

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001**

Postal Rate and Fee Changes, 2006) Docket No. R2006-1

**SECOND INTERROGATORIES
OF GROWING FAMILY, INC.
TO UNITED STATES POSTAL SERVICE WITNESS BERKELEY
GF/USPS –T39-20 - 48
(June 29, 2006)**

Pursuant to Rules 25, 26 and 27 of the Rules of Practice, Growing Family, Inc., hereby submits interrogatories and requests for production of documents to United States Postal Service witness Berkeley. Growing Family asks that, in responding to these requests, the Postal Service follow the guidelines set forth below. If any request is deemed burdensome or seeks information that the respondent reasonably believes is confidential, please contact the undersigned counsel for Growing Family to discuss possible limitations or alternative requests.

If the witness to whom these interrogatories are directed is unable to provide a complete response, please provide a response by another witness, and if no such witness is capable of providing a complete response, please submit an "institutional" response. If an "institutional" response is provided, please provide the name or names of the persons responsible for the response.

If information requested is not available in the exact format or level of detail requested, please provide responsive material in such different format or level of detail as is available.

If a privilege or confidentiality is claimed with respect to any information that is responsive to these requests, please describe the precise nature of any privilege claimed and describe information being withheld, including sufficient detail to enable a reasonable assessment of the claim of privilege or confidentiality.

If any information that would have been provided in response to these requests has been destroyed, please describe such data or documents and explain the circumstances under which they were destroyed.

Respectfully submitted,

/s/ David R. Straus
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June 29, 2006

SECOND INTERROGATORIES OF GROWING FAMILY, INC.
TO UNITED STATES POSTAL SERVICE WITNESS BERKELEY

GF/USPS-T39-20. In response to GF/USPS-T39-2, you refer to the increased indemnity limit and to Postal Bulletin 22127 as outlining the changes in policy with respect to the payment of COD claims.

(a) Please confirm the authenticity of the attached letter, dated March 10, 2005, from Delores Killelte, the Postal Service's Vice President and Consumer Advocate, to counsel for Growing Family concerning COD claims paid to Growing Family.

(b) Please confirm that Growing Family is the Postal Service's largest COD customer.

(c) Please confirm that for at least several years before February, 2005, the Postal Service paid all valid COD claims by Growing Family in an amount equal to the amount to be collected from the recipient.

(d) Please confirm that, beginning on February, 2005, the Postal Service began paying some valid COD claims by Growing Family in an amount significantly lower than the amount to be collected from the recipient.

(e) Please confirm that, beginning in approximately May, 2005, the Postal Service began paying all valid claims by Growing Family in an amount significantly below the amount to be collected from the recipient.

(f) Please confirm that beginning approximately December, 2005, and through the present, the Postal Service is paying all of Growing Family's valid COD claims at approximately \$15.00 per package, plus postage.

(g) Please confirm that Growing Family files claims on approximately 3% of its COD packages.

(h) Please confirm that the amount to be collected from the recipient for Growing Family's COD packages generally falls within the \$25 to \$89 range, although it is sometimes higher.

GF/USPS-T39-21. In response to GF/USPS-T39-3, you refer to your answer to GF/USPS-T39-2 when asked whether the Postal Service has changed its "practice" with respect to the payment of COD claims in the past five years.

(a) Do you consider the reduced payments to Growing Family to be a change in practice?

(b) Are there other COD mailers as to which the Postal Service has within the past five years changed from paying claims on the basis of the amount to be collected to paying claims on the basis of some lesser amount? If so, please quantify the number of COD claims per year so affected.

(c) Does the Postal Service apply the policy and standards set forth in the March 10th letter to all COD claims?

(d) If your answer to part (c) is anything other than an unqualified "yes," please explain if the policy applies to only Growing Family or to a subset of COD mailers and explain the reason for the less than 100% application of the policy.

GF/USPS-T39-22. In GF/USPS-T39-4, Growing Family asked for volume and number of claims information for the five largest COD customers. You provided

the volumes but not the claims, contending that the Postal Service does not produce such a report.

