

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Pat Apple, Chairman
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the General Investigation of)
MacInnis Trucking LLC of Shawnee,)
Kansas, Pursuant to the Kansas Highway)
Patrol Issuance of a Notice of Violation(s) and) Docket No. 17-GIMM-403-KHP
Invoice for the Violations of the Kansas Motor)
Carrier Safety Statutes, Rules and Regulations.)

ORDER APPROVING STIPULATED SETTLEMENT AGREEMENT

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On February 6, 2017, Kansas Highway Patrol Technical Trooper D. Wills conducted a routine "Level I – Full Inspection" on a commercial motor vehicle operated by the Respondent.

2. As a result of this inspection, Kansas Highway Patrol Technical Trooper D. Wills identified two (2) apparent out of service violations of the Kansas motor carrier safety rules and regulations. This violation was documented in Kansas Highway Patrol Driver/Vehicle Examination Report No. KSHP03030400.

3. On February 7, 2017, the Kansas Highway Patrol issued a Notice of Violation and Invoice No. H000566827, alleging violations found during the February 6, 2017, motor carrier

inspection. Respondent was assessed a \$0.00 fine for Prohibited HM marking on package, citing 172.303A, a \$150.00 fine for Leaking/spilling/blowing/failing cargo, citing 393.100B.

4. On February 13, 2017, Respondent initiated a formal challenge with the KHP.

5. On February 16, 2017, the Kansas Highway Patrol denied Respondent's challenge and advised MacInnis Trucking LLC of its right to an administrative hearing before the Commission.

6. On March 2, 2017, Respondent requested a hearing before the Commission.

7. On June 1, 2017, Dean MacInnis, Owner of MacInnis Trucking LLC; Mike Hoeme, Director of the Commission's Transportation Division; Gary Davenport, Deputy Director of the Commission's Transportation Division; and Ahsan A. Latif, Litigation Counsel for Staff informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

8. On June 28, 2017, Staff filed a Joint Motion for Approval of Stipulated Settlement Agreement. The Stipulated Settlement Agreement is attached to this Order.

9. Respondent agrees to operate commercial motor vehicles subject to the Commission's jurisdiction in a safe manner.

10. In signing the Stipulated Settlement Agreement, the parties agree that the Agreement constitutes a reasonable and fair resolution of the outstanding issues raised in this proceeding.

II. FINDINGS AND CONCLUSIONS

10. The Commission finds that the terms and provisions of the Stipulated Settlement Agreement constitute a reasonable and appropriate final resolution of this matter.

6. The Commission concludes that settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853, 869 P.2d 686 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

7. The Commission further concludes that pursuant to K.S.A. 2016 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2016 Supp. 66-1,108b, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. The Commission may fine, sanction, suspend, cancel or revoke a carrier's authority in accordance with K.S.A. 2016 Supp. 66-1,129a, 66-1,130 and 66-1,142b. Further, the Commission has the authority to investigate a party in accordance with K.A.R. 82-1-237.

8. The Commission has reviewed the Stipulated Settlement Agreement attached hereto and concludes that the terms and provisions therein are an appropriate and reasonable disposition of this matter. The Commission therefore adopts and incorporates by reference the terms of the Agreement.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Joint Motion for Approval the Stipulated Settlement Agreement entered into between MacInnis Trucking LLC of Shawnee, Kansas, and Transportation Staff is hereby

granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

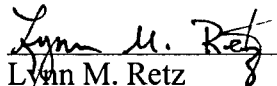
B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was received in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 2016 Supp. 66-118b; K.S.A. 2013 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Apple, Chairman; Albrecht, Commissioner; Emler, Commissioner

Dated: JUL 11 2017


Lynn M. Retz
Secretary to the Commission

AAL

Order Mailed Date

JUL 12 2017

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Investigation of **MacInnis**)
Trucking LLC of Shawnee, Kansas, Pursuant to the)
Kansas Highway Patrol Issuance of a Notice of) Docket No. 17-GIMM-403-KHP
Violation(s) and Invoice for the Violations of the)
Kansas Motor Carrier Safety Statutes, Rules and)
Regulations.)

