

# BAKER & DANIELS L.L.P.

EST 1863

805 15th Street, N.W. Suite 700 • Washington D.C. 20005  
Tel 202 312 7440 • Fax 202 312 7460  
www.bakerdaniels.com

FRANK S. SWAIN  
Attorney at Law  
Direct 202 312 7416  
frank.swain@bakerd.com



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August 23, 2007

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AUG 24 2007

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Public Record

MC-F-19309

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

Re: Wheaton Van Lines, Inc. Pooling No MC-87113 (Sub-No. 20)

Dear Mr. Williams,

This is to request, on behalf of Wheaton Van Lines, the addition to its pooling agreement of the following carrier agent

<u>CARRIER AGENT</u>	<u>ADDRESS</u>	<u>POOLING OPTION</u>
Jack Bartlett Moving & Construction Co., Inc. d/b/a Jack Bartlett Moving Co., Inc.	2-A Old Leicester Road Asheville, NC 28804	I

For the above mentioned carrier agent an executed pooling agreement, selection of pooling option, and proof of motor carrier authority is enclosed.

Please contact the undersigned if you have any questions. Thank you very much

Yours very truly,

BAKER & DANIELS

By:   
Frank S. Swain  
Attorneys for Wheaton Van Lines, Inc.

Enclosures

## **POOLING AGREEMENT**

**AGREEMENT** between Wheaton Van Lines, Inc., an Indiana corporation with its principal offices at 8010 Castleton Road, Indianapolis, Indiana, hereinafter referred to as "Wheaton," and Jack Bartlett Moving & Construction Co., Inc., dba Jack Bartlett Moving Co., Inc. with principal office or place of business 2-A Old Leicester Road, Ashville, North Carolina 28804, hereinafter referred to as "Carrier-Agent".

### **WITNESSETH**

**WHEREAS**, Wheaton and Carrier-Agent are motor common carriers of household goods in interstate or foreign commerce subject to the jurisdiction of the Surface Transportation Board ("S.T.B."); and

**WHEREAS**, Wheaton and Carrier-Agent desire, subject to approval of the S.T.B. under 49 U.S.C. Sec. 14302, to agree to pool or divide traffic, services, and earnings in the transportation of household goods;

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter contained, the parties hereby agree as follows.

#### **1. Motor Carrier Operating Authority**

a. Wheaton represents and warrants that it holds in good standing Certificate of Public Convenience and Necessity, No MC-87113 (Sub-No. 20) This certificate authorizes transportation, over irregular routes, as a motor common carrier of household goods between points in the United States, attached hereto as Addendum A.

b. Carrier-Agent represents and warrants that it holds in good standing authority as a motor common carrier to transport household goods between certain points in the United States, as set forth in the Certificate(s) of Public Convenience and Necessity, attached hereto as Addendum B

#### **2. Agency Agreement**

Wheaton and Carrier-Agent represent and warrant that they have entered into a separate Agency Agreement governing the services and compensation for transportation performed pursuant to Wheaton's motor carrier authority. The parties agree that the continuance of this Agency Agreement is a condition to the continued participation by Carrier-Agent in this Pooling Agreement.

#### **3. Pooling**

Wheaton hereby consents and agrees to divide traffic, services, and earnings in the transportation in interstate or foreign commerce of household goods to the extent that Wheaton's and Carrier-Agent's interstate motor common carrier authorities are duplicative. Carrier-Agent shall book and register all household goods shipments with Wheaton when the customer requests the services of Wheaton, or when the shipment moves beyond the mileage limitation in the pooling option elected by Carrier-Agent, as provided herein. Wheaton agrees that Carrier-Agent may, in its discretion, request

that Wheaton transport a shipment within the scope of the Carrier-Agent's authorized mileage allowed by the pooling option elected by Carrier-Agent; and if Wheaton agrees, the shipment is to be booked for transportation under Wheaton's interstate motor common carrier authority.

