plaintiff's property and that such a breach constitutes a violation of the Pennsylvania UTPCPA. Id. ¶¶ 33-46.

III. PROCEDURAL HISTORY

Plaintiff filed his Complaint in the Court of Common Pleas, Beaver County on October 16, 2018. See generally id. Defendant Debo Moving and Storage was served with plaintiff's Complaint on October 22, 2018. Defendant Mayflower Transit was served on October 19, 2018. Thereafter, on November 16, 2018, defendants filed a timely Notice of Removal to remove this

case from the Court of Common Pleas, Beaver County to this Honorable Court on the basis of federal question jurisdiction. See Defs.’ Notice of Removal, ECF No. 1.

IV. QUESTIONS PRESENTED

A. Should this Honorable Court dismiss all claims against defendant Debo Moving and Storage as it bears no liability for plaintiff’s alleged damages because its services related to the transportation of household goods, it acted with the authority of defendant Mayflower Transit, and the shipment was subject to a valid bill of lading?

Suggested Answer: Yes.

B. Should this Honorable Court dismiss plaintiff’s Complaint because the only claims asserted by plaintiff are state law claims which the Third Circuit specifically has held are preempted by the Carmack Amendment?

Suggested Answer: Yes.

V. STANDARD OF REVIEW

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) challenges the legal sufficiency of the Complaint filed by the plaintiff. The Court must accept as true all well-pleaded facts and allegations, and must draw all reasonable inferences therefrom in favor of the plaintiff. Phillips v. Cnty. of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008). However, the “factual allegations must be enough to raise a right to relief above the speculative level.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

A district court must conduct a two-part analysis when presented with a motion to dismiss for failure to state a claim. Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009). First, the court must separate the factual and legal elements of the claim. Id. at 210-11. Second, the court must determine if the facts as alleged are sufficient to support a “plausible

claim for relief.” Id. at 211. As such, the complaint must “show” the plaintiff is entitled to relief, not just allege the plaintiff is entitled to relief. Id. The determination for plausibility will be “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id.

VI. LEGAL ARGUMENT

A. Defendant Debo Moving and Storage bears no Liability for Plaintiff’s Claims

Pursuant to 49 U.S.C. §13907(a), a motor carrier is liable for the acts or omissions of its agents which (1) relate to the transportation of household goods and (2) are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier. 49 U.S.C. §13907(a). “Household goods” includes “personal effects and property used or to be used in a dwelling.” 49 U.S.C. §13907(e); 49 U.S.C. §10102(11) (in eff. Dec. 31, 1995). The agent bears no liability if the transaction occurred pursuant to a valid bill of lading. See United Van Lines, LLC v. Lohr Printing, 2014 U.S. Dist. LEXIS 97557 at *19-20 (D.N.J., July 18, 2014).

It is uncontroverted that the shipment in question included plaintiff’s personal effects and property used in plaintiff’s prior residence and to be used in a new residence. See Pl.’s Compl. at ¶¶ 6-7. Thus, the alleged acts or omissions of defendant Debo Moving and Storage concern household goods transportation services.

Plaintiff admits defendant Debo Moving and Storage acted subject to the authority of defendant Mayflower Transit. See id. ¶¶ 3, 7 (Defendant Mayflower “had responsibility for Defendant Debo”; “Plaintiff hired Defendant Debo and through Defendant Mayflower”). The signature line of Michael Allinder, who sent shipment documents to plaintiff for his review and signature, identified the company as “Debo Mayflower” and the subject line reads “Justin Houze – Your Mayflower Transit eAcceptance Document **FINALIZED MOVING

DOCS – TO BE eSIGNED**.” See id. at Exh. A (emphasis added). Furthermore, all of the documents related to plaintiff’s shipment, and signed by plaintiff, identified Mayflower Transit as the carrier. See, e.g., Credit Card Authorization Form, Household Goods Detail of Actual Charges, Order for Service and Estimated Cost of Service Addendum, Estimate, Itemized Customer Survey/Inventory, Carrier Packing & Crating Summary, Additional Services Performed, High Value Inventory, Motor Vehicle/Boat/Motorcycle Descriptive Inventory, Household Goods Descriptive Inventory, and Inventory Control Form, attached hereto collectively as Exh. A; see also Bill of Lading, attached hereto as Exh. B.

Lastly, plaintiff’s shipment was pursuant to a valid Bill of Lading. See Exh. B.

Plaintiff’s allegations against defendant Debo Moving and Storage arise from household goods transportation services. Defendant Debo Moving and Storage acted pursuant to the authority of defendant Mayflower Transit. Plaintiff’s shipment was pursuant to a valid Bill of Lading. Therefore, defendant Debo Moving and Storage is relieved of liability for plaintiff’s claims.

B. The Carmack Amendment Preempts Plaintiff’s State Law Claims

Plaintiff’s state law claims against defendants for negligence, breach of contract and violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Act (“UTPCPA”) are preempted by the Carmack Amendment and should, therefore, be dismissed. “The Court has consistently described the Amendment’s preemptive force as exceedingly broad—broad enough to embrace ‘all losses resulting from any failure to discharge a carrier’s duty as to any part of the agreed transportation.’” Certain Underwriters at Interest at Lloyd’s of London v. United Parcel Serv. of Am., Inc., 762 F.3d 332, 335-36 (3d Cir. 2014). The liability of motor carriers regulated by the Surface Transportation Board for loss and damage arising from

an interstate shipment is exclusively governed by the Carmack Amendment. 49 U.S.C. 14706 et seq; Adams Express Co. v. Croninger, 226 U.S. 491, 505-6 (1913). The Carmack Amendment preempts “all manner and type of claims” seeking recovery for losses arising from interstate shipping, including “negligence, breach of contract, breach of fiduciary duty, fraud, conversion, misrepresentation, and claims alleging the violation of state consumer fraud statutes.” Id. at 336 n.3.