(a) Does the Postal Service have the data necessary to respond to this request?

(b) If your answer to part (a) is anything other than an unqualified “yes,” please see the March 10th letter, which states that “[t]he delivery system established by the Postal Service provides scans to record events for COD deliveries, such as, Acceptance, Arrival at Unit, Notice Left, Refused, Unclaimed, and Delivered” and state why, in addition to the listed information with respect to COD parcels, the Postal Service does not associate claims data with this other information.

GF/USPS-T39-23. In response to GF/USPS-T39-5, you show that the second listed COD customer mailed roughly 80,000 COD pieces in each year FY2003, 2004 and 2005, but only 1,162 COD pieces through May of FY2006. Please state the reason for this reduction

GF/USPS-T39-24. In response to GF/USPS-T39-6, you provided a chart showing the basis for COD claims for FY2004 and 2005.

(a) Please explain fully the terms “damage,” “loss,” and “no remit” as used in your response.

(b) Please list and explain each of the circumstances under which a COD claim can be based on “no remit.”

(c) Please confirm that, of the 21,950 claims for FY2004, more than 20,000 were for “loss” and only 219 for “damage.”

(d) Please explain the reason(s) why the Postal Service apparently lost more than 20,000 COD packages in FY2004, given the scans and the manner in which such packages are handled.

(e) Please provide the Postal Service’s best estimate of the percentage of all mail that is “lost,” as that term is used in your chart.

(f) Please confirm that there were more than 10,000 “no remit” claims in FY2005, compared with only 1,697 in FY2004, and explain the reason(s) for this increase, even though total COD claims in 2005 dropped by 24% from the FY2004 level.

(g) Please confirm that, in FY2005, there were 9,111 claims where the amount paid was \$100 or less and that, of these, 5474, or 60%, were for “no remit.”

GF/USPS-T39-25. In GF/USPS-T39-7, Growing Family asked you for a breakdown of the number, or approximate number (or percentage), of claims paid that fall into the following categories: (1) the article is delivered, but the funds are not collected from the recipient, (2) the article is lost or destroyed before delivery, (3) the article is refused or unclaimed by the recipient and lost or destroyed prior to its return, (4) the article is delivered and the funds collected, but the payment is not provided to the sender (5) other. You responded that the Postal Service collects data only in terms of “damage, loss, or no remittance.”

(a) If the Postal Service's records are unable to distinguish between, for example, a package lost on the way to a recipient from a package lost during the return to the sender, is it possible for the mailer to know when it was "lost"?

(b) If so, how?

GF/USPS-T39-26. Assume that a mailer mails 1,000 COD packages and that, sixty days later, that mailer has received payment for 500 packages and the return of 300 packages, and the mailer wishes to submit a claim with respect to the remaining 200 packages. Please state whether the mailer will know the cause of the failure by the Postal Service to provide either the payment or a return of the package, and if so how.

GF/USPS-T39-27. Specifically, assume that a mailer mails 1,000 COD packages and that, sixty days later, that mailer has received payment for 500 packages and the return of 300 packages, and the mailer wishes to submit a claim with respect to the remaining 200 packages.

(a) Please explain whether the mailer will know the breakdown of those 200 claims into the following categories: (1) the article was delivered, but the funds were not collected from the recipient, (2) the article was lost or destroyed before delivery, (3) the article was refused or unclaimed by the recipient and lost or destroyed prior to its return, (4) the article was delivered and the funds collected, but the payment was not provided to the sender (5) other, and if so how.

(b) Please explain whether the Postal Service will know the breakdown of those 200 claims into the following categories: (1) the article was delivered, but the funds are not collected from the recipient, (2) the article was lost or destroyed before delivery, (3) the article was refused or unclaimed by the recipient and lost or destroyed prior to its return, (4) the article was delivered and the funds collected, but the payment is not provided to the sender (5) other, and if so how.