#### **4. Election of Pooling Option**

Except for shipments booked for and registered with Wheaton, as provided in paragraph 3 above, Carrier-Agent may operate under its own motor common carrier authority to the extent provided in the pooling option elected by Carrier-Agent by execution of a designation of election form, copies of which are attached hereto. Carrier-Agent shall elect one of the following pooling options:

**Option I** -- Carrier-Agent agrees not to operate in interstate or foreign commerce as a motor common carrier pursuant to its motor common carrier authority to transport household goods.

**Option II** -- Carrier-Agent may transport under its own motor common carrier authority, in its own equipment, household goods shipments tendered for transportation in interstate or foreign commerce which are to move a distance of up to 500 miles from its principal office or within the geographic scope of its motor common carrier authority, whichever is less. Wheaton shall not be obligated to provide return loads to Carrier-Agents who elect Pooling Option II when they transport shipment under their authority. If return loads are provided under this Option, the Carrier-Agent shall be compensated on the basis of seventy-five percent (75%) of the net transportation charge (63% to Power Unit, 12% to Cargo Unit), if less than 500 miles.

"Net transportation charge," as used herein, means the revenues received for transportation, exclusive of charges for packing, unpacking, and accessorial services, after deducting all applicable pick-up charges, discounts, military shipment charges, valuation charges, and brokerage charges.

#### **5. Change of Election of Pooling Option**

Carrier-Agent may change its election of pooling option only once per year by execution of a new designation of election form transmitted to Wheaton at least thirty (30) days prior to the termination date of the previous election period.

#### **6. Transportation by Carrier-Agent**

Carrier-Agent agrees that all shipments booked for movement under its motor common carrier authority shall move pursuant to Carrier-Agent's tariff or government rate and shipping documents and in vehicles identified as those of Carrier-Agent. Carrier-Agent shall make full and complete disclosure to shipper that said shipment is being hauled by Carrier-Agent pursuant to the Carrier-Agent's operating authority and is not being hauled by Wheaton under its interstate operating authority. Copies of Carrier-Agent's shipping documents shall be provided to Wheaton upon request. Carrier-Agent shall not commingle in the same vehicle shipments moving under its operating authority with shipments booked for movement under Wheaton's interstate operating authority.

**7. Violations of Agreement**

Agents who violate the provisions of their pooling agreement by operating beyond their limits will be subject to penalties. The first offense will result in a \$1,000 fine, the second offense will result in a \$1,500 fine, and a third offense will result in a \$2,500 fine and possible termination of the agency agreement.

Any expenses, including attorney fees, incurred by Wheaton in collecting those amounts or in terminating the Agency Agreement or its Pooling Agreement, shall be paid by the Carrier-Agent. Likewise, any expenses, including attorney fees, incurred by the Carrier-Agent in successfully defending any such suits shall be paid by Wheaton.

**8. Compliance with Rules and Regulations**

When Carrier-Agent transports shipments under its own operating authority, Carrier-Agent agrees to comply fully with the rules and regulation of the Secretary of Transportation and the various states in which Carrier-Agent operates.

**9. Hold Harmless Clause**

Carrier-Agent agrees to hold Wheaton harmless against any claim, demand or assertion of liability resulting from transportation performed pursuant to Carrier-Agent's motor common carrier authority and to indemnify Wheaton for any payment required to be made for loss incurred by Wheaton, including attorney fees and all necessary costs and expenses in connection therewith arising out of or connected with the operation of vehicles by Carrier-Agent under its motor common carrier authority, including any such claim, demand, assertion of liability, payment or loss arising from (1) injury or death of any driver and/or helper of Carrier-Agent, (2) personal injuries and/or property damage to the public occurring during the course of operation of Carrier-Agent's vehicles; (3) any cargo loss or damage or liability occurring while cargo is being packed or unpacked, being loaded into, being unloaded from, or transported in vehicles of Carrier-Agent; or (4) negligence and/or dishonesty of the driver and/or helpers of Carrier-Agent.