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement (Agreement) is entered into by and between the Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively), and MacInnis Trucking LLC (Respondent). Its effective date will be the date the Commission enters an Order approving or amending the terms of the Agreement.

I. JURISDICTION

1. Pursuant to K.S.A. 2016 Supp. 66-1,108b, 66-1,111, 66-1,112, 66-1,114, 66-1,114b and 66-1,115, and amendments thereto, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in K.S.A. 2016 Supp. 66-1,108, doing business or procuring business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.

2. Pursuant to K.S.A. 2016 Supp. 66-1,129a, 66-1,130 and 66-1,142b, and amendments thereto, the Commission may suspend operations, revoke or amend certificates, and initiate sanctions or fines against every motor carrier and every person who violates any provision of Kansas law in regard to the regulation of such motor carriers and persons, or who fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to K.A.R. 82-1-237, to investigate a party under its jurisdiction.

4. Pursuant to K.S.A. 2016 Supp. 74-2108, the Kansas Highway Patrol may require the driver of any motor vehicle operated by any motor carrier to stop and submit to an inspection to determine compliance with the laws, rules and regulations relating to motor carriers. Additionally, K.A.R. 82-4-2a gives the Kansas Highway Patrol the authority to examine motor carrier equipment operating on the highways in Kansas, and examine the manner of the motor carrier's conduct as it relates to the public safety and the operation of commercial motor vehicles in Kansas.

5. Pursuant to K.S.A. 2016 Supp. 66-1,129(a), sanctions imposed against motor carriers must be done in accordance with the Kansas Administrative Procedure Act.

6. Pursuant to K.S.A. 2016 Supp. 77-505, nothing in the Kansas Administrative Procedure Act shall preclude the informal settlement of matters that may make other proceedings unnecessary.

7. Pursuant to K.S.A. 2016 Supp. 66-1,142c, a civil penalty may be compromised by the Commission. In determining the amount of the penalty or the amount agreed in compromise, the appropriateness of the penalty to the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance shall be considered.

II. BACKGROUND

8. On February 6, 2017, Kansas Highway Patrol Technical Trooper D. Wills conducted a routine "Level I – Full Inspection" on a commercial motor vehicle operated by the Respondent.

9. As a result of this inspection, Kansas Highway Patrol Technical Trooper D. Wills identified two (2) apparent out of service violations of the Kansas motor carrier safety rules and

regulations. This violation was documented in Kansas Highway Patrol Driver/Vehicle Examination Report No. KSHP03030400.

10. On February 7, 2017, the Kansas Highway Patrol issued a Notice of Violation and Invoice No. H000566827, alleging violations found during the February 6, 2017, motor carrier inspection. Respondent was assessed a \$0.00 fine for Prohibited HM marking on package, citing 172.303A, a \$150.00 fine for Leaking/spilling/blowing/failing cargo, citing 393.100B.

11. On February 13, 2017, Respondent initiated a formal challenge with the KHP.

12. On February 16, 2017, the Kansas Highway Patrol denied Respondent's challenge and advised MacInnis Trucking LLC of its right to an administrative hearing before the Commission.

13. On March 2, 2017, Respondent requested a hearing before the Commission.

14. On June 1, 2017, Dean MacInnis, Owner of MacInnis Trucking LLC; Mike Hoeme, Director of the Commission's Transportation Division; Gary Davenport, Deputy Director of the Commission's Transportation Division; and Ahsan A. Latif, Litigation Counsel for Staff informally discussed the possibility of a settlement. During the informal discussions, Staff and Respondent were able to reach mutually agreeable terms in anticipated settlement of the issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Respondent for approval and signature.

III. TERMS OF THE STIPULATED SETTLEMENT AGREEMENT

15. The parties agree that the Commission has jurisdiction and authority over this matter.

16. The parties also agree that adoption of this Agreement is in the public interest and that the Commission should approve the stipulations as set forth below.