GF/USPS-T39-28. Please confirm that the March 10th letter establishes different levels of claims payment for Growing Family depending upon whether (1) the article was delivered, but the funds were not collected from the recipient, (2) the article was lost or destroyed before delivery, (3) the article was refused or unclaimed by the recipient and lost or destroyed prior to its return, (4) the article was delivered and the funds collected, but the payment was not provided to the sender.

GF/USPS-T39-29. In interrogatories GF/USPS-T39-8 through 11, Growing Family asked how various claims would be paid by the Postal Service and, in part (b) to each of those interrogatories, Growing Family asked how the Postal Service determines which of the four scenarios is applicable and whether the Postal Service undertakes the burden of determining the reason for the claim. A response to the various parts (a) was provided, but not, specifically, to the parts (b). Please provide a response to part (b) for each of the interrogatories identified.

GF/USPS-T39-30. You state in response to the parts (a) of interrogatories GF/USPS-T39-8 through 11 that the amount there stated will be paid provided that the required documentation is presented and the regulations are met.

(a) Please identify the regulations that explain the different claim level payments in the four scenarios set forth in the March 10th letter and state with specificity how they inform the mailer that the payment levels in your responses are appropriate.

(b) Is the mailer expected, as part of providing “all required documentation,” to provide information demonstrating whether (1) the article was delivered, but the funds were not collected from the recipient, (2) the article was lost or destroyed before delivery, (3) the article was refused or unclaimed by the recipient and lost or destroyed prior to its return, (4) the article was delivered and the funds collected, but the payment was not provided to the sender?

(c) If the answer to part (b) is anything but an unqualified “yes,” please state whether, for all claims, the Postal Service will determine the reason for the claim and advise the mailer accordingly, so that the mailer will understand the reason for the amount paid on the claim?

(d) If the answer to part (b) is in the affirmative, please explain how the mailer is supposed to have or obtain that information.

GF/USPS-T39-31. In response to GF/USPS-T39-8(a)(2), you state that if the hypothetical coin “worth \$400” is lost or destroyed before delivery, the amount paid would be the “fair market value, up to \$400.”

(a) How would the Postal Service determine the fair market value?

(b) If it appeared that the standard retail price of the coin was \$400 and that the dealer could obtain another, identical coin for a wholesale cost of \$300, would the reimbursement be \$400 or \$300? Please explain.

(c) If it appeared that the standard retail price of the coin was \$400 and that the usual wholesale cost of the coin is \$300, but there are none available at the time of the claim, so that the sale cannot be consummated with a substitute, would the reimbursement be \$400 or \$300? Please explain.

GF/USPS-T39-32. In response to GF/USPS-T39-8(a)(3), you state that if the coin “worth \$400” is lost or destroyed prior to its return to the dealer, the amount paid would be the “fair market value, up to \$400.”

(a) If it appeared that the standard retail price of the coin was \$400 and that the dealer could obtain another, identical coin for a wholesale cost of \$300, would the reimbursement be \$400 or \$300?

(b) In answering part (a), would the Postal Service have to determine whether the dealer could readily sell the coin to another collector, and earn the expected \$100 profit, or whether the dealer had no other ready customer and, for example, returned the coin to its wholesale supplier for a \$300 credit? Please explain.

GF/USPS-T39-33. In interrogatories GF/USPS-T39-8 through 11, Growing Family asked how various claims would be paid by the Postal Service and, in part (a)(4) to each of those interrogatories, Growing Family asked for the amount of claim to be paid if the funds are collected from the recipient but not provided to the mailer. In response, you state that if the payment was made by money order, the Postal Service will provide a replacement, but if the payment was made by personal check, the Postal Service expects the sender to obtain a replacement check from the recipient.

(a) In this situation, how does the Postal Service determine whether the payment was by personal check or money order?

(b) Is there any way for the mailer to know, or to determine, whether the missing payment was made by check or by money order, and if so, how?

