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April 27, 2016

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

RE: Hiester Lotz v. Carl R. Bieber, Inc.
Docket Number: C-2016-2538634

Dear Secretary Chiavetta,

Enclosed for filing please find the Preliminary Objections in the above referenced matter on behalf of Carl R. Bieber, Inc.. Copies have been served on the parties of record in accordance with the attached Certificate of Service.

Yours truly,

Jeffrey A. Franklin
Attorney for: Carl R. Bieber, Inc.
Address: 646 Lenape Road
Bechtelsville, PA
Telephone: 1-610-845-3803
Supreme Court ID No. 59560

jaf/web
Matter No. 37007
Enclosure
cc: w/o enc: Mr. Hiester H. Lotz by mail

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Hiester Lotz	:	
Complainant	:	
v.	:	Docket No. C-2016-2538634
	:	
Carl R. Bieber, Inc.	:	
Respondent	:	

Notice to Plead

The attached Preliminary Objections have been filed by Carl R. Bieber, Inc. with the Pennsylvania Public Utility Commission in the above-captioned proceeding. If you wish to respond to the Preliminary Objections, you must, pursuant to the provisions of 52 Pa. Code § 5.101(f), take action within ten (10) days after these Preliminary Objections are served by filing a response with the Secretary of the Pennsylvania Public Utility Commission and serving a copy of that response upon all parties of record. You are warned that if you fail to do so, the case may proceed without you and an order or a judgment may be entered against you by the Commission without further notice.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Hiester Lotz	:	
Complainant	:	
v.	:	Docket No. C-2016-2538634
	:	
Carl R. Bieber, Inc.	:	
Respondent	:	

**CARL R. BIEBER, INC.’s PRELIMINARY OBJECTIONS TO
AND MOTION TO DISMISS
THE COMPLAINT OF HIESTER LOTZ**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Carl R. Bieber, Inc. t/a Bieber Tourways ("Respondent" or the "Company"), by and through its counsel, Jeffrey A. Franklin, Prince Law Offices, P.C., and pursuant to 52 Pa. Code§ 5.101(a)(1), respectfully submits these Preliminary Objections asking for dismissal of the Complaint filed by Hiester Lotz at the above-captioned docket pursuant to 52 Pa. Code§ 5.101(a)(1), (3)-(4), avers as follows:

52 Pa. Code § 5.101(a)(1), (3)-(4)

1. In disposing of Preliminary Objections, the Commission must accept as true all well-pled, material facts of the nonmoving party, as well as every reasonable inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlt. 1988). The Commission must review the Complaint in the light most favorable to the Complainant and should dismiss the Complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

2. The Commission should dismiss the instant Complaint because (i) the Commission lacks jurisdiction to grant the requested relief and (ii) the Complaint fails to state a claim on which relief could be granted. See 52 Pa. Code § 5.101(a)(1), (3)-(4).

3. The Complainant requests in this most recent Complaint to this Commission that this Commission direct the Company to file some type of amended letter to the Office of Attorney General Bureau of Consumer Protection at its File No. BCP-14-05-028479 from two years ago in 2014.

4. This Commission lacks jurisdiction to do so and there is no basis under the Pennsylvania Public Utility Code or this Commission's regulations for this Commission to do so. The Complainant's proper redress is to the Office of Attorney General Bureau of Consumer Protection, not this Commission.

Settlement Discussions

5. In addition, the Complaint attaches a document labeled as "Exhibit #5" which consists of "efforts to resolve this issue" (Complaint at Narrative sentence No. 7) and are confidential settlement discussions conducted by e-mail between the Complainant and counsel for the Respondent in the prior Commission Complaint by the same Complainant of the same underlying issue with the same Respondent at PaPUC Docket No. C-2014-2443703. The attachment contains confidential settlement discussions including an unaccepted offer of settlement. It is the policy of this Commission to encourage settlements. 52 Pa. Code § 5.231(a). This settlement offer is inappropriately provided by Complainant and is not admissible in evidence against counsel or the Respondent in PaPUC Docket Nos. C-2014-2443703 (concluded) or C-2016-2538634 (present incarnation). 52 Pa. Code § 5.231(d).

