

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OBJECTION OF UNITED STATES POSTAL SERVICE  
TO OFFICE OF THE CONSUMER ADVOCATE INTERROGATORIES  
OCA/USPS-T40-14 (IN PART), 15 (IN PART), AND 20-21 TO WITNESS PLUNKETT  
(SEPTEMBER 19, 1997)

The United States Postal Service hereby objects to the Office of the Consumer Advocate's interrogatories OCA/USPS-T40-14 (in part), 15 (in part), and 20-21, filed on September 9, 1997. These interrogatories are not relevant to the proposals in this proceeding, and all ask for legal conclusions, rather than discoverable facts.

The four interrogatories are as follows:

OCA/USPS-T40-14. Is the insurance business of the Postal Service regulated by state insurance commissions? Please explain, including any legal citations necessary to support the Postal Service explanations. Also include any contrary legal citations if they exist.

OCA/USPS-T40-15. Is the advertising or marketing of insurance by the Postal Service regulated by any federal agency, such as the Federal Trade Commission (under its unfair or deceptive acts or practices authority). Please explain.

OCA/USPS-T40-19. As to insured and uninsured mailers, does the Postal Service have the status of a common carrier? For example, at common law, a common carrier was regarded as an insurer against the loss of, or damage to, property received by it for transportation (subject to certain exceptions). See, generally, 14 Am. Jur 2d §508. Please explain. If there are contrary views about this (e.g., from reported court decisions, or from allegations in lawsuits) please provide the contrary views.

OCA/USPS-T40-20. As to insured and uninsured mailers, does the Postal Service have the status of a bailee (a person who receives the possession or custody of property)? Please explain. If there are contrary views about this (e.g., from reported court decisions, or from allegations in lawsuits) please provide the contrary views.

These legal inquiries are not relevant to the Postal Service's insurance proposal, or any other issue, in this proceeding. Moreover, these interrogatories ask for witness Plunkett's legal conclusions about the regulatory authority of state insurance commissions and federal agencies, and the legal status of the Postal Service as a common carrier or bailee. Special Rule of Practice 5 in this docket states that:

[a]rgument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda.

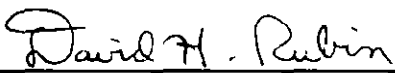
Presiding Officer's Ruling No. R97-1/4. Mr. Plunkett is not a lawyer, and, as Special Rule 5 makes clear, legal issues are best left to lawyers, rather than witnesses, as part of the briefing process.<sup>1</sup> Under rules 25 and 26, interrogatories must appear to be "reasonably calculated to lead to the discovery of admissible evidence." These interrogatories fail to meet that standard.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

  
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David H. Rubin

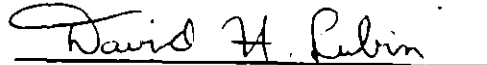
475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2986; Fax -5402  
September 19, 1997

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<sup>1</sup> Witness Plunkett will respond to interrogatories OCA/USPS-T40-14 and 15 to the extent they request his knowledge of actual regulation of the Postal Service's insurance business by state insurance commission or federal agencies.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

  
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David H. Rubin

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Washington, D.C. 20260-1137  
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