(c) If the mailer is unable to obtain a replacement check for any reason, such as the recipient cannot be located, simply refuses or claims that she did not receive the package, will the Postal Service replace the missing payment?

(d) If so, what type of proof does it require that the effort was unsuccessful?

(e) If not, why not?

(f) Please confirm that, on some occasions, payment is tendered and accepted in the form of cash.

(g) If payment is tendered and accepted in the form of cash, how does the Postal Service handle payment of the claim if funds are received from the recipient but not transmitted to the mailer?

GF/USPS-T39-34. In response to GF/USPS-T39-10(a)(2), you state that the claim on a hypothetical painting with a claimed retail value of \$500 and a raw materials cost of \$5 will be based on the “fair market value” of the painting “at the time and place of mailing” if it is lost or destroyed before delivery.

(a) How would the fair market value be determined?

(b) Would your answer be the same, that is, would the claim be paid at the “fair market value” if, instead of a painting, the lost article was a fine photograph by a well-known photographer, with a claimed value of \$500 and a raw materials cost of \$5. If not, why not?

GF/USPS-T39-35. In response to GF/USPS-T39-10(a)(3), you state that the claim on a hypothetical painting with a claimed retail value of \$500 and a raw materials cost of \$5 will be based on the “fair market value” at the time and place of mailing of the painting if it is refused or unclaimed and is lost or destroyed prior to its return.

(a) Would your answer be different if the painting was a commissioned portrait of the recipient?

(b) If so, please state why and whether the Postal Service would investigate the ability of the seller to sell the painting to someone else? If not, why not?

GF/USPS-T39-36. (a) Why in response to GF/USPS-T39-11(a)(2) does a photographer receive only reproduction cost (plus postage) but in response to GF/USPS-T39-11(a)(2) a painter receives fair market value, rather than the cost of materials?

(b) Would your answer vary depending upon whether the artist took 5 minutes or five days to produce the painting?

GF/USPS-T39-37. In response to GF/USPS-T39-11(a)(3), you distinguish between the situation in which the photographs are “personal” and the situation in which they “would be purchased by the general public.” How does the Postal Service determine which factual situation applies?

GF/USPS-T39-38. Please refer to your response to GF/USPS-T39-12(a), which asked, among other things, whether the Postal Service determines the validity and the reason for every claim. If your answer should be understood as anything other than an unqualified “no,” please provide a more detailed answer, including how the Postal Service determines the reason for the claim.

GF/USPS-T39-39. Please refer to the March 10th letter referred to in GF/USPS-T39-20.

(a) Please state who made the first decision, appealed by Growing Family, to reduce the amount paid on Growing Family's claims, when that decision was made, and why it was made.

(b) Please state whether the Postal Service has undertaken the task of determining into which scenario set forth in that letter Growing Family's claims since the date of the original decision or the date of that letter fall?

(c) Please state whether the Postal Service expects Growing Family to undertake the task of determining into which scenario set forth in that letter its claims fall and, if so, please state in detail how Growing Family is supposed to know the exact reason why the Postal Service failed to return either the funds to be collected or the photographs.

GF/USPS-T39-40. In response to GF/USPS-T39-14, you state that the Postal Service does not take steps to determine whether the payment was in fact delivered to the mailer in the situation where a claim is filed but Postal Service records show that payment was tendered by the recipient.

(a) In this situation, is the claim paid? Why?

(b) In this situation, is the claim denied? Why?

(c) Does it ever occur that the Postal Service records show that payment was tendered by the recipient but that, for some reason, it is later firmly established that payment was not made to the mailer?

GF/USPS-T39-41. In response to GF/USPS-T39-15(a), you state that the Postal Service provides the mailer with “the check or money order number, date, and amount collected” if its records show that payment was received from the recipient but not delivered to the mailer.

(a) In this response, are you saying that the “number, date and amount” are provided for both checks and money orders, or just for money orders?

(b) If the information is provided for checks as well as money orders, please explain how and when the Postal Service records such information.

(c) Do the Postal Service records always show the form in which payment was received?