Res Judicata and Collateral Estoppel

6. Further, the Complainant filed a formal complaint against Respondent with this Commission at Docket No. C-2014-2443703 in 2014 based on the same event in which the issues were fully litigated and a final Order was entered by this Commission.

7. Any attempt to re-litigate this issue that already has been decided is barred by the doctrine of collateral estoppel. Collateral estoppel, or issue preclusion, prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. *Fiore v. Commonwealth of Pennsylvania (Department of Environmental Resources)*, 508 A.2d 371, 374 (Pa. Cmwlth. 1986). Collateral estoppel bars the re-litigation of an issue where: (1) an issue decided in a prior action is identical to one presented in a later action; (2) the prior action resulted in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4), the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action. *Stilp v. Commonwealth*, 910 A.2d 775 (Pa. Cmwlth. 2006). Each of these elements is satisfied in the instant matter as more fully discussed herein.

8. When a final decision has been rendered in a proceeding, it is binding, under the doctrine of claim preclusion, on any case brought subsequent to that time which involves the same parties and issues as raised previously. *Cannon v. Verizon Pennsylvania Inc.*, Docket No. C-20043729, Opinion and Order entered June 29, 2005.

9. Claim preclusion, or res judicata, provides that matters which were actually litigated in a prior action, as well as those which should have been litigated in that prior action, will not be litigated in a subsequent action.

10. For the doctrine to prevail, four conditions must be met: (1) identity of issues; (2) identity of causes of action; (3) identity of persons and parties to the action;

and (4) identity of the quality and capacity of the parties suing or sued. *Safeguard Mutual Insurance Co. v. Williams*, 345 A.2d 664 (1975) and *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (1983); *Northwestern Lehigh School District v. Commonwealth of Pennsylvania, Agricultural Lands Condemnation Approval Board*, 578 A. 2d 614 (1990). The Commonwealth Court stated that, "for the purposes of res judicata, there is identity of causes of action when in both the old and new proceedings, the subject matter and the ultimate issues are the same." *Howard v. Department of Public Welfare*, 529 A.2d 1231 (1987).

11. Although the Commission's procedural rules do not specifically address the issue, the Commission has adopted this well-settled legal principle. *Simms v. Philadelphia Electric Company*, Docket No. F-889246 (1988). The Commission has recognized the applicability of the doctrine of res judicata in proceedings before it. *O'Toole v. Bell Telephone Company of Pennsylvania*, 77 Pa. PUC 98 (1992). The Pennsylvania courts have affirmed the Commission's application of the doctrine in the context of utility rate proceedings. *Philadelphia Electric Company v. Pennsylvania Public Utility Commission*, 433 A.2d 620 (Pa. Cmwlth. 1981); see also, *Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Commission*, 721 F. Supp. 710 (M.D. Pa. 1989) (acknowledging the role of res judicata and collateral estoppel in administrative proceedings), aff'd., 899 F.2d 1217.

12. A final valid judgment on the merits by a court of competent jurisdiction bars any future suit between the same parties on the same cause of action. *McCarthy, et al. v. Township of McCandless*, 300 A.2d 815 (1973); *Martin v. Poole*, 177 A.2d 339 (1975).

13. All four conditions required for a finding of res judicata have been met in this case: (1) the issues are identical (the 2016 Complaint even attached the Commission's Order from the 2014 Complaint proceeding); (2) the causes of action are identical (It is not clear to the Respondent that the instant Complaint alleges any violation of the Pennsylvania Public Utility Code or Commission regulations, but in the event the Commission determines that it does, then the Respondent avers that the Complainant argues in both Complaints that Respondent has failed to provide him with adequate, safe, and reasonable service in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501); (3) the persons and parties to the action are identical (both Complaints involve the Complainant and the Respondent); and 4) the quality and capacity of the parties suing or sued are also identical.

