

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

In the Matter of the General Investigation)
of **Leon Shestak of Columbia Falls,**)
Montana, Pursuant to the Kansas Highway)
Patrol Issuance of a Notice of Violation(s)) Docket No. 18-GIMM-083-KHP
and Invoice for the Violations of the)
Kansas Motor Carrier Safety Statutes,)
Rules and Regulations.)

**JOINT MOTION FOR APPROVAL OF
STIPULATED SETTLEMENT AGREEMENT**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) by and through its counsel Ahsan A. Latif, and Leon Shestak of Columbia Falls, Montana (Respondent) file this Joint Motion requesting the Commission issue an Order approving the attached Stipulated Settlement Agreement. In support of this Motion, Staff and Respondent state as follows:

1. On July 3, 2017, the Kansas Highway Patrol issued a Notice of Violation(s) against Leon Shestak (Respondent), for alleged violations found during a June 29, 2017, routine motor carrier stop and inspections conducted by the Kansas Highway Patrol (KHP).

2. Respondent was assessed \$450 in civil fines related to Driver/Vehicle Inspection Report No. KSHP01270451, comprised of the following violations: a \$150.00 fine for No/Improper Breakaway or Emergency Braking, citing 393.43, a \$150.00 fine for Leaking/Spilling/Blowing/Falling Cargo, citing 393.100B, and a \$150.00 fine for Defective coupling devices for full trailer, citing 393.70C.

3. Respondent was assessed \$450 in civil fines related to Driver/Vehicle Inspection Report No. KSHP01270452, comprised of the following violations: a \$150.00 fine for No/Improper Breakaway or Emergency Braking, citing 393.43, a \$150.00 fine for Driving a

CMV in Interstate Commerce and driver is less than 21 years of age, citing 391.11B, and a \$150.00 fine for Defective coupling devices for full trailer, citing 393.70C.

4. On August 2, 2017, Respondent initiated a formal challenge with the KHP.

5. On August 4, 2017, the Kansas Highway Patrol denied Respondent's challenge and advised Respondent of its right to an administrative hearing before the Commission.

6. On August 15, 2017, Respondent requested a hearing before the Commission.

7. On April 13, 2018, Leon Shestak, 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.

8. The resulting signed Stipulated Settlement Agreement is attached hereto as Attachment "A" and is hereby incorporated by reference. This Agreement resolves all issues in this proceeding between Staff and Respondent. The parties believe that the Agreement represents a reasonable and fair resolution of this matter and that the Commission should approve the Agreement in full.

9. Should the Commission accept the terms of the attached Stipulated Settlement Agreement, the parties waive their respective rights to cross-examine witnesses and present oral arguments or written briefs to the Commission. The parties also waive their rights to request reconsideration of the Commission Order approving the Agreement and waive their rights to seek judicial review of said Order.

WHEREFORE, for the reasons set forth herein, Staff and Leon Shestak request this Joint Motion be granted, and that the attached Stipulated Settlement Agreement be approved.


Respectfully Submitted,

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:


Leon Shestak
36 Sandy Hill Terr
Columbia Falls, MT 59912

Respondent

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In the Matter of the General Investigation)
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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 Leon Shestak (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. 2017 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. 2017 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. 2017 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. 2017 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. 2017 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. 2017 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 3, 2017, the Kansas Highway Patrol issued a Notice of Violation(s) against Leon Shestak (Respondent), for alleged violations found during a June 29, 2017, routine motor carrier stop and inspections conducted by the Kansas Highway Patrol (KHP).

9. Respondent was assessed \$450 in civil fines related to Driver/Vehicle Inspection Report No. KSHP01270451, comprised of the following violations: a \$150.00 fine for No/Improper Breakaway or Emergency Braking, citing 393.43, a \$150.00 fine for Leaking/Spilling/Blowing/Falling Cargo, citing 393.100B, and a \$150.00 fine for Defective coupling devices for full trailer, citing 393.70C.

10. Respondent was assessed \$450 in civil fines related to Driver/Vehicle Inspection Report No. KSHP01270452, comprised of the following violations: a \$150.00 fine for No/Improper Breakaway or Emergency Braking, citing 393.43, a \$150.00 fine for Driving a CMV in Interstate Commerce and driver is less than 21 years of age, citing 391.11B, and a \$150.00 fine for Defective coupling devices for full trailer, citing 393.70C.

11. On August 2, 2017, the Respondent initiated a formal challenge with the KHP.

12. On August 4, 2017, the Kansas Highway Patrol denied Respondent's challenge and advised Respondent of its right to an administrative hearing before the Commission.

13. On August 15, 2017, Respondent requested a hearing before the Commission.

14. On April 13, 2018, Leon Shestak 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

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 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. 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. 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 dismiss the \$450.00 civil assessments included in the Commission's Notice of Violation and Invoice No. H000569419, comprised of the following violations: a \$150.00 fine for No/Improper Breakaway or Emergency Braking, citing 393.43, a \$150.00 fine for Driving a CMV in Interstate Commerce and driver is less than 21 years of age, citing 391.11B, and a \$150.00 fine for Defective coupling devices for full trailer, citing 393.70C.

23. Staff's Recommendation for dismissal of this civil assessment is based upon the fact Respondent agreed to operate in a safe manner.

24. Respondent agrees to pay remaining fines totaling \$450 for the above violations by July 15, 2018. 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 (18-GIMM-083-KHP) in the memo field of the payment.*

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

V. DUTIES OF THE RESPONDENT.

26. Respondent shall, when applicable, 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

27. 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.

28. 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.

29. 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

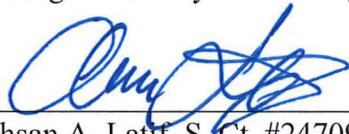
conditions its approval of the same. This paragraph is not meant to limit future enforcement of this Agreement, should either party fail to fulfill all terms and provisions.

30. 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. 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 Leon Shestak 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:



Leon Shestak
36 Sandy Hill Terr
Columbia Falls, MT 59912

Respondent

VERIFICATION

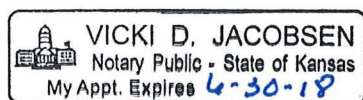
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)


Ahsan A. Latif, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Joint Motion for Approval of Stipulated Settlement Agreement* and attests that the statements therein are true and correct to the best of his knowledge, information and belief.



Ahsan A. Latif, S. Ct. # 24709
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 30th day of April, 2018.





Notary Public

My Appointment Expires: June 30, 2018

CERTIFICATE OF SERVICE

18-GIMM-083-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Joint Motion for Approval of Stipulated Settlement Agreement was placed in the United States mail, postage prepaid, or hand-delivered this 1st day of May, 2018, to the following:

DUSTIN KIRK, DEPUTY GENERAL COUNSEL
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LEON SHESTAK, OWNER
LEON SHESTAK
36 SANDY HILL TERR
COLUMBIA FALLS, MT 59912



Vicki Jacobsen