(d) What form of payment is reflected in the records when the payment is in the form of cash?

GF/USPS-T39-42. In response to GF/USPS-T39-15(c), you state a Postal Service assumption that “people are reasonable about paying for goods and services” to support the position that the mailer should try to and will be able to obtain a substitute payment when a payment received by the Postal Service is not transmitted to the mailer.

(a) Would the Postal Service save window service costs if it placed containers of stamps in its retail facilities and an “honor box” into which patrons would make payment for stamps taken?

(b) If so, why doesn't it adopt such a method of selling stamps?

GF/USPS-T39-43. In response to GF/USPS-T39-15(d), you state that if Postal Service records show that payment was received by the Postal Service and not delivered to the mailer, and the mailer is unable to obtain a substitute payment from the recipient, the Postal Service will not pay the claim.

(a) Please explain in detail why the Postal Service believes that it is permitted to deny a claim in these circumstances, when it has collected a fee from the mailer based upon the amount to be collected, collects the funds due to the mailer, and fails to transmit the money to the mailer.

(b) Does the Postal Service believe that it has a contract with or an obligation to a COD mailer to provide that mailer with either the funds to be collected or a return of the mailed object? If not, why not?

GF/USPS-T39-44. In response to GF/USPS-T39-16(a), you agree that it sometimes occurs that a COD package is left with the recipient, but no payment is collected.

(a) Is it a violation of Postal Service regulations for this to occur?

(b) When it does occur, is the carrier disciplined?

(c) Can the Postal Service always tell from its records whether a carrier loses a piece before delivery, whether the carrier loses it after it has been refused by the recipient, or whether the carrier left the piece but failed to collect the COD charges?

(d) Is it possible that a carrier would claim that an article is lost if, in fact, it is left without the collection of the COD charges, and a later effort by the carrier to collect those charges, if undertaken, is unsuccessful?

(e) Would a carrier have an incentive to do so?

GF/USPS-T39-45. In response to GF/USPS-T39-17, you agree that the DMCS states that the COD fee is based upon the amount to be collected, but that it does not say that the fee is based “only upon” the amount to be collected.

(a) Does the DMCS state any alternative or additional basis?

(b) Is the Postal Service free to adopt a regulation that COD fees are to be based in part upon the postal zone of the mailing?

(c) On what authority can the Postal Service depart from the fee basis stated in the DMCS?

(d) Please confirm that the DMM, to which you refer in response to part (b), states that the fee is to be based upon “the amount to be collected or the amount of insurance coverage desired, whichever is higher.”

(e) Is the Postal Service free to charge a COD fee that is not in accordance with the DMM?

(f) Please confirm that neither the DMM nor the DMCS, nor any other official Postal Service document, states that the COD fee may be based upon the “monetary value of the merchandise,” the term used in your testimony.

(g) Please confirm that there is no way under present policy for the mailer to pay a fee based on any amount lower than the amount to be collected.

(f) If the monetary value of merchandise mailed COD is \$1,000, but the amount to be collected from the recipient is \$500, on what is the fee based?

GF/USPS-T39-46. In GF/USPS-T39-18, you were asked:

Assuming that a mailer sends 1,000 COD parcels a year and pays a fee based upon the amount to be collected from the customer, and assuming that the mailer submits 100 valid claims per year, will that mailer's claims always be reimbursed at the amount to be collected from the recipient? If not, why not.

You responded that you cannot provide a definitive answer because information is lacking. Assume that the reasons for the claims are in the same proportion as the reasons shown for FY2005 in the chart provided in response to GF/USPS-T39-6.

(a) In this situation, will the claims all be paid at the amount to be collected from the recipient? If not, why not. If additional assumptions are needed to respond, please provide any additional, reasonable assumptions that are necessary.

(b) Would your answer be the same if the question applied to FY2000 or to FY2006? If not, why not?