14. Application of the claim preclusion helps to prevent vexatious litigation, to conserve the parties' and the tribunal resources by eliminating redundant lawsuits and to establish certainty by bringing finality to the resolution of a controversy. *McArdle v. Tronetti*, 627 A.2d 1219 (Pa. Super. 1993), appeal denied, 537 Pa. 622, 641 A.2d 587 (1004); *Pa. Public Util. Comm'n v Katrina Waddington t/b/a Waddington Tours*, Docket No. A-00108279, Opinion and Order entered May 20, 2002.

15. The Complainant fully participated in the 2014 Complaint proceeding. He now seeks to re-litigate the same issues in the instant complaint proceeding. The doctrine of res judicata bars the same allegations and issues that he presented, or had a full and fair opportunity to present, in the previous proceeding. The Commission should as a matter of law dismiss this Complaint.

ICC Route Preemption

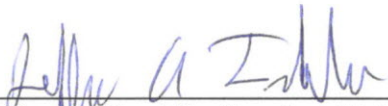
16. Respondent provides transportation service on this route pursuant to Certificates of Public Convenience and Necessity from the Interstate Commerce Commission (“ICC”) attached hereto and incorporated herein as Attachment No. 1 and Attachment No. 2. *See Petition for Declaratory Relief by Fullington Trailways, LLC*, Docket No. FMCSA-2009-0106, 75 FR 4443 (2010) (“*Fullington*”) (addressing federal preemption). The Federal Motor Carrier Safety Administration (“FMCSA”) has primary jurisdiction to interpret the scope of operations that may lawfully be conducted under Federal authority. *See, Funbus Systems, Inc. v. C.P.U.C.*, 801 F2d 1120, 1129 (9th Cir. 1986) (“*Funbus*”). 49 U.S.C. 14501(a)(1) preempts State or local government entities from regulating rates or scheduling of carriers that provide intrastate or intrastate transportation subject to Federal jurisdiction. *Fullington* at *4445.

17. In addition to the ICC authority for the route, Respondent avers it satisfies the *Funbus* factors because its service of the instant route is substantially similar to that addressed in *Fullington*. Like Fullington’s service in *Fullington*, Respondent in the instant matter provides active, regularly scheduled interstate service on this route to through-ticketed passengers in interstate origins or destinations to or from other states than just Pennsylvania including connections to other carriers such as Greyhound and Amtrak for out of state passenger service, like that of the Complainant.

WHEREFORE, Carl R. Bieber, Inc. hereby requests that the Complaint of Hiester Lotz be dismissed with prejudice.

Respectfully submitted,

Dated: April 27, 2016



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Bechtelsville, Pennsylvania 19505-9135
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Attorneys for
Carl R. Bieber, Inc.

Docket No. C-2016-2538634

Carl R. Bieber, Inc. Preliminary Objections

Attachment No. 1

ICC Certificate of Public Convenience and Necessity

INTERSTATE COMMERCE COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. MC 63390 SUB 20*

SERVICE DATE

CARL R. BIEBER, INC.,
KUTZTOWN, PENNSYLVANIA

OCT 2 1978

This Certificate of Public Convenience and Necessity is evidence of the carrier's authority to engage in transportation in interstate or foreign commerce, to the extent specified below, as a common carrier by motor vehicle.

This authority is subject to any terms, conditions, and limitations as are now, or will be, attached to this privilege.

The carrier, as an underlying condition of this authority, shall render reasonably continuous and adequate service to the public. Failure to do so will constitute sufficient grounds for the suspension, change, or revocation of this authority.

