



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE  
C-2012-2333793

September 16, 2013

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and  
Enforcement v. Gene Polsinelli, Inc. t/a American Lenders Service  
Company of Pittsburgh, PA;  
Docket No. C-2012-2333793

Dear Secretary Chiavetta:

Enclosed for filing is the original of the **Exception** of the Bureau of Investigation and Enforcement in the above-captioned proceeding. Copies of the Exception have been served in accordance with the attached Certificate of Service.

Sincerely,

Stephanie M. Wimer  
Prosecutor

Enclosures

cc: Honorable Mark A. Hoyer  
Per Certificate of Service

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**SECRETARY'S BUREAU**

Pennsylvania Public Utility Commission :  
Bureau of Investigation and Enforcement :

v. :

Docket No. C-2012-2333793

Gene Polsinelli, Inc. t/a American Lenders :  
Service Company of Pittsburgh, PA :

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**EXCEPTION OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Pursuant to Section 5.533 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.533, the Commission's Bureau of Investigation and Enforcement ("I&E") files the following Exception to the Initial Decision ("I.D.") of Administrative Law Judge ("ALJ") Mark A. Hoyer that was issued on September 5, 2013.

**I. INTRODUCTION AND PROCEDURAL HISTORY**

The parties in this case are I&E and Gene Polsinelli, Inc. t/a American Lenders Service Company of Pittsburgh ("Respondent"). I&E is the entity responsible for enforcing compliance with the Public Utility Code ("Code") and Commission regulations.<sup>1</sup> Respondent is a jurisdictional motor carrier, as defined by 66 Pa. C.S.

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<sup>1</sup> See 66 Pa. C.S. § 308.2(a)(11) and *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

§ 102, and is engaged in transporting property as a common carrier for compensation in its certificated service territory. The Commission issued Respondent a Certificate of Public Convenience on May 20, 2009, at Docket No. A-8911033 for trucking authority.

This proceeding began on November 27, 2012, when I&E filed a complaint against Respondent for failing to maintain evidence of cargo insurance on file with the Commission. I&E alleged that Respondent violated 66 Pa. C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a). I&E sought a civil penalty of \$500 and demanded that Respondent's insurer provide evidence of cargo insurance within 20 days of issuance of the complaint.

By facsimile received on December 12, 2012, Respondent's insurer alleged that it attempted to submit evidence of cargo insurance and admitted that the appropriate evidence, which is commonly called a Form H, did not go "through . . . for some reason." Respondent's insurer requested that the \$500 civil penalty be dropped and stated that "proof of insurance can be provided."

An Initial Hearing in this matter was held on May 20, 2013. I&E presented one witness, Motor Carrier Compliance Manager Robert Bingaman, and four exhibits, which were admitted into evidence, to demonstrate that Respondent did not maintain evidence of cargo insurance with the Commission between October 31, 2012 and December 3, 2012. Respondent presented one witness, Gene Polsinelli, and offered one exhibit.

On September 5, 2013, the presiding ALJ's I.D. was issued, which held that I&E failed to meet its burden in proving that Respondent violated the Code, a Commission regulation or Commission order. (I.D. 7, Conclusion of Law 4). Accordingly, the ALJ dismissed I&E's complaint.

I&E files this Exception because it unquestionably demonstrated that Respondent did not maintain evidence of cargo insurance with the Commission, which is required pursuant to 66 Pa. C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.13(a).

**II. EXCEPTION: THE ALJ ERRED IN DETERMINING THAT I&E FAILED TO MEET ITS BURDEN IN PROVING THAT RESPONDENT DID NOT MAINTAIN EVIDENCE OF INSURANCE WITH THE COMMISSION**

The issue in this case is whether I&E met its burden in proving that Respondent did not timely file a Form H with the Commission. The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. In *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. A preponderance of the evidence is the lowest degree of proof recognized by law. *Id.* As explained below, I&E met its burden in proving by a preponderance of evidence that Respondent did not consistently maintain evidence of insurance with the Commission.

The Commission derives its authority to require motor carriers to carry insurance, and other “such requirements as it may deem necessary for the protection of persons or property of their patrons and the public” from Section 512 of the Code, 66 Pa. C.S. § 512. Consistent with the authority that is granted under Section 512, the Commission requires motor carriers to file certificates of insurance. 52 Pa. Code § 32.2(c). In addition to liability insurance, a property motor carrier is required to file a certificate of insurance in an amount that is satisfactory to the Commission in order to provide payment for loss or damage to cargo carried on a motor vehicle. 52 Pa. Code § 32.13.