Since the enactment of the Carmack Amendment, “[t]he Court has consistently described the Amendment’s preemptive force as exceedingly broad—broad enough to embrace ‘all losses resulting from any failure to discharge a carrier’s duty as to any part of the agreed transportation.’” Certain Underwriters at Interest at Lloyd’s of London, 762 F.3d at 335-36. The Carmack Amendment preempts “all manner and type of claims” seeking recovery for losses arising from interstate shipping, including “negligence, breach of contract, breach of fiduciary duty, fraud, conversion, misrepresentation, and claims alleging the violation of state consumer fraud statutes.” Id. at 336 n.3. The only recognized exceptions to the expansive Carmack Amendment preemption are claims based upon conduct or harm, which are independent of the delay, loss or damage to shipped property, such as intentional infliction of emotional distress. Id. at 336 n.4.

1. Negligence Claims

As noted above, plaintiff contends he hired defendants to pack and transport his personal property from Pennsylvania to South Carolina. See Pl.’s Compl. at ¶¶ 7-12 Plaintiff alleges defendants were negligent and careless in their maintenance of a moving ramp used to load items into the moving truck and in their loading and transporting of plaintiff’s personal property. Id. at ¶¶ 13-22. Plaintiff contends defendants’ negligence caused damage to plaintiff’s property.

Id. at ¶¶ 16, 21. As such, plaintiff seeks damages for defendants' alleged failure to discharge their transportation duties.

Therefore, plaintiff's negligence claims fit squarely within the scope of the Carmack Amendment's preemption as they seek damages for losses arising from the interstate shipment of plaintiff's personal property by a motor carrier. Because plaintiff's negligence claims are preempted, Counts I and II of plaintiff's Complaint must be dismissed because they fail to state a claim against defendants upon which relief may be granted.

2. Breach of Contract Claims

In Counts III and IV, plaintiff contends defendants breached the contract with plaintiff by "failing to take appropriate care not to damage [p]laintiff's property," in failing to reimburse plaintiff for the property damage, and in failing to store plaintiff's motorcycle as the plaintiff alleges the parties had previously agreed. Id. ¶¶ 23-32. Thus, like plaintiff's negligence claims, plaintiff's breach of contract claims seek damages for defendants' alleged failure to discharge their transportation duties.

As such, plaintiff's breach of contract claims are preempted by the Carmack Amendment. Therefore, Counts III and IV of plaintiff's Complaint must be dismissed because they fail to state a claim against defendants upon which relief may be granted.

3. UTPCPA Claims

The final two counts of plaintiff's Complaint concern the Pennsylvania UTPCPA. See id. ¶¶ 33-46. Specifically, plaintiff contends defendants owe him Full Value Protection coverage but have failed and/or refused to pay for the repair or replacement of plaintiff's damaged property. Plaintiff asserts defendants' failure to repair or replace his property constitutes a breach of the defendants' guarantee and a violation of the Pennsylvania UTPCPA. Id.

Plaintiff's allegations copy those asserted by the plaintiff in Kendrick v. South Hills Movers, Inc., 2014 U.S. Dist. LEXIS 155847 (W.D. Pa., Nov. 4, 2014), which arose from the plaintiff's interstate shipment of personal property. In Kendrick, the plaintiff alleged the defendant's failure to honor the "Full Replacement Value Protection" provided for in the contract violated the Pennsylvania UTPCPA. Id. at *1-4. The defendant, a moving company, filed a Motion to Dismiss arguing the Carmack Amendment preempted the plaintiff's UTPCPA claims. The Court granted the defendant's Motion finding the only harm suffered by the plaintiff was the damage and/or destruction of his personal property. Id. at *8-10. Thus, the Court concluded, the plaintiff's claims "lie at the heart of Carmack Amendment preemption." Id. at *9.

As in Kendrick, the only loss giving rise to plaintiff's claims under the Pennsylvania UTPCPA is the damage and/or destruction of his personal property. Therefore, plaintiff's claims are preempted by the Carmack Amendment. As such, Counts V and VI of plaintiff's Complaint must be dismissed because they fail to state a claim against defendants upon which relief may be granted.

VII. CONCLUSION

Plaintiff's Complaint must be dismissed for two reasons.

First, defendant Debo Moving and Storage bears no liability for plaintiff's claimed damages. At all times material hereto, defendant Debo Moving and Storage provided household goods transportation services pursuant to the authority of defendant Mayflower Transit. Furthermore, the transportation was subject to a valid Bill of Lading.

Second, the Carmack Amendment preempts plaintiff's negligence, breach of contract, and Pennsylvania UTPCPA claims. The Third Circuit has held routinely that these state law claims are subject to the Carmack Amendment's broad preemption.

Therefore, plaintiff's Complaint must be dismissed as it fails to state any claims against defendants upon which relief may be granted.

Respectfully submitted,

**WEBER GALLAGHER SIMPSON
STAPLETON FIRES & NEWBY LLP**



By: _____

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Date: November 21, 2018