17. Respondent agrees to continue to operate commercial motor vehicles subject to the Commission's jurisdiction in a safe manner.

18. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission this Agreement shall constitute a final resolution of this matter.

19. Pursuant to K.S.A. 2016 Supp. 77-504, the Respondent waives all rights to a hearing on, or appeal of the Invoice, and withdraws its request for a hearing previously filed herein.

20. Pursuant to K.S.A. 2016 Supp. 77-526, the Commission expressly reserves and maintains the right and authority to enforce the terms of this Agreement.

21. Pursuant to the Kansas Judicial Review Act, K.S.A 77-601 *et seq.*, Respondent waives all rights to a hearing on, or appeal of, this Agreement.

22. Respondent neither admits to nor denies the violations alleged in the Invoice dated July 28, 2016.

23. Respondent agrees to pay fines totaling \$150 for the above violations by July 1, 2017. Payment shall be made payable to the Kansas Corporation Commission and mailed to the Kansas Corporation Commission, Legal Division, 1500 S.W. Arrowhead Road, Topeka, Kansas, 66604-4027. ***Respondent shall include the docket number of these proceedings (17-GIMM-403-KHP) in the memo field of the payment.***

24. Respondent agrees to withdraw its Request for Hearing before the Commission.

25. Respondent shall comply with Kansas law governing the regulation of motor carriers, the Kansas Administrative Regulations and provisions of the Federal Motor Carrier Safety Regulations, as adopted by the Kansas Administrative Regulations.

VI. RESERVATIONS

26. This Agreement fully resolves issues specifically addressed between the parties. The terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein.

27. The terms and provisions of this Agreement have resulted from negotiations between the signatories and are interdependent. In the event the Commission does not approve the terms of the Agreement in total, any party has the option to terminate this Agreement and, if so terminated, none of the signatories hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

28. Unless (and only to the extent) otherwise specified in this Agreement, the signatories to this Agreement shall not be prejudiced, bound by, or affected in any way by the terms of this Agreement: (1) in any future Commission or court proceeding; (2) in any proceeding currently pending before the Commission under a separate docket; and/or (3) in this proceeding, if the Commission decides not to approve this Agreement in total or in any way conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

29. Unless (and only to the extent) otherwise specified in this Agreement, this Agreement does not prejudice or waive any party's legal rights, positions, claims, assertions or arguments in any proceedings in this docket, or any other proceeding before the Commission or in any court.


30. If the Commission approves this Agreement in its entirety and incorporates the same into a Final Order in this docket, the parties agree to be bound by its terms and the

Commission's Order incorporating its terms as to all issues addressed herein, and will not appeal the Commission's Order.

31. This Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, Staff and MacInnis Trucking LLC hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

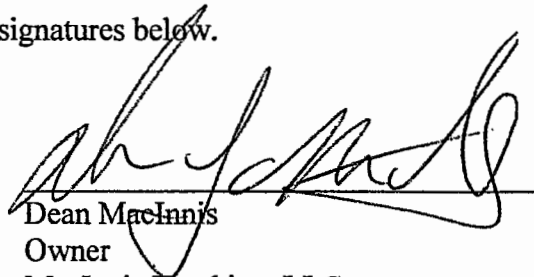
By:



Ahsan A. Latif, S. Ct. #24709
Litigation Counsel
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Attorney for Commission Staff

By:



Dean MacInnis
Owner
MacInnis Trucking, LLC
4608 Meadow View Dr.
Shawnee, KS 66226
Phone: 913-908-0081

Respondent

CERTIFICATE OF SERVICE

17-GIMM-403-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on **JUL 11 2017**.

AHSAN LATIF, LITIGATION COUNSEL
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DEAN MACINNIS, MANAGING MEMBER
MACINNIS TRUCKING LLC
4608 MEADOW VIEW DRIVE
SHAWNEE, KS 66226
macinnistrucking@hotmail.com

/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

JUL 12 2017