GF/USPS-T39-47. In GF/USPS-T39-19, you were asked:

For each year (or fiscal year) 2003 through the present, including a partial fiscal year in order to include the latest data, please state what percentage of valid claims filed were paid at a level lower than the amount to be collected from the recipient, and break down that percentage further to separate (a) those claims paid at less than the amount to be collected because the mailed product was damaged and had residual value and (b) those that were paid at less than the amount claimed for other reasons, such as but not limited to the Postal Service's view that even though the product was lost, the reproduction cost to the mailer was lower than the amount to be collected.

You responded that the Postal Service does not "currently report COD claims information" to the level of detail requested.

(a) Does the Postal Service have the data that are necessary in order to provide a response?

(b) Please explain how the Postal Service can pay claims on the bases contained in the March 10th letter if it does not obtain information on the reasons for the claim to this level of detail.

GF/USPS-T39-48. Please confirm that, in FY2005, Growing Family accounted for approximately 10% of the total COD volume. Growing Family hereby waives

any confidentiality concerns that might otherwise be associated with the release of customer-specific volume data.



March 10, 2006

Mr. David R. Straus
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Washington, DC 20006-1167

Dear Mr. Straus:

This is in response to the appeal you filed on behalf of Growing Family, Inc., regarding the decision issued by the Manager of the St. Louis Accounting Service Center (ASC) on August 16, 2005. The decision concerned the amount of indemnity to be paid on Collect on Delivery (COD) claims submitted by Growing Family. I agree with the general conclusion reached in the ASC Decision and this letter will further clarify how Growing Family will be reimbursed on COD claims.

Background

As part of its business, Growing Family takes photographs of newborn babies in hospitals and mails these as part of packages to the infants' parents using COD service. Some parents accept the parcels and pay the amount to be collected, i.e. the retail value. Others refuse to accept them and these parcels are returned to Growing Family.

Growing Family has submitted numerous COD claims to the Postal Service, representing individual mailings where it was asserted that it had received neither payment of the retail value nor the return of the parcel. These claims sought payment from the Postal Service of the retail value that was to be collected from the addressee. Until recently, the Postal Service often paid the retail value to Growing Family on its claims.¹

Based on its consideration of Growing Family's claims and the postal standards under which indemnity is paid, the St. Louis ASC, which is responsible for adjudication of claims, found that payment of the retail value is not warranted on all COD claims submitted by Growing Family. Consequently, starting May 2005, many of Growing Family's claims were paid in an amount less than the retail value. The basis for this determination was set forth in the ASC Decision, which is the subject of the appeal.

Regulations

The Postal Service policies and procedures for processing claims are detailed in the Domestic Mail Manual (DMM). Payable claims are outlined under DMM Section 609.4.1 and state:

4.1 Payable Claims

Insurance for loss or damage to insured, registered, or COD mail within the amount covered by the fee paid or within the indemnity limits for Express Mail as explained in 4.2 is payable for the following:

a. Actual value of lost articles at the time and place of mailing (see 4.1n. for bulk insured articles).

.. c. Remittance due on a COD parcel not received by the sender, subject to the limitations set by the standards for COD service.

.. j. Cost of film stock or blank tape for photographic film, negatives, slides, transparencies, videotapes, laser disks, x-rays, magnetic resonance imaging (MRI) prints, computerized axial tomography (CAT) scan prints, etc.

Nonpayable claims covered under DMM 609.4.3 state:

4.3 Nonpayable Claims

Indemnity is not paid for insured mail, Registered Mail, COD, or Express Mail in these situations:

.. e The contents of film (e.g., positives, negatives, slides, transparencies, videotapes, laser disks, x-rays, magnetic resonance imaging (MRI) prints, computerized axial tomography (CAT) scan prints), the cost of creating or re-creating these items, or the photographer's time and expense in taking the photographs.

.. g Consequential loss claimed rather than the actual value of the article.

.. y Items sent COD without the addressee's consent.

