



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Midwestern Service Center

19900 Governors Drive
Suite 210
Olympia Fields, IL 60461-1021

Phone: (708) 283-3555

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Certified/ Return Receipt Requested

October 13, 2004

Joseph J Kerola, President
P I & I Motor Express Inc.
P O Box 62
908 Broadway Street
Masury, OH 44438

NOTICE OF CLAIM¹ -- Violations of 49 CFR § 392.9(a)(1).

CIVIL PENALTY: \$5,000

Case Number: IN-2004-0539-IN3865

Dear Mr. Kerola:

On September 29, 2004 a commercial motor vehicle operated by P I & I Motor Express Inc. was inspected at CR 61 and CR 40. The purpose of this inspection was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this inspection, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against P I & I Motor Express Inc. for the amount of \$5,000.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. **Also, under 49 CFR §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit P I & I Motor Express Inc. from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.**

1) A Notice of Claim is the official charging document used by the Federal Motor Carrier Safety Administration to initiate a civil action for violations of Federal Laws.

SUMMARY OF VIOLATIONS

Your company is charged with:

1. One (1) violation of 49 CFR § 392.9(a)(1)- Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

1. Do not allow and/or operate a commercial motor vehicle unless all cargo is properly distributed and adequately secured in accordance with 49 CFR Parts 392 and 393.

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions. Under Section 222 of the Motor Carrier Safety Improvement Act of 1999, recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) that result in three or more enforcement actions within a six-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violations with a checkmark in the "§ 222 Applied" column in the penalty table below are subject to this "Section 222" provision and the maximum penalties have been assessed. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

PENALTY

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before assessing a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty assessment shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

The FMCSA also is not required by statute to consider these factors in assessing penalties for violations of the commercial regulations. However, in accordance with 49 U.S.C. § 14901(c), the FMCSA must, before assessing a civil penalty concerning the transportation of household goods, take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA has assessed a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION²</u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>§222 APPLIED</u>	<u>TOTAL</u>
392.9(a)(1)	NR	1	\$5,000.00		\$5,000.00

Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$5,000.

HOW TO REPLY TO THE NOTICE OF CLAIM

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. **DO NOT** call the Federal Motor Carrier Safety Administration Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) **PAYMENT OF PENALTY:** Within 25 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at (708)283-3577.

All payments must be by cashier or certified check, or money order made payable to the Federal Motor Carrier Safety Administration and mailed to: United States Department of Transportation, Federal Motor Carrier Safety Administration, Midwestern Service Center, 19900 Governors Drive, Suite 210, Olympia Fields, IL 60461-1021. Personal or company checks will not be accepted and will be returned. Alternatively, you may pay electronically through our Do-It-Yourself website at <http://diy.dot.gov> by selecting "Federal Motor Carrier Safety Administration," then "FMCSA Fine Payments."

Payment of the penalty will constitute admission of the violation(s) set forth in the Notice of Claim and these violations shall constitute prior offenses under either 49 U.S.C. § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 U.S.C. § 14901(c) (for violations of the commercial regulations involving transportation of household goods) or 49 U.S.C. § 5123(c) (for violations of the Hazardous Materials Regulations). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.

(2) **REQUEST FOR A HEARING:** You may request a hearing on the record on any material issues of fact in dispute. If you choose this course of action, you must carefully follow the provisions within 49

2) CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalties assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commercial Regulations.

CFR SECTION 386.14, including filing a written Reply within 15 days after service of this Notice of Claim.

(3) SUBMISSION OF EVIDENCE AND ARGUMENT WITHOUT HEARING: You may also contest the allegations in the Notice of Claim without a formal hearing. To do so, you must serve notice of your intention to proceed in this manner by filing a written Reply within 15 days after service of this Notice of Claim (49 CFR §§ 386.14(b)(2) and 386.14(c)). Service of the notice of intent must also be made upon the Chief Safety Officer (Assistant Administrator) and all representatives listed in the Service List that is attached to this Notice of Claim. If you choose this option, you and the FMCSA Field Administrator for this Service Center are required to serve all written evidence and written argument on each party listed on the Service List and on the Chief Safety Officer for the Federal Motor Carrier Safety Administration, Attn: Dockets, 400 7th Street, S.W., Room PL-401, Washington D.C. 20590, within 40 days of the service date of this Notice of Claim (include a copy of this Notice of Claim with your initial filing to the Docket). All evidence must be in the form described in 49 CFR § 386.49, Form of Written Evidence. The Chief Safety Officer for the Federal Motor Carrier Safety Administration will make a final decision based on the written evidence and written argument submitted by all of the parties.

