

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

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

In the Matter of the General Investigation of)
Kelsy Conard of Wentworth, Missouri,)
Pursuant to the Kansas Highway Patrol)
Issuance of a Notice of Violation(s) and) Docket No. 17-GIMM-133-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 July 28, 2016, the Kansas Highway Patrol issued a Notice of Violation(s) against Kelsey Conard (Respondent), for alleged violations found during a July 22, 2016, routine motor carrier stop and inspection conducted by the Kansas Highway Patrol (KHP).

2. As a result of this inspection, Respondent was assessed \$1,650 in civil fines, comprised of the following violations: a \$150.00 fine for No Shipping Papers, citing 177.817A, a \$150.00 fine for Package Not Secure in Vehicle, citing 177.834A, a \$150.00 fine for No/Improper Breakaway or Emergency Braking, citing 393.43, a \$0.00 fine for Failing to Secure Equipment, citing 392.9A2, a \$0.00 fine for Leaking/Spilling/Blowing/Falling Cargo, citing 393.100B, a \$150.00 fine for No/Improper Heavy Vehicle/Machine Securement, citing 393.130, a \$150.00 fine for Tire-load weight rating/under inflated, citing 393.75F, a \$150.00 fine for

Inoperative Turn Signal, citing 393.9TS, a \$250.00 for Operating a CMV while ill or fatigued, citing 392.3, a \$250.00 fine for Driver in possession of intoxicating beverage while on duty or driving, citing 392.5A3 and a \$250.00 fine for No Driver's Record of Duty Status, citing 395.8A.

3. On August 26, 2016, Respondent initiated a formal challenge with the KHP.

4. On September 9, 2016, the Kansas Highway Patrol denied Respondent's challenge and advised Respondent of its right to an administrative hearing before the Commission.

5. On September 22, 2016, Respondent requested a hearing before the Commission.

6. On January 11, 2017 John E. Harvell, Counsel for Kelsey Conard; 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 this and subsequent 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.

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

8. 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 and the waiver of the civil assessment in exchange for requested actions of the Respondent 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. 2013 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. 2013 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. 2013 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 of the parties 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 to Approve the Stipulated Settlement Agreement entered into by Kelsy Conard, of Wentworth, Missouri, and Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

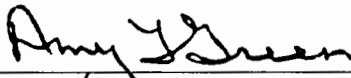
B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was received in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 2013 Supp. 66-118b; K.S.A. 2013 Supp. 77-529(a)(1).

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: FEB 02 2017



Amy L. Green
Secretary to the Commission

AAL

Order Mailed Date

FEB 03 2017

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the General Investigation)
of **Kelsy Conard of Wentworth,**)
Missouri, Pursuant to the Kansas Highway)
Patrol Issuance of a Notice of Violation(s)) Docket No. 17-GIMM-133-KHP
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 Kelsy Conard (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 July 28, 2016, the Kansas Highway Patrol issued a Notice of Violation(s) against Kelsey Conard (Respondent), for alleged violations found during a July 22, 2016, routine motor carrier stop and inspection conducted by the Kansas Highway Patrol (KHP).

9. As a result of this inspection, Respondent was assessed \$1,650 in civil fines, comprised of the following violations: a \$150.00 fine for No Shipping Papers, citing 177.817A, a \$150.00 fine for Package Not Secure in Vehicle, citing 177.834A, a \$150.00 fine for No/Improper Breakaway or Emergency Braking, citing 393.43, a \$0.00 fine for Failing to Secure Equipment, citing 392.9A2, a \$0.00 fine for Leaking/Spilling/Blowing/Falling Cargo, citing 393.100B, a \$150.00 fine for No/Improper Heavy Vehicle/Machine Securement, citing 393.130, a \$150.00 fine for Tire-load weight rating/under inflated, citing 393.75F, a \$150.00 fine for Inoperative Turn Signal, citing 393.9TS, a \$250.00 for Operating a CMV while ill or fatigued, citing 392.3, a \$250.00 fine for Driver in possession of intoxicating beverage while on duty or driving, citing 392.5A3 and a \$250.00 fine for No Driver's Record of Duty Status, citing 395.8A.

10. On August 26, 2016, Respondent initiated a formal challenge with the KHP.

11. On September 9, 2016, the Kansas Highway Patrol denied Respondent's challenge and advised Respondent of its right to an administrative hearing before the Commission.

12. On September 22, 2016, Respondent requested a hearing before the Commission.

13. On January 11, 2017 John E. Harvell, Counsel for Kelsey Conard; 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 this and subsequent 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

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

15. 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.

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

17. Respondent agrees 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.

IV. MODIFICATION OF EXAMINATION AND INVOICE

22. Staff agrees to reduce the civil fee assessed against Respondent by \$650.00 from \$1,650.00 to \$1,000.00.

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

V. DUTIES OF THE RESPONDENT.

24. Respondent agrees to pay fines totaling \$1,000 by January 31, 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-133-KHP) in the memo field of the payment.*

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.

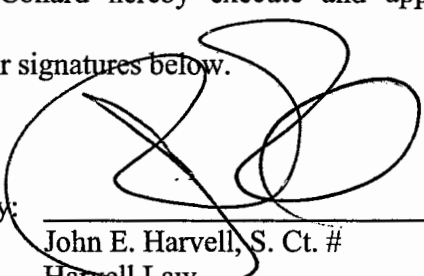
IN WITNESS WHERETO, Staff and Kelsey Conard hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

By:



Ahsan A. Latif, S. Ct. #24709
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3118
Fax: 785-271-3167
Email: a.latif@kcc.ks.gov

Attorney for Commission Staff

By:


John E. Harvell, S. Ct. #
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108 East Cedar
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Phone: 913-339-9919
Fax: 913-339-9013
Email: john@johnharvell.com

Attorney for Respondent

By: 
Kelsy Conard.

CERTIFICATE OF SERVICE

17-GIMM-133-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on FEB 02 2017.

JOHN E. HARVELL, ATTORNEY AT LAW
JOHN E. HARVELL
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OLATHE, KS 66061
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a.latif@kcc.ks.gov

/S/ DeeAnn Shupe
DeeAnn Shupe

Order Mailed Date

FEB 03 2017