Arguments

The appeal appears to be based on three arguments. First, you contend Growing Family is paying to insure "the amount to be collected from the addressee," not the cost of film stock. Secondly, you claim the Postal Service cannot change policy retroactively, so, even if amounts less than the retail value is paid on future claims, that should not have occurred on claims filed prior to the August 16, 2005 letter. Finally, you claim Growing Family is being overcharged for COD service, stating the Postal Service is charging fees based on one value and paying claims based on a lower value.

Your assertion that Growing Family should invariably be compensated based upon the retail value rather than the costs to reproduce and resend the parcels is not consistent with postal standards or the principles on which those standards are based. The appeal, on page 4, cites DMCS and DMM provisions stating COD service provides the sender with insurance against loss, damage, or rifling of the article or failure to receive the amount collected from the addressee. The use of the alternative language is significant; these provisions do not state that the sender invariably is compensated in the amount of the retail value. In some circumstances (e.g., where the article is lost before being offered to the addressee or refused and lost upon return), there literally is no amount collected or that should have been collected from the addressee and, accordingly, no basis to provide compensation in that amount to the sender. A decision to pay indemnity in the amount of the retail value in all instances would contradict the principles underlying the indemnity standards by making the sender better off, in some instances, than it would have been. For instance, if the addressee refuses the parcel and it is lost upon return to the sender, compensation in the amount of the retail value would provide the sender a profit it is not entitled to since the addressee refused the package. Where the package is lost enroute to the addressee, providing compensation for reproducing the package allows the sender to resend the package to the addressee to see if a sale can still be made.

The appeal appears to recognize these principles and seeks to raise two counter-arguments at pages 7-8. First, you assert that parents are less likely to accept re-sent packages due to the delay between the birth of the child and the receipt of the package. You have not presented any evidence that this occurs. Moreover, postal standards expressly exclude liability for consequential loss or for delay, DMM 609.4.3.(g). If the original package were delayed during postal processing, indemnity would not be paid based upon an argument that the delay reduced the likelihood of purchase. The same result is reached where the delay is caused by other circumstances.

Your second argument is based upon the speculation that some of the articles believed to be lost before being offered to the addressee were actually delivered to the addressee, with payment either not received or lost after receipt. The delivery system established by the Postal Service provides scans to record events for COD deliveries, such as, Acceptance, Arrival at Unit, Notice Left, Refused, Unclaimed, and Delivered. The scans show the last event that determines the initial response from the St Louis ASC. You recently presented two examples. For the first sample regarding the article mailed to Milwaukee, WI, the delivery system has recorded the customer's check number indicating completion of the transaction. Therefore, this does not substantiate your claim. The delivery system has no record, e.g., no acceptance or delivery scans, for the article that went to Philadelphia. Our investigation revealed a clerical error in recording the events for this COD article. An incident such as this is identifiable through the claims appeals process and investigation.

Your assertion that the Postal Service has changed policy appears to rely on principles of equitable estoppel, i.e., because the Postal Service has made indemnity payments based upon the retail value in the past, it must continue to do so, even if that were in error. The Postal Service, like other government agencies, is not subject to estoppel. Moreover, even if it were subject to estoppel, the necessary elements are not present here, such as reasonable reliance. The decision to pay claims based upon the costs of reproducing and resending the photographs is based upon the express provisions in our regulations, DMM 609.4.1(j). The decision in this instance is not based upon a change in policy or interpretation, but the correct application of existing policy. It is noted that the letter enclosed in the appeal, as Exhibit B, and discussion of that letter do not support your argument. The letter, dated November 8, 1996, from the USPS St. Louis office similarly established that CODs would not always be paid at full retail value. Although you indicate this position was subsequently reversed, you have not provided documentation to this effect or identified the postal officials that may have made such a decision. Moreover, even if that had occurred, it does not require the Postal Service to continue to pay indemnity claims in an amount higher than warranted under our standards.