The transportation service to be performed is as follows:

REGULAR ROUTES:

(1) Passengers and their baggage, and express and newspapers, in the same vehicle with passengers,

Between Philadelphia, Pa., and Allentown, Pa., serving all intermediate points:

From Philadelphia over Pennsylvania Highway 152 to North Glenside, Pa., thence over unnumbered highway to Fort Washington, Pa., thence over unnumbered highway to junction U. S. Highway 309, near Spring House, Pa., thence over U. S. Highway 309 via Center Valley, Pa., to junction unnumbered highway, thence over unnumbered highway to Allentown (also from Center Valley over Pennsylvania Highway 191 to Bethlehem Pa., thence over unnumbered highway to Allentown), and return over the same route.

Between Philadelphia, Pa., and Allentown, Pa., serving all intermediate:

From Philadelphia over the Schuylkill Expressway to junction Pennsylvania Turnpike Delaware River Extension, thence over the Pennsylvania Turnpike Delaware River Extension to junction Pennsylvania Turnpike Northeast Extension, thence over the Pennsylvania Turnpike Northeast Extension to the Lehigh Valley Interchange, and thence over unnumbered highway to Allentown, and return over the same route.

Between junction Pennsylvania Turnpike Delaware River Extension and Pennsylvania Turnpike Northeast Extension, and junction unnumbered highway and the Pennsylvania Turnpike Delaware River Extension serving all intermediate points:

From junction Pennsylvania Turnpike Delaware River Extension and Pennsylvania Turnpike Northeast Extension over the Pennsylvania Turnpike Delaware River Extension to junction unnumbered highway, and return over the same route.

Between the Pennsylvania Turnpike Northeast Extension Lansdale Interchange, and junction Pennsylvania Highway 63 and U. S. Highway 309, serving all intermediate points:

From the Pennsylvania Turnpike Northeast Extension Lansdale Interchange, over Pennsylvania Highway 63 to junction U. S. Highway 309, and return over the same route.

Between the Pennsylvania Turnpike Northeast Extension Quakertown Interchange, and Quakertown, Pa., serving all intermediate points:

From the Pennsylvania Turnpike Northeast Extension Quakertown Interchange over Pennsylvania Highway 663 to Quakertown, and return over the same route.

(2) Passengers, and express, and newspapers, and baggage of passengers in the same vehicle with passengers,

Between Philadelphia, Pa., and Allentown, Pa., serving all intermediate points, including Bethlehem, Coopersburg, Quakertown, Sellersville, and Ambler, Pa.:

From Philadelphia over U. S. Highway 309 to Center Valley, Pa., thence over Pennsylvania Highway 191 to Bethlehem, Pa., and thence over city streets to Allentown, and return over the same route; (also from junction U. S. Highway 309 and Pennsylvania Highway 191 over U. S. Highway 309 to Lanark, Pa., and thence over unnumbered highway to Allentown, and return over the same route); (also from junction Pennsylvania Highway 152 and U. S. Highway 309 over Pennsylvania Highway 152 to junction unnumbered highway at Edge Hill, Pa., thence over unnumbered highway to Fort Washington, Pa., and thence over unnumbered highway to junction U. S. Highway 309 north of Springhouse, Pa., and return over the same route); (also from junction Pennsylvania Highway 152 and unnumbered highway south of Glenside, Pa., over unnumbered highway to Glenside, and thence over unnumbered highway to junction Pennsylvania Highway 152 at Edge Hill, Pa., and return over the same route).

NO. MC 63390 SUB 20*, SHEET NO. 3

From Philadelphia over Pennsylvania Highway 43 to Valley Forge Interchange of Pennsylvania Turnpike, thence over Pennsylvania Turnpike to Lehigh Valley Interchange, thence over U. S. Highway 22 to junction Pennsylvania Highway 145, and thence over Pennsylvania Highway 145 to Allentown, and return over the same route; (also from Quakertown Interchange of Pennsylvania Turnpike over Pennsylvania Highway 663 to junction U. S. Highway 309 at Quakertown, Pa., and return over the same route); (also from Lansdale Interchange of Pennsylvania Turnpike over Pennsylvania Highway 63 to junction U. S. Highway 309, and return over the same route); (also from junction Pennsylvania Turnpike Northeast Extension and Pennsylvania Turnpike over Pennsylvania Turnpike to Fort Washington Interchange, and return over the same route).

