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In Re:

Stevens Worldwide Van Lines, Inc.

Claimant

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DATE: September 10, 1999

Claims Case No. 99080603

## CLAIMS APPEALS BOARD DECISION

### DIGEST

The service member fails to provide sufficient evidence to establish a *prima facie* case of liability against a carrier on the issue of whether he tendered six baseball card collections claimed to be worth \$6,000 to a household goods carrier when the member admits that he has no direct evidence that he owned the six collections and that the only evidence that he owned them was his claim, his statement that he owned collections worth about \$25,000 with 45,000 cards, and statements by his wife and a friend indicating that he was an avid baseball card collector. The record is devoid of any evidence of proof of ownership of the surviving collections in the value claimed by the member.

### DECISION

Stevens Worldwide Van Lines, Inc. (Stevens) appeals the August 11, 1997, Settlement Certificate of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 97060220. In the Settlement Certificate, DOHA affirmed Stevens' liability for transit damage to a shipment of a service member's household goods.<sup>(1)</sup> In this appeal, Stevens seeks a refund of the \$4,151 set off by the Army to recover for missing collections of baseball cards.<sup>(2)</sup> Stevens contends generally that the member failed to present sufficient evidence to establish a *prima facie* case of liability against Stevens for the missing collections.

### Background

The record shows that the shipment was picked up in Reno, Nevada, on July 23, 1993, and was delivered to the service member in California, on August 3, 1993. The Descriptive Inventory indicates that there were five 1.5 cubic foot cartons of "cards" which were carrier packed: items 65, 72, 73, 100, and 116. On September 14, 1993, the service member dispatched a Notice of Loss or Damage (DD Form 1840R) which noted that six sets of baseball cards were missing from four of these cartons. The member listed a 1973 Topps baseball card set (660 cards) from item 65; a 1982 Topps Traded set (132 cards) and a 1984 Fleer Update set (132 cards) from item 73; a 1970 Topps baseball set (720 cards) from item 72; and a 1975 Topps baseball set (660 cards) and a 1976 Topps baseball set (660 cards) from item 100. The member submitted estimates from three baseball card dealers which showed that the replacement costs for these sets were \$1,200, \$275, \$950, \$2,250, \$900, and \$425, respectively.

The service member admits he has no evidence that he owned the missing collections, and had not shown his completed collections to anyone. He provided statements from associates and his spouse indicating that he was involved in collecting baseball cards, but they were not aware of the contents of the collections. The member states that he does have sales receipts for the purchase of two collections, or for the individual cards he purchased to complete the other four sets. The member stated that generally sales receipts are not issued at card shows and card shops for these transactions.

Stevens contends that there is no proof that the member owned and tendered these collections, and questions the estimates concerning what they are worth. In earlier correspondence, Stevens suggested that the description "cards" used

by its packers is so nonspecific that it could have included Christmas cards. Stevens criticizes the Army's effort to gather supporting evidence two years after delivery suggesting that not only was the Army's effort untimely but that even with the member's "boasting" about a collection of 45,000 cards worth approximately \$25,000, the member still offered no evidence that he owned such a collection. Stevens argues that the supporting statements of the member, an associate who was familiar with his collection activities, and his spouse do not describe the contents of his collection with respect to value and specific cards. Stevens also suggests that the claim is questionable because the member delayed from July 26, 1993, until September 14, 1993, to report the loss. Stevens also suggests that two replacement estimates by two separate dealers are suspicious because the figures given by each were identical even though it is well-established that prices vary from 25 percent to 50 percent of the listed retail and the amounts provided in the estimate were listed retail prices. Among others, Stevens cites as support the decisions of the Comptroller General in *OK Transfer and Storage*, B-261577, Mar. 20, 1996; *Suddath Van Lines*, B-247430, July 1, 1992; and *Fogarty Van Lines*, B-235558.5, Apr. 29, 1991.

### Discussion

As Stevens suggests, there are three elements on which the service member or his service in subrogation must present to establish a *prima facie* case of liability against the carrier: tender of an item to a carrier, delivery in a damaged or more damaged condition, and the amount of damages. See *Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134, 138 (1964). Stevens contends that the member failed to support all three elements.

Stevens' argument that the replacement estimates are suspect, or that the value of these collections is questionable, is not meritorious. The estimates appear facially valid, and Stevens failed to offer any evidence concerning the proper replacement costs of these collections. In the absence of clear and convincing contrary evidence, Stevens' liability would be measured by the estimates provided by the member and adopted by the Army if there is sufficient evidence on the other two elements of the *prima facie* case. Generally, this Office will not question an agency's determination of replacement costs of household goods in the absence of clear and convincing evidence that the amount assessed was unreasonable. See *Cartwright International Van Lines*, B-261980, Jan. 26, 1996.

There is sufficient evidence that the boxes of "cards" that the member had shipped were not Christmas cards, but they were baseball cards. Stevens agents packed and labeled the cartons, and if they did not contain baseball cards, those agents should have described what they were. The member's collection activities were verified by the member's spouse and the other service member who had introduced him to the hobby and who had accompanied him to many of the card shows. Baseball cards were consistent with the description on the Descriptive Inventory. Therefore, if the issue is whether the member had tendered baseball cards to Stevens, the member demonstrated that he did so. But, this is not the issue here. The real issue is whether the record contains sufficient evidence to suggest that the member tendered the six complete collections that he has claimed.

In essence, the only evidence here of tender of the six collections was the member's claim that he tendered them. The member needs something more than the claim itself to establish a *prima facie* case of liability against Stevens in the element of tender. See *Paul Arpin Van Lines, Inc.*, B-205084, June 2, 1982; *aff'd* B-205084, June 8, 1983. As the value of a tendered item increases, especially one which is not a fungible commodity, it is reasonable to expect better evidence of support. See *OK Transfer & Storage, Inc.*, B-261577, Mar. 20, 1996. It was not necessary for the member to produce sales receipts, especially where there is evidence that this was not the practice among hobbyists. Moreover, the results here may have been different if the member specifically described the other collections that he still owned, which he suggested were more valuable than the six that were lost, and then verified that in fact he owned whatever was necessary to justify the value of those other sets. In any event, the member has not offered sufficient evidence for us to reasonably conclude that he tendered the six named collections to Stevens. In part, this claim is comparable to the facts in *Suddath, supra*, where the member did not provide evidence concerning the nature of the carpet she tendered or its value. Here, we know what the six collections were worth if the six collections had been tendered, but the member failed to offer supporting, objective evidence on the nature of what he tendered.

### Conclusion

We reverse the Settlement Certificate and remand this matter to the Army Claims Service to determine the value of [\(3\)](#)

baseball cards sold at ordinary retail stores at the time and place of delivery. The member's damages should be calculated on that amount.

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 shipment involved Personal Property Government Bill of Lading (PPGBL) RP-987,852; Army Claim No. 94-041-0215; and Stevens' Claim No.93-69312.
2. Stevens's appeal covers only the baseball card collections for which the Army offset a net amount of \$4,000, not other broken household items totaling an additional \$151. The member claimed that the collections were worth \$6,000, but not knowing the condition of the cards in the collections, the Army adjudicated the loss at \$4,000.
3. We were advised that at present Wal Mart, for example, sells a pack of 15 baseball cards for \$2.40. If that price had been applicable six years ago, the average price per card was \$0.16, or a total of \$474.24 (2,964 cards X .16 each).