The violation alleged in I&E's complaint pertains to Respondent's failure to ensure that the Commission received a certificate of cargo insurance, or a Form H. It is crucial to understand that the violation does not allege that there was a lapse in Respondent's insurance coverage. Oftentimes, motor carriers carry valid insurance, but the Commission does not receive evidence of it. I&E's violation solely pertains to Respondent's obligation to ensure that it maintains evidence of its insurance with the Commission.<sup>2</sup>

In the Initial Decision, the ALJ acknowledged that Respondent failed to maintain evidence of its cargo insurance with the Commission in the following statements:

There is no doubt that the Commission's records did not contain evidence of cargo liability insurance on October 31, 2012 or any time prior to the filing of this complaint against Respondent. Also, proof of cargo liability insurance was not contained in the National Online Registry (NOR) prior to the filing of the complaint.

(I.D. at 4). Despite recognizing that Respondent did not consistently maintain evidence of insurance, the ALJ nevertheless found that I&E failed to meet its burden of proof.

This is clearly an error.

The ALJ rested his conclusion on the fact that Respondent was confused about letters that he received from the Commission. By letter dated October 28, 2012, the Commission notified Respondent that it received evidence of its liability insurance and that the suspension of its operating authority was lifted.<sup>3</sup> (Respondent Exhibit 1).

However, also by letter dated October 28, 2012, the Commission notified Respondent

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<sup>2</sup> Certificates of insurance must be filed by the insurer and motor carriers bear the responsibility for ensuring that evidence of valid insurance is on file with the Commission. See 52 Pa. Code §§ 32.11, 32.12.

<sup>3</sup> A certificate of liability insurance is commonly called a Form E and is a separate obligation from a certificate of cargo insurance – or Form H.

that its operating authority is suspended due to the cancellation or expiration of its cargo insurance. (I&E Exhibit 2).

Without reading the details of the letters, Respondent assumed that the Commission made a mistake and that the letters cancelled out each other. (N.T. 33-34). Respondent presumed that its operating authority was not suspended and did not contact the Commission to confirm its understanding. (N.T. 28).

Respondent's misinterpretation of the letters and apparent confusion does not alter the fact that the Commission did not timely receive evidence of its cargo insurance. Respondent's misunderstanding also does not constitute a good reason to disregard its regulatory obligations. A plain reading of the letters dated October 28, 2012 clearly notifies Respondent that the Commission did not have evidence of its cargo insurance. Therefore, Respondent was warned that its insurer had not submitted a Form H and did not act upon this warning until after I&E filed its complaint.

The importance behind the Commission's regulations requiring motor carriers to consistently maintain evidence of insurance is so that the Commission is able to execute its duty to ensure that motor carriers have insurance coverage and that the public is protected. This is the reason why the Commission temporarily suspends a motor carrier's operating authority if evidence of insurance is not received - to make sure that no accidents occur while the Commission waits for a certificate of insurance.

To dismiss a complaint when there is irrefutable evidence that a Form H was not received renders the Commission's insurance regulations to be meaningless. If the ALJ's decision is upheld, then a message will be sent to motor carriers that untimely receipt of insurance certificates is acceptable. Consequently, the Commission will experience a

diminished ability to protect the public by overseeing that motor carriers actually carry appropriate insurance.<sup>4</sup>

Therefore, the ALJ erred in concluding that I&E failed to meet its burden in proving that Respondent did not consistently maintain evidence of cargo insurance when there is indisputable proof to the contrary.

### III. CONCLUSION

I&E respectfully requests that the Commission grant the foregoing Exception and sustain its Complaint.

Respectfully submitted,



Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

Counsel for the  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement

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Dated: September 16, 2013

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<sup>4</sup> I&E's witness testified that the civil penalty for failing to maintain evidence of insurance was increased to \$500 in recent years because there was a sentiment that insurance filings were being taken too lightly. The increased civil penalty is intended to act as an incentive to timely file evidence of insurance, and lower the number of suspensions of authority and complaints that are issued for insurance reasons. (N.T. 19-20).

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, Exception, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

*Notification by First Class Mail:*

Craig H. Alexander, Esq.  
Bruce E. Dice & Associates  
787 Pine Valley Drive, Suite E  
Pittsburgh, PA 15239

*Notification by Electronic Mail:*

Office of Special Assistants  
[ra-OSA@pa.gov](mailto:ra-OSA@pa.gov)



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Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

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