(4) BINDING ARBITRATION AVAILABILITY: You can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. If you want an arbitrator to decide whether the amount of the civil penalty is justified and/or the length of time to pay the civil penalty, you should notify the FMCSA of your request in writing when you submit your Reply. The Chief Safety Officer will determine if your case is appropriate for binding arbitration. You will be notified in writing of the Chief Safety Officer's decision regarding your request. You can choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: <<http://www.fmcsa.dot.gov/>>. You can also request a copy of the guidelines from the Service Center.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR §386.31.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 WILL BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN FIFTEEN (15) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE EXACT MANNER SPECIFIED IN 49 CFR § 386.14 WILL BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(e), A FAILURE TO REPLY WILL CAUSE THIS NOTICE OF CLAIM TO BECOME THE FINAL AGENCY ORDER IN THIS PROCEEDING TWENTY-FIVE (25) DAYS AFTER IT IS SERVED.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(b). UNLESS A CONCISE STATEMENT OF FACTS CONSTITUTING EACH DEFENSE IS PROVIDED IN YOUR REPLY, A DEFAULT MAY BE ENTERED AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK

Case Number: IN-2004-0539-IN3865

LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth D. Strickland". The signature is written in a cursive style with a prominent initial "K".

Kenneth D. Strickland
Division Administrator
Federal Motor Carrier Safety Administration

Enclosures

APPLICABLE STATUTES

Section 521(b)(2)(A) of 49 USC provides that any person who is determined to have committed an act that is a violation of regulations issued under subchapter III of chapter 311 (49 USC §§ 31131 et seq.)(except sections 31138 and 31139) or 49 USC §§ 31301 and 31306, or section 31502 of 49 USC, shall be liable for a civil penalty in an amount not to exceed \$11,000 for each offense. No civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding \$2,750 (49 USC § 521(b)(2)(A) and 68 Fed. Reg. 15381 (March 31, 2003)).

STATEMENT OF CHARGES

Violation 1 --- 49 CFR 392.9(a)(1) - Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.

CHARGE #1:

On or about 09/29/2004, P I & I Motor Express Inc. used driver (b)(6); (b)(7)(C) to drive a commercial motor vehicle in interstate commerce from Butler, Indiana to Harvey, Illinois. During the time of this transportation the State Police conducted a roadside inspection, report # IN3865000332. It was discovered the Steel Coil weighing 44,380 pounds was not adequately secured.

There were four tiedown assemblies (chains and binders) used to secure the coil which was loaded with the eye crosswise. Four tiedown assemblies were positioned through the eye of the coil and anchored to the right and left side of the trailer. All of the chains were 3/8" in size with a rating indicator of G70 which indicates a working load limit (WWL) of 6,600 pounds each. The four binders used were rated at 5400 pounds (WWL) each. Three out of the four chains used in the tie down assemblies contained damaged links. Using the lowest rating indicator of the tiedowns assemblies the minimum aggregate working load limit required to secure this coil is 22,190 pounds or 50% of the actual weight of the coil. This requirement was not met for the following two reasons. 1. Three of the tiedown assemblies used were defective because of the damaged chain links and 2. The aggregate working load limit of the four tie-down assemblies used (if not defective) was 21,600 pounds which is 590 pounds less than the minimum amount needed to be in compliance. Therefore this coil was not properly secured against movement, in any direction, as required in part 393.102 of the F.M.C.S.R's.

Note: All the numbering of the tiedown assemblies used in this report are numbered from the front to the rear of the vehicle.

SERVICE LIST

This is to certify that on October 13, 2004, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

Joseph J Kerola, President
P I & I Motor Express Inc.
P O Box 62
908 Broadway Street
Masury, OH 44438

Original
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Kenneth D. Strickland, Division Administrator
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Federal Motor Carrier Safety Administration
575 N. Pennsylvania,
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One Copy
Personal Delivery

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Joseph J. Kerola