**10. Insurance**

Carrier-Agent agrees to maintain in full force and effect during the term of this agreement, at its own expense, workmen's compensation and employer's liability insurance, in statutory amounts as may be required by law, and bodily injury, property damage, and cargo insurance in not less than the minimum amounts required by the Secretary of Transportation and the states in which Carrier-Agent operates motor vehicles. Carrier-Agent agrees to name Wheaton as an additional named insured on its bodily injury, property damage, and cargo insurance policies and to furnish Wheaton copies of said policies or endorsements. Carrier-Agent agrees to indemnify and hold harmless Wheaton from any and all claims arising out of or in any way connected with the Carrier-Agent's failure to provide insurance as prescribed herein, including the payment of any attorney fees or costs.

**11. Operating Compliance, Records and Reports**

Carrier-Agent agrees to establish and maintain accurate records of the volume of shipments and revenues from household goods transportation performed under Carrier-Agent's motor common carrier authority. Carrier-Agents who select Option II will be subject to periodic audits to ensure compliance and will be required to provide proof of proper fuel tax filings, permit purchases, state and franchise tax filings, and separate order documentation, paperwork, and advertising materials.

**12. Assignment**

This agreement may not be assigned by Carrier-Agent.

**13. Waiver Provision**

The failure of either party hereto (a) to enforce at any time any of the provisions of this agreement, or (b) to exercise any option which is herein provided, or (c) to require at any time performance by the other of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this agreement, or the right of such party thereafter to enforce each and every such provision

**14. Governing Law**

This agreement shall be governed by and construed according to laws of the State of Indiana.

**15. Original Agreement**

This agreement has been executed in duplicate and all copies shall be deemed to be an original.

**16. Term of Agreement**

The pooling plan evidenced by this Pooling Agreement is subject to approval by the S.T.B. This agreement shall be effective from the date of execution hereof or the effective date of approval by the S.T.B, whichever is later, and shall remain in effect until the Wheaton Agency Agreement with Carrier-Agent is terminated or Carrier-Agent breaches this Pooling Agreement, in which case the Agency Agreement may be terminated by Wheaton in accordance with the terms of this Pooling Agreement.

17. Notice

Notices required to be given under this Pooling Agreement shall be in writing addressed as follows:

**If to Wheaton:**

**David L. Witzerman, Executive Vice President  
Wheaton Van Lines, Inc.  
8010 Castleton Road  
P.O. Box 50800  
Indianapolis, IN 46250-0800**

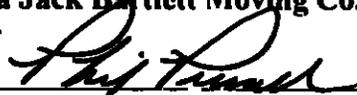
**If to Barnes Van Lines:**

**Mr. Phil Purcell  
Jack Bartlett Moving & Construction Co., Inc.  
Dba Jack Bartlett Moving Co., Inc.  
2-A Old Leicester Road  
Asheville, NC 28804**

Notice shall be deemed to have been given the day it shall be deposited in the United States mail, certified, postage prepaid, and addressed to the party entitled to receive notice, as herein set forth.

IN WITNESS WHEREOF, the parties have this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, hereto caused this Pooling Agreement to be executed.

**Jack Bartlett Moving & Construction Co., Inc.  
dba Jack Bartlett Moving Co., Inc.**

By: 

Signature  
Operations Manager

Title  
Celeste B. Bartlett

Witness

**WHEATON VAN LINES, INC.**

By: 

Signature  
EVP

Title  
David L. Witzerman

Witness

**INTERSTATE COMMERCE COMMISSION**  
**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

SERVICE DATE:  
Aug 21, 1981

No. MC-87113 (Sub-No 20) X

WHEATON VAN LINES, INC.  
(Indianapolis, IN)

This Certificate of Public Convenience and Necessity is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle

This authority will become effective only when the carrier has met the compliance requirements pertaining to insurance coverage for the protection of the public (49 CFR 43), the designation of agents upon whom process may be served (49 CFR 44), and tariffs or schedules (49 CFR 1300 through 13, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient ground for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For all carriers: Any duplication in this authority and rights currently held does not confer more than one operating right.

