

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

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

In the Matter of the Investigation of **Miller's of** )  
**Claflin, Inc. of Claflin, Kansas**, Pursuant to the )  
Kansas Highway Patrol Issuance of a Notice of )  
Violation for Violation(s) of the Kansas Motor )  
Carrier Safety Statutes, Rules and Regulations and )  
the Commission's Authority to Impose Penalties, )  
Sanctions and/or the