

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

IN THE MATTER OF)
)
PI & I MOTOR EXPRESS,) **Case No. IN-2004-0540-IN3865**
)
Respondent)

REPLY AND REQUEST FOR HEARING

NOW COMES the Respondent, PI & I Motor Express, by and through its attorneys, David L. LaPorte and the law firm Querrey & Harrow, Ltd., and for its Reply to the above captioned Notice of Claim, states as follows:

REPLY

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.

REPLY: Denied. The FMCSA alleges that the aggregate working load of the four tie-down assemblies was only 21,600 pounds, when the required working load aggregate was required to be 22,190 pounds. However, as the FMCSA points out, the four chains in use to secure the load each had working load limits of 6,600 pounds. Therefore, the working load aggregated was 26,400 pounds, which exceeded the minimum requirement of 22,190 pounds. Although the FMCSA alleges that the chains contained damaged links, there is no evidence that the damaged links in anyway reduced the working load aggregate to below 22,190 pounds.

REQUEST FOR HEARING

The Respondent requests an oral hearing. The following material facts are believed to be in dispute:

1. Whether the working load aggregate of the chains in use was 26,400 pounds;

2. Whether the working load aggregate of the chains in use exceeded 22,190 pounds;
3. Whether the damage to the links reduced the working load aggregate of the chains to below 21,190 pounds;
4. Whether the FMCSA properly factored in the nature of the violation when assessing a penalty in the mid-range of available penalties.
5. Whether the FMCSA properly factored in the circumstance of the violation when assessing a penalty in the mid-range of available penalties.
6. Whether the FMCSA properly factored in the extent of the violation when assessing a penalty in the mid-range of available penalties.
7. Whether the FMCSA properly factored in the gravity of the violation when assessing a penalty in the mid-range of available penalties.
8. Whether the FMCSA properly factored in the Respondent's history of prior offenses when assessing a penalty in the mid-range of available penalties.
9. Whether the FMCSA properly factored in the Respondent's ability to pay when assessing a penalty in the mid-range of available penalties.
10. Whether the FMCSA properly factored in the effect of the Respondent's ability to continue to do business when assessing a penalty in the mid-range of available penalties.
11. Whether the FMCSA properly factored in other matters as justice and public safety requires when assessing a penalty in the mid-range of available penalties.


STATEMENT OF WILLINGNESS TO NEGOTIATE

The Respondent is willing to negotiate a settlement of the amount claimed and the terms of payment.

WHEREFORE, the Respondent, PI & I Motor Express, respectfully prays that the Chief Safety Officer grant its requests for an oral hearing on the issues listed above.


Respectfully submitted,

PI & I Motor Express

By: 
David L. LaPorte, one of its attorneys

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In the matter of PI & I Motor Express

Docket No. IN 2004-05-10-

Our File No.: 67590-POR

CERTIFICATE OF SERVICE

It is hereby certify that copies of the foregoing REPLY AND REQUEST FOR HEARING was served via Federal Express on the 2nd of November, 2004 on the following:



Lolita R. Tucker

SERVICE LIST 67509-POR

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Federal Motor Carrier Safety Administration
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Indianapolis, IN 46204

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