

---

In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

---

)  
DATE: September 29, 1998

Claims Case No. 98082505

## CLAIMS APPEALS BOARD DECISION

### DIGEST

Tender of scuba equipment and a VCR for purposes of establishing a prima facie case of liability for transit loss by a carrier may be established through a detailed written statement from the member's spouse describing the events at origin, coupled with other evidence of ownership prior to the move and an inadequate descriptive inventory.

### DECISION

Stevens Worldwide Van Lines, Inc. (Stevens), appeals the January 28, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97100606 which allowed \$637 of Stevens claim for a refund of the \$5,589 that was setoff by the Army for transit loss and damage to a service member's household shipment.<sup>(1)</sup>

### Background

The shipment was picked up at Fort Lee, Virginia, on August 8, 1993, and placed into a non-temporary storage (NTS) facility. Stevens picked up the shipment from the NTS facility on November 17, 1993, and delivered it to the service member in Colorado on February 22, 1994.

On the day of delivery, the service member and Stevens' agent prepared a Joint Statement of Loss or Damage at Delivery (DD Form 1840) which indicated that two scuba tanks (not numbered or listed on the Descriptive Inventory) were missing and a box of CDs and Disney tapes was missing. The DD Form 1840 noted that another list was attached.<sup>(2)</sup> On arch 18, 1994, the service member dispatched a Notice of Loss or Damage (DD Form 1840R) indicating that various scuba equipment articles were missing (e.g., wet suit-type articles, boots, fins, gloves, regulator, compass), along with a broken Sharp 21-inch television and a broken mug(s). No inventory numbers were noted. The DD Form 1840R referred to another "sheet." The record contained three pages of handwritten continuation sheets in loose-leaf, copy-book style format listing additional loss/damage. Two of the continuation sheets list loss/damage on both sides, and one lists broken or damaged items on one side. Each of the three sheets appears to be certified as received at Fort Carson, Colorado, on March 18, 1994. Numerous items with inventory numbers (including #262, a box of VCR tapes; and #253, a diskette case) plus a number of unnumbered items (including a View Max VCR) were listed on the continuation sheets.

Two other listings of missing or damaged items are relevant. One was a handwritten list entitled "Added List for Claims" which states that it was "turned in first time 18 Mar 94." The list otherwise is undated. It included numerous inventory item numbers and unnumbered items. The second was a list received at the Fort Carson claims office on September 7, 1994, entitled "Missing items list from Government Shipments." This list included both numbered items (all but one item appears on the March 18, 1994, continuation sheets) and unnumbered items (many of which appear on the "Added List of Claims".)

Stevens contends that it did not receive timely notice of loss or damage for a number of items including the mugs (\$120); #253, the diskette case (\$5); #262, a box of VCR tapes (\$773); and other items that appear on the "Added List for Claims" (\$722). Stevens' total for these items is \$1,620. Stevens also argues that there is no evidence that the member tendered the following items which had no inventory numbers: the scuba tanks (\$297); the Magnavox View Max VCR (\$424); and the balance of the scuba equipment: scuba jacket/pants (\$288), summer skins (\$86), boots (\$41), fins (\$59), gloves (\$38), hood (\$42), diver's flag (\$75), scuba BC (\$286), compass (\$58), diver's console (\$315), and a regulator (\$351).<sup>(3)</sup>

The Army's administrative report stated that Stevens did receive timely notice of the loss or damage because all the items were listed on the DD Form 1840, DD Form 1840R, or the continuation sheets sent with the DD Form 1840R. In support of its claim of tender, the Army obtained a written statement from the spouse of the service member, which describes in her own words the conditions surrounding the tender of the family's household goods to the NTS facility in August 1993. Briefly, she described a chaotic situation in which the packers did not bring sufficient packing material to pack goods at her former residence. It was her understanding that the shortage of such material was due to destructive weather in the area on the previous day. The spouse states that she had specifically requested that the packer list the scuba gear, VCRs, and other items on the inventory, but that the packers told her not to worry about it. It was reported that the packers placed scuba equipment into their truck without boxing it. At delivery, the spouse stated that Stevens' agents advised her that some of the boxes felt inordinately light, and they actually watched her open a stereo speaker box that was filled with paper. In addition, the member produced a photograph showing two people wearing the scuba equipment and a receipt for the purchase of some of the scuba equipment.