For common carriers with irregular route authority: Any irregular route authority authorized in this certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document and will be valid as long as the carrier maintains compliance with the above requirements.

By the Commission

Agatha L. Mergenovich  
Secretary

(SEAL)

Supersedes: Certificate No. MC-87113 (Sub-Nos. and 12).

No. MC-87113 (Sub-No. 20) X

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting household goods, as defined by the Commission, and furniture and fixtures, between points in the United States.

ADDENDUM A

**WHEATON VAN LINES, INC.  
POOLING AGREEMENT  
ELECTION OF OPTION**

The undersigned has fully reviewed all of the options contained in Paragraph 4 of the Wheaton Van Lines, Inc., Pooling Agreement attached hereto, and on behalf of Jack Bartlett Moving & Construction Co., Inc dba Jack Bartlett Moving Co., Inc. MC-432553, does hereby elect to participate under Option I, which is incorporated herein by reference. Attached is a copy of (my) (our) Motor Common Carrier Authority to transport household goods.

The undersigned further acknowledges that commonly owned agencies must all be governed by the same option, in that, once a declaration is submitted, that option may not be changed until the next declaration period.

I understand that unless I select another option within thirty (30) days prior to the termination of the declaration period, the option that I have chosen shall remain in full force and effect for all subsequent declaration periods.

By: *Phil Purcell*  
Signature  
Phil Purcell  
Name  
Operations Manager  
Title

STATE OF NC

COUNTY OF Buncombe

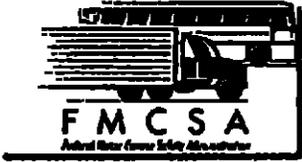
Subscribed and sworn to before me, a Notary Public this 31 day of July, 2007.

*Malinda L Parham*  
Notary Public

My Commission expires. 9-17-2007

(SEAL)  
Malinda L Parham  
Notary Public  
Buncombe County, NC

ADDENDUM C



Menu Choose Menu Option



**Motor Carrier Details**

<b>US DOT:</b>	1049066	<b>Docket Number:</b>	MC432553	
<b>Legal Name:</b>	JACK BARTLETT MOVING AND CONSTRUCTION CO , INC			
<b>Doing-Business-As Name:</b>				
<b>Business Address</b>	<b>Business Telephone and Fax</b>	<b>Mail Address</b>	<b>Mail Telephone and Fax</b>	<b>Undeliverable Mail</b>
2-A OLD LEICESTER ROAD ASHEVILLE NC 28804	(828) 350-1100 Fax (828) 350-1100	PO BOX 18418 ASHEVILLE NC 28814		NO
<b>Authority Type</b>	<b>Authority Status</b>	<b>Application Pending</b>		
Common	ACTIVE	NO		
Contract	NONE	NO		
Broker	NONE	NO		
<b>Property</b>	<b>Passenger</b>	<b>Household Goods</b>	<b>Private</b>	<b>Enterprise</b>
NO	NO	YES	NO	NO
<b>Insurance Type</b>	<b>Insurance Required</b>	<b>Insurance on File</b>		
BIPD	\$750,000	\$750,000		
Cargo	YES	YES		
Bond	NO	NO		

**BOC-3: YES**

**Blanket Company: AMERICAN MOVING AND STORAGE ASSOCIATION**

**Web Site Content and BOC-3 Information Clarification**

| [Active/Pending Insurance](#) | [Rejected Insurance](#) | [Insurance History](#) | [Authnity History](#) | [Pending Application](#) | [Revocation](#) |

Wednesday, August 22, 2007 at 17 29 48

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United States Department of Transportation - Federal Motor Carrier Safety Administration