

The Insurance Federation of Pennsylvania, Inc.

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Samuel R. Marshall
President & CEO

July 23, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Third Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**Re: Application of Rasier, PA, LLC;
A-2014-2416127**

Dear Secretary Chiavetta:

Enclosed for filing are the Exceptions of the Insurance Federation to the July 1, 2014 Order Sustaining the Preliminary Objections Filed by Rasier, Inc. in the above-captioned matter.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Sincerely,



Samuel R. Marshall

C: Administrative Law Judges Mary D. Long and Jeffrey Watson (via First-Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: Application of Rasier, PA, LLC : Docket No. A-2014-2416127

**EXCEPTIONS OF THE INSURANCE FEDERATION OF PENNSYLVANIA
TO THE JULY 1, 2014 ORDER SUSTAINING THE PRELIMINARY
OBJECTIONS FILED BY RASIER-PA, LLC AND DISMISSING THE
INSURANCE FEDERATION'S PROTEST**

The Insurance Federation of Pennsylvania, Inc. ("Insurance Federation"), pursuant to 52 Pa.Code Section 5.533, files these Exceptions to the July 1, 2014 Order, mailed on July 3, from the Administrative Law Judges sustaining the Preliminary Objections of Rasier-PA, LLC, ("the Applicant") to the Insurance Federation's Protest of the above-captioned Application.

1. The Order is incorrect in finding, as a Conclusion of Law (paragraph 2, p.7), that the Insurance Federation failed to demonstrate an interest which is "direct, immediate and substantial."

The Order acknowledges the importance of adequate insurance coverage by the Applicant and the value of the expertise the Insurance Federation might provide. The Order also notes the Insurance Federation has "strong and important opinions" on the insurance coverage offered by the Applicant.

It nonetheless concludes the Insurance Federation has not articulated “a specific and immediate injury other than an abstract interest in ensuring” that the Applicant satisfy the Commission’s insurance requirements, noting no Federation member has had to handle a claim resulting from the Applicant’s service.

It also concludes approving the Application will “not impose a legal obligation upon the insurance carriers represented by the Insurance Federation to provide any specific coverage or to cover costs which may or may not result from the Commission’s approval of the application.”

In reaching these conclusions, the Order fails to acknowledge the exposure to the Insurance Federation’s auto-insuring members outlined in its Protest, and the exposure the Applicant itself has outlined. The Applicant concedes it is fulfilling the Commission’s insurance requirements not through a primary policy it has obtained, but through an excess policy that applies only if and after the personal auto policies of the Insurance Federation’s members are found not to apply. The Applicant also creates the potential of substantial gaps in its purported coverage.

At the least, that imposes significant administrative costs on the auto-insuring members of the Insurance Federation: This will necessitate claims investigation and defense costs even if no claim is actually paid. And as envisioned by the Applicant, it will mean payment of claims by the auto-insuring members of the Insurance Federation, as the Applicant believes those insurers will at least be

providing coverage while the Applicant's drivers are on the road and on duty, if not with a passenger in the car.

Granted, the legal obligations of the auto-insuring members of the Insurance Federation are established (and limited) through their own policies with the drivers the Applicant intends to use. That, however, does not mean the Applicant is not proposing new legal obligations for Federation members.

Just the opposite: By its own admission, the Applicant is using the personal auto insurance of its drivers, as provided by members of the Federation, to satisfy a large part of the Commission's insurance requisites, starting the moment a driver is ready for business. Those obligations are wholly unanticipated and therefore not included in any rate setting or underwriting process by the Insurance Federation's auto-insuring members – in part because the Applicant does not provide for notice to its drivers' personal auto insurers: It wants the coverage those insurers provide, but not any cooperation or communication with them.

The Order also bases its dismissal in part on the current lack of claims and costs imposed on the Insurance Federation's auto-insuring members. That sets up a Catch 22: The Order reasons that the Federation's members will only sustain injuries (and therefore standing) after the Application is approved and the Applicant's drivers get involved in the inevitable claims – meaning the Federation

would only have standing after the Application and the issues creating injuries to the Federation's members have been decided by the Commission.