Stevens contends that the shipper's picture only shows two unidentified people wearing scuba equipment at some indefinite point in time and the receipt does not identify the member. Stevens also suggests that the spouse's statement is somewhat unreliable because it came from the spouse and not the member.<sup>(4)</sup>

The record also shows that another photograph of the two divers taken in a similar setting was copied on a piece of paper, and the member apparently wrote next to the image of the two divers that "this also shows that we have 2 full sets." The date of this photograph was August 27, 1992.

## Discussion

To establish a prima facie case of liability against a carrier for transit damage, the service member, or the military service that succeeded to his claim through subrogation, must establish that he delivered the damaged item to the carrier in good condition, that the carrier delivered it in a damaged condition, and the amount of damages. See Missouri Pacific Railroad Company v. Elmore & Stahl, 377 U.S. 134, 138 (1964). Additionally, under paragraph I of the *Military-Industry Memorandum of Understanding on Loss and Damage Rules*, effective January 1, 1992, the service member can overcome the presumption of the correctness of the delivery receipt when he dispatches notice of additional damages not later than 75 days after delivery. Generally, the service member cannot establish a prima facie case of liability for additional damage when notice is dispatched after 75 days.

The record supports Stevens' claim that timely notice was not dispatched to it for most of the items regarding which Stevens says it was not provided timely notice. The "Added List for Claims" listing states that it was "turned in first time" on March 18th, but unlike the other three sheets it lacks the signature certifying receipt on that date. In view of its different format, we cannot find that it was submitted and dispatched to the carrier on March 18, 1994, along with the other three. However, a few items which Stevens claims it did not have timely notice of were listed on the DD Form 1840R or the continuation sheets that were stamped as having been received March 18, 1994. Item 262 is an example. One of the arch 18, 1994, continuation sheets shows "3.0 Box" as crossed out, but the associated item number (262), the phrase "Missing," and the phrase "cannot tell at this time" remain on the sheet. Moreover, "Disney Tapes" (contents of Item 262) were reported missing by the service member and the carrier's representative on the day of delivery. Also Item 253, a diskette case, was reported as broken and chipped on one of the March 18th continuation sheets.<sup>(5)</sup> A broken mug(s) was also listed on the DD Form 1840R (original). However, our examination of the DD Form 1840R and the associated continuation sheets does not indicate possible loss/damage to the other specific items questioned by Stevens. For example, while specific pieces of specialized diving equipment is listed on the DD Form 1840R (original), none of the items listed was a scuba wreck reel. While one of the continuation sheets includes the View Max VCR, neither the

DD Form 1840R nor any of the March 18th continuation sheets includes a Sanyo VCR. Stevens should receive a refund of \$722, the amount we calculated to represent the offset for the other items for which it claims it did not have timely notice.

We disagree with Stevens on the issue of tender. Tender is an issue of fact, and even though the evidence is weak, overall there is enough evidence on record to reasonably support tender of the scuba equipment and View Max VCR. Ordinarily, we would have expected to see some reference to the scuba equipment and VCR on the Descriptive Inventory if such equipment had been tendered. The member's spouse had the opportunity to briefly note her disagreement with the inventory in the "Remarks/Exceptions" lines at the bottom of one of the Descriptive Inventory sheets, but she failed to do so. While the shipper is not strictly bound by the carrier's labeling and inventorying decisions, a shipper ignores such decisions at his peril. See Carlyle Brothers Forwarding Co., B-247442, March 16, 1992; and OK Transfer & Storage, Inc., B-261577, March 20, 1996.

