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1/27/72

Memorandum 72-11

Subject: Study 39 - Attachment, Garnishment, Execution

The attached letter indicates the need for a study of the claim and delivery statute and urges that the Commission devise a constitutional procedure for repossession of property to present for legislative enactment.

This is another in the series of requests that the Commission study repossession of property. However, the Commission has not been authorized to study this topic and cannot do so unless a concurrent resolution authorizing the Commission to study the topic is adopted.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



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EXHIBIT I

GLOBAL VAN LINES INC.

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January 20, 1972

Mr. John DeMouilly
Executive Secretary
California Law Revision Commission
Stanford University School of Law
Palo Alto, California

Dear Mr. DeMouilly:

It is my understanding that the California Law Revision Commission is considering the problems created by recent Appellate Court decisions affecting creditor's remedies.

We, in the moving industry are quite interested in this area. We are particularly concerned with the special problems of our own industry which have arisen since the California Supreme Court's decision in Blair v. Pitchess, 5 Cal. 3d 258, 1971.

The claim and delivery law as set out in Section 509 - 521 of the California Code of Civil Procedure has been of great assistance to the moving industry. Let me set out for you three instances of the use of this claim and delivery procedure and the deleterious consequences resulting from its demise as a viable remedy.

1. In the Household Goods shipping industry, a corporation will conduct its operations by means of authorized agents in various cities. These agents have their own warehouse, but their interstate and foreign moves will be made as an agent for an interstate common carrier such as Global Van Lines, Inc.

Household goods moving from or to a foreign country will move in metal or wooden containers, costing between \$150 and \$300. They belong to the common carrier and not to the local agent. Due to the nature of the business a number of these containers may come into the possession of a local agent.

Also due to the nature of the business, agents and carriers tend to terminate their relationship frequently sometimes not on amicable terms. This can leave the carrier in danger of losing its containers. In the past a carrier has always been able to use claim and delivery to regain possession of its containers before the agent can repaint them and ship them out to points unknown with his own goods in them.

- II. An Agent also has various household goods of individual shippers temporarily in his warehouse which are being moved in interstate commerce under the authority of a common carrier. In order to force a carrier to make concessions to him, an agent may refuse to release the storage lot. This makes it impossible for the carrier to complete delivery of the shipment.

The result of this is not merely inconvenience to the carrier, but also severe hardship to the shipper and his family. Often the agent will not release the household goods either to the carrier or to the shipper himself. Thus the shipper and his family are deprived of the possession and use of their furniture, kitchen utensils and even their clothing. In the past it has always been possible to circumvent such action on an agent's part by use of the claim and delivery procedure.

- III. Common carriers own the trailers in which they transport household goods. Such trailers are generally pulled by a tractor which the carrier leases from owner/operators. This owner/operator driver contracts to pull a carrier's trailer for a percentage of the transportation charges. The carrier thus allows the owner/operator to have possession of the trailer in order to move the goods, but retains title, both equitable and legal. Under the contract agreement the carrier always has a legal right to immediate possession of its trailer in the event the contract is terminated by either party.

Occasionally, an independent driver will attempt to force a carrier to deviate from contract terms by retaining possession of the carrier's trailer and secreting it until his demands are met. As a trailer is, by its nature, highly mobile, the utmost speed must be used to circumvent such a scheme by a disgruntled driver. The speediest remedy in the past has proven to be the claim and delivery procedure.

These are just three examples of the type of situation which has been remedied by claim and delivery. It is apparent that the moving industry will be sorely harmed by the absence of some type of claim and delivery procedure. For this reason I am writing to you to present our problem to the Commission and also to urge that the Commission devise a constitutional procedure to present to the California Legislature.

If the Commission will be holding open hearings, I would appreciate notification of their time and place. Additionally, I would welcome the opportunity to appear at such a hearing to personally present Global Van Lines' position as to the necessity for a claim and delivery procedure.

John DeMouilly

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January 20, 1972

I thank you for your cooperation and consideration in this matter.

Very truly yours,

GLOBAL VAN LINES, INC.



Floyd L. Farano
General Counsel

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