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**NCLA Petition Takes Issue with PHMSA over Scierter, Statute of Limitations, and Lack of Jury Trial**

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

**Washington, DC (April 14, 2022)** - The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed its [opening brief](#) in *Polyweave Packaging v. U.S. Dept. of Transportation*, in the U.S. Court of Appeals for the Sixth Circuit. NCLA contends that the Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA, pronounced “Fem´-suh”) exceeded its authority under a statute that allows imposition of a civil penalty in response to “knowingly violating” the Hazardous Material Regulations.

Polyweave Packaging, Inc. is a small company that makes packaging for the safe transportation of hazardous materials. The Hazardous Materials Transportation Act of 1975 authorizes civil penalties for selling hazmat packaging that does not conform to regulatory requirements. To prevent individuals and businesses from being penalized for innocent conduct, Congress made clear in 1975 and again in 1990 that a penalty can be assessed only if a person “knowingly violates” those regulations.

PHMSA, however, ignored Congress and asserted it was not “required to show that Polyweave acted in ways it knew or should have known were non-compliant” before assessing a penalty. Indeed, PHMSA assessed a civil penalty without offering evidence that Polyweave acted “knowingly” in selling packaging that allegedly failed to conform with HMR rules. The packaging at issue is a special bag used to ship explosive materials. Polyweave had relied on specific advice from a PHMSA official in the early ’90s that its product was “combination packaging” that only had to be tested every 24 months, instead of “composite packaging” that had to be tested every 12 months. PHMSA changed its mind about the product in 2015 and sought retroactive penalties, even though Polyweave agreed to comply with the new interpretation and testing schedule on a going-forward basis.

On October 18, 2021, PHMSA’s Chief Safety Officer—a career civil servant who lacks appropriate authority—issued a Final Decision affirming alleged violations against Polyweave and assessing a civil penalty of \$14,460. One alleged violation was for selling packaging with markings that became blurred over time, which Polyweave could not have known about when it shipped clearly marked packaging to customers (Polyweave immediately replaced its printer when a customer reported the blurring).

PHMSA’s prosecution of Polyweave was also marked by repeated violations of due process of law. PHMSA suppressed documents showing its inspector altered evidence used against Polyweave. The agency even hid its own conclusion that other companies’ use of Polyweave’s allegedly non-compliant packaging to transport explosives did not violate any regulation. Because the civil penalty against Polyweave was assessed more than six years after the alleged violations took place, it is unenforceable under the applicable five-year statute of limitations. Finally, the nature of the civil penalty assessed should have entitled Polyweave to a trial by jury rather than a mere administrative hearing. For these reasons, the Chief Safety Officer’s Final Decision must be vacated.

**NCLA released the following statements:**

“The agency’s statutory and constitutional violations are the predictable—and indeed predicted—consequence of administrative adjudication whereby the inspector, the prosecutor, the trial judge, and the appellate judge are all co-workers in the same agency. A real judge would have no trouble excoriating a real prosecutor for misinterpreting the law or mishandling evidence. But a bureaucrat playing a judge may hesitate to do the same to a fellow bureaucrat from the same office—one who might later sit on his performance review committee.”

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

“Many people have been laboring for decades under the view that agency adjudications are a good mechanism for resolving agency enforcement actions. But that view often ignores the clear constitutional deficits that are part and parcel of these processes. As here, agency adjudications systematically deny regulated parties their due process and jury trial rights. The unusual circumstances in this case only highlight the constitutional deficiencies and warrant a close look by the Court in this petition.”

— **Kara Rollins, 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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