However, it is not necessary to list every household good on the descriptive inventory, and a carrier can be charged with loss of articles not specifically listed where other circumstances are sufficient to establish that such goods were tendered and lost. See DOHA Claims Case No. 96070203 (September 5, 1996); Aalmod Transportation Corp., B-240350, Dec. 18, 1990; and Valdez Transfer, Inc., B-197911.8, Nov. 16, 1989. Here, the spouse, the person with knowledge of the events surrounding the tender of the items, prepared a written statement in her own words describing what had transpired at origin. Compare Security Van Lines, B-254197, Feb. 2, 1994. The spouse's written statement is more specific than the form-type statement of September 7, 1994, "Missing items list from Government Shipments," which is similar to the form statements we have discounted in prior decisions. The spouse's story is corroborated by her photograph and the 1992 receipt for the purchase of scuba equipment. It is also corroborated by the existence of the poor inventory prepared at origin.

The origin packer prepared the inventory poorly. Except for a few items like most of the stereo equipment, the packer consistently failed to describe the contents of cartons or boxes. Typically, it described a line item as simply "3.0 CP" for a carrier-packed carton with a volume of 3 cubic feet. Generally, no further description of the contents was provided.<sup>(6)</sup> The poor inventory descriptions had to be apparent to Stevens. This problem was re-emphasized when Stevens prepared its own rider at the NTS facility noting that there were two containers associated with the shipment with non-described contents and which had not been inventoried. If Stevens had checked everything it received and prepared a proper inventory or rider, it would have found (or had evidence that it was never tendered) the scuba equipment and the VCR. Apparently, Stevens was satisfied with merely viewing the external condition of containers (even non-inventoried ones) that may have contained anything. Moreover, as the member's spouse noted, Stevens' agents had directed her attention to the fact that some of the containers were peculiarly light. If this condition had been apparent to them at delivery, it should have been apparent to them when they were at the NTS facility. This too should have prompted them to open and inspect the containers they received from the NTS facility. When goods pass through the custody of several bailees, it is a presumption of the common law that the damage occurred in the hands of the last one. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 418 (1978); and DOHA Claims Case No. 96070205 (September 5, 1996). Even if Stevens did not violate its Tender of Service,<sup>(7)</sup> it risked liability by not opening and examining the contents of the non-described containers. See DOHA Claims Case No. 98043009 (May 14, 1998); and Carlyle Van Lines, B-270114, May 22, 1996.

We disagree with the significance of Stevens' argument that the member himself did not prepare the written statement. The spouse was present and signed the applicable documents at pick-up and delivery. She had first-hand knowledge of the events which transpired at each time. While Stevens raises important questions about the authenticity and relevancy of the photograph, judicial rules of evidence are not strictly applied here. In this context, it is reasonable to assume that the member has offered a photograph of him and his spouse wearing the scuba equipment they had owned. Finally, regarding the authenticity of the receipt for the scuba equipment, it is reasonable to believe that the member purchased the equipment if he produced the receipt.

### Conclusion

We modify the Settlement to allow Stevens an additional \$722; otherwise we affirm it.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. This matter refers to Personal Property Government Bill of Lading No. SP-600,487; Army Claim No. 94-061-1992 and Stevens Claim No. 93-74477. The January 28th Settlement Certificate amends the earlier December 12, 1997, Settlement Certificate, which allowed \$259.
2. We were not able to identify that list.
3. The DD Form 1844 involved a claim of \$25 for the diver's flag, not \$75, and the scuba BC involved a claim of \$386, not \$286.
4. The record indicates that the spouse was the person who signed the inventory at origin and the DD Form 1840 at destination.
5. The last item listed on a sheet which began with Item 136.
6. Paragraph C-5,a of the *Basic Ordering Agreement for Storage of Household Goods and Related Service*, requires that the contents of containers be described in general terms, such as "dishes" or "linens." Paragraph 5.5.1.1 of the *Performance Work Statement For Packing, Containerization and Local Drayage of Personal Property Shipments*, similarly directs a minimally sufficient general description such as: "linens, pots and pans" plus the container size. See Appendices H and P of the Department of Defense *Personal Property Traffic Management Regulation*, DoD 4500.34-R (October 1991).
7. See Appendix A to the Department of Defense *Personal Property Traffic Management Regulation*, DoD 4500.34-R (October 1991).