In the interim, the Applicant has claimed it is revising its insurance coverage to satisfy the Commission's requirements (and maybe the Insurance Federation's concerns). While it has yet to make a formal revision with the Commission, it says it will provide primary coverage during the time its drivers have a match with riders, not just when those riders are in the car with the driver. However, it still refuses to provide primary coverage during the time its drivers have the applications open for business – the time they are available and soliciting rides.

It continues to say this time period should be first covered by its drivers' personal auto insurers – the Insurance Federation's members. While we disagree with whether personal auto insurers' policies will cover that time period, the Applicant's coverage, even if amended as the applicant claims it will be doing, perpetuates that gap and uncertainty – and imposes costs and liability exposure that are direct and immediate on the Federation's auto writing members.

The insurance offered by the Insurance Federation's members is hardly abstract or speculative in evaluating this Application – and therefore, as set forth in the Federation's Protest, neither is the interest and standing of the Federation on its members' behalf.

2. The Order is incorrect in finding, as a Conclusion of Law (paragraph 3, p. 7), that the Insurance Federation has not set forth sufficient facts to support its standing for its Protest.

The Insurance Federation's Protest sets forth the facts that justify its standing: It outlines the direct and immediate liability exposure created by the Applicant's proposal, and it explains that this exposure is unanticipated and not capable of being underwritten and rated given the wall of secrecy the Applicant creates between its drivers and their personal auto insurers.

The Applicant has not challenged that in its Preliminary Objections. Nor does the Order, expect to say that the Protest does not set forth ongoing injuries. As noted in the Insurance Federation's first Exception, however, that is a Catch 22 and should not be the basis of denying the Federation's standing to file the Protest.

3. The Order is incorrect in finding, as a Conclusion of Law (paragraph 4, p. 8), that dismissing the Insurance Federation's Protest without a hearing is "just, reasonable and in the public interest."

The Applicant touts the uniqueness of its service. The same can be said of its insurance program, though not as a compliment: From our research of Commission decisions, never before has an applicant sought to satisfy insurance requisites through an excess policy falling on top of unwilling and unwitting primary policies issued under radically different settings, assumptions and terms.

That unprecedented means of satisfying the Commission's insurance requisite at the least justifies a hearing to determine whether those primary policies are actually providing the insurance the Applicant claims they are. Otherwise, the Commission will be evaluating the insurance coverage claimed by the Applicant without hearing from the insurers it says will provide that coverage – insurers who disagree with the Applicant on that key point.

The Commission should also take note of what has transpired in the enforcement proceedings against the Applicant brought by its own Bureau of Investigation and Enforcement ("BIE") in June. The BIE noted, and the Applicant did not counter, the inadequate insurance coverage as reflected in the Application and detailed in the Insurance Federation's Protest, citing that Protest and noting the dangers of inadequate insurance.

In granting the BIE's ceased and desist request against the Applicant, the Commission's Administrative Law Judges noted that insurance coverage is integral to protecting public safety, and that the Applicant failed to offer testimony

or evidence supporting its compliance with the Commission's insurance requirements (see the July 1, 2014 Order at pp. 7 and 14-15). Those are the concerns the Insurance Federation raised in its Protest, to the direct exposure and detriment of its auto-writing members. Those concerns should be resolved in full and open proceedings, including a hearing.

For all the foregoing reasons, the Commission should grant the Insurance Federation's Exceptions and allow the Federation's Protest to proceed.

Respectfully submitted,

A handwritten signature in blue ink that reads "Samuel R. Marshall".

Samuel R. Marshall (PA ID No. 33619)
President and CEO
Insurance Federation of Pennsylvania, Inc.
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1600 Market Street
Philadelphia, PA 19103

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In Re: Application of Rasier, PA, LLC : Docket No. A-2014-2416127

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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A-2014-2416127



Samuel R. Marshall

Insurance Federation of Pennsylvania

Dated this 23rd day of July, 2014, in Philadelphia, Pennsylvania