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Sixth Circuit Vacates Penalty Against NCLA Client, Sends Case Back to Dept. of Transportation

Polyweave Packaging, Inc. v. U.S. Dept. of Transportation; Pipeline and Hazardous Materials Safety Admin.

Washington, DC (January 27, 2023) – The U.S. Court of Appeals for the Sixth Circuit today issued a [ruling](#) in *Polyweave Packaging v. U.S. Dept. of Transportation* to vacate the civil penalty against Polyweave Packaging, Inc. and remand back to the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). The New Civil Liberties Alliance, which represents Polyweave, petitioned for review a decision of PHMSA’s Chief Safety Officer—a career civil servant who is not politically accountable and thus lacks appropriate authority—after he issued a Final Decision affirming alleged violations against Polyweave and assessing a civil penalty of \$14,460. The agency has since [conceded](#) that the Chief Safety Office was not properly appointed at the time of the decision in October 2021.

Polyweave petitioned the Sixth Circuit for review after identifying numerous statutory and constitutional defects in PHMSA’s administrative proceedings. Rather than respond to the [opening brief](#), PHMSA moved to remand the case back to itself. PHMSA admitted that, even though the Supreme Court’s 2017 *Lucia v. SEC* decision required the Secretary of Transportation to appoint each agency adjudication officer, it never followed that requirement. NCLA argues that PHMSA should have known about this defective appointment under *Lucia*, because the Solicitor General immediately issued guidance in 2017 to federal agencies—including PHMSA—to correct *Lucia* appointment errors. Instead of following that guidance, PHMSA allowed its improperly appointed Chief Safety Officer to preside over not just Polyweave’s case but dozens of others. The Sixth Circuit Panel reasoned that PHMSA may “request a remand because it believes that its original decision was incorrect on the merits and it wishes to change the result.”

While PHMSA admitted to the defective appointment under *Lucia*, it has yet to concede that its in-house proceedings suffer from many of the other statutory and constitutional defects NCLA raised in its opening brief. For instance, PHMSA denied Polyweave its constitutionally mandated jury rights and applied a strict-liability standard against Polyweave even though the [statute](#) clearly says PHMSA may impose a civil penalty only against a “person that knowingly violates ... a regulation.” Additionally, because the civil penalty against Polyweave was assessed more than six years after the alleged violations took place in 2015, it is unenforceable under the five-year statute of limitations applicable to the federal government. If PHMSA does not fix these and other errors, this case may return before the U.S. Court of Appeals for the Sixth Circuit.

NCLA released the following statement:

“Polyweave is not the only company that was improperly assessed a civil penalty by PHMSA’s unconstitutionally appointed Chief Safety Officer. PHMSA allowed the same officer to impose fines against dozens of other small businesses, even though the agency knew or should have known since the Supreme Court’s 2017 *Lucia* decision that he lacked authority to do so. Unfortunately, most of those small businesses did not fight the agency through *pro bono* counsel and so paid fines that the agency now admits should be vacated.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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