The above-described authority to transport passengers was issued pursuant to an application filed on or before January 1, 1967, and therefore incidental charter operations in interstate or foreign commerce may be conducted under rules and regulations prescribed by the Commission pursuant to section 208(c) of the Interstate Commerce Act, as amended November 10, 1966.

Any duplication in this document of authority presently held by carrier does not confer more than one operating right.

By the Commission.

(SEAL)

H. G. HOMME, JR.,
Acting Secretary.

*This certificate cancels Certificate No. MC 126551 Sub 4, issued September 3, 1974, acquired in, and as modified by, MC-F 13076.

Docket No. C-2016-2538634

Carl R. Bieber, Inc. Preliminary Objections

Attachment No. 2

ICC Certificate of Public Convenience and Necessity

INTERSTATE COMMERCE COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

MC-53390 (Sub-No. 22F)

CARL R. BIEBER, INC.
(Kutztown, PA)

SERVICE DATE

DEC 8 1981

This Certificate of Public Convenience and Necessity is evidence of the carrier's authority to engage in transportation as a common carrier by motor vehicle.

This authority will become effective only when the carrier has met the compliance requirements pertaining to insurance coverage for the protection of the public (49 CFR 1043), the designation of agents upon whom process may be served (49 CFR 1044), and tariffs or schedules (49 CFR 1300 through 1310, revised). The carrier shall also render reasonably continuous and adequate service to the public. Failure to meet these conditions will constitute sufficient grounds for the suspension, change, or revocation of this authority.

This authority is subject to any terms, conditions, and limitations as are now, or may later be, attached to this privilege.

For all carriers: Any duplication in this authority and rights currently held does not confer more than one operating right.

For common carriers with irregular route authority: Any irregular route authority authorized in this certificate may not be tacked or joined with your other irregular route authority unless joinder is specifically authorized.

The transportation service to be performed is described on the reverse side of this document and will be valid as long as the carrier maintains compliance with the above requirements.

By the Commission.

Agatha L. Mergenovich
Secretary

(SEAL)

Note: If there are any discrepancies regarding this document please notify the Commission within 30 days.

To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting passengers and their baggage, in the same vehicle with passengers, (1) between Kutztown and Allentown, PA, over U.S. Hwy 222, (2) between Kutztown and Bethlehem, PA, from Kutztown over U.S. Hwy 222 to junction PA Hwy 309, then over PA Hwy 309 to junction U.S. Hwy 22, then over U.S. Hwy 22 to junction PA Hwy 378, then over PA Hwy 378 to Bethlehem, and return over the same route, and (3) between Philadelphia, PA, and Atlantic City, NJ, from Philadelphia over U.S. Hwy 76 to junction NJ Hwy 42, then over NJ Hwy 42 to the Atlantic City Expressway, then over the Atlantic City Expressway to Atlantic City, and return over the same route, serving all intermediate points and serving Philadelphia for purpose of joinder only with carrier's authorized regular routes between Allentown-Bethlehem and Philadelphia as authorized by Certificate in MC-63390 Sub 20, in connection with routes (1) through (2) above.

VERIFICATION

I, STEVEY HADAMS, PRESIDENT of Carl R. Bieber, Inc., hereby state that the facts set forth above are true and correct to the best of my knowledge, information, and belief and that I expect the Company will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: April 27, 2016

Stevey Hadams Pres.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Hiester Lotz :
Complainant :
v. : Docket No. C-2016-2538634
: :
Carl R. Bieber, Inc. :
Respondent :

Certificate of Service


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

Via First Class Mail:

Hiester H. Lotz
7 Jeanette Dr.
Hamburg, PA 19526

Respectfully submitted,

Dated: April 27, 2016


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