Your final argument concerns the amount of COD fees that should be paid on Growing Family's mail. This issue relates to mail rates and classifications, and is outside the scope of this appeal and the types of issues properly considered by this office. See DMM 607.2.0. Nevertheless, please note that our standards provide that COD fees are based upon the higher of the amount to be collected or the insurance coverage provided, DMM 503.11.1.2, and, as explained below, there are instances where indemnity will be paid to Growing Family based upon the retail value.

Analysis

I agree with the general conclusion reached in the ASC Decision. That is, under postal standards, the proper level of indemnity payments on COD claims is not always based upon the retail value to be collected from the addressee. Rather, the amount of the payment must be assessed on consideration of the facts of each claim and the reason why the sender did not receive the retail value or return of the parcel.

As a general principle, the Postal Service's indemnity standards seek to provide compensation on indemnity claims so that the sender is no better or worse off than if the article were properly delivered. There are four types of circumstances to consider in evaluating the indemnity payment on COD claims:

- (1) the article is delivered to the addressee but the retail value is not collected;
- (2) the article is lost or totally damaged before offered for delivery to the addressee;
- (3) the article is refused or unclaimed by the addressee and lost or damaged before return to the sender; or
- (4) the article is delivered and the retail value is collected, but the payment is lost before delivery to the sender.

Each of these circumstances can be identified from the scans recorded and maintained by the Postal Service. My conclusion regarding the amount that should be paid in each instance is discussed below.

Conclusion

For the reasons explained herein, the appeal is partially upheld and partially denied. We will provide reimbursement of the amount to be collected, i.e. the retail value, if the COD article is delivered and we

fail to collect payment from the addressee. In this instance, the Postal Service failed to provide the service purchased. Accordingly, the indemnity should be paid in the amount of the retail value to make the sender whole.

In other situations, claims will be reimbursed as follows:

- 1) If the article is lost or totally damaged before it is offered for delivery to the addressee: I agree with the ASC decision that the amount to be paid in this case should be based upon the costs to produce another package for the addressee and the original postage paid. If the addressee accepts or refuses the parcel, the sender is in the same position, as it would have been, had the addressee accepted or refused the initial parcel. As noted in that decision, please let us know if Growing Family's costs change or you believe there is some other reason for adjustment. The St. Louis ASC will work with you in determining the value.
- 2) If the article is refused or unclaimed by the addressee and then lost or totally damaged before it is returned to the sender: In this instance, since the addressee did not accept the parcel, the only benefit that could be realized by the sender would be the value of the contents and the amount of postage. There is no evidence that the photographs have any salvage or other value to Growing Family. Accordingly, I conclude that reimbursement will be limited to indemnity for miscellaneous items that are lost or damaged, such as keepsakes, and postage.
- 3) If the article is delivered and the retail value is collected, but the payment is lost before delivery to the sender: Replacement of the payment should be issued to the sender. If paid by postal money order, the Postal Service will provide a replacement money order or postal check. If paid by check, and Growing Family did not receive the check, the Postal Service generally expects the sender to obtain a replacement check from the addressee. In these instances, the Postal Service will reimburse the addressee for any "stop payment" charges incurred and paid.

Based upon these principles, the following actions are appropriate with respect to Growing Family. COD claims submitted on or after the date of this decision will be paid in accordance with the standards explained above. The decisions on claims submitted before the date of this decision, in which payments were made for less than the retail value, are hereby affirmed. As an exception, Growing Family may appeal any claims submitted before this decision that were paid for less than the retail value that should under one of the scenarios described above, have received a higher indemnity payment; e.g., the USPS delivered the article and failed to collect the payment. Since not before me for decision, this appeal does not decide whether Growing Family was inappropriately overpaid in the past, or the extent of any such overpayment.

This is the final agency decision of the U.S. Postal Service.

If you have any immediate questions, please feel free to contact Michele Mulleady at (202) 268-2306.

Sincerely,


Delores J. Killeth

¹ In a number of instances, the Postal Service found that the claims were for packages on which the retail value had been collected and paid to Growing Family or packages that had been refused and returned to Growing Family. COD claims should not have been filed in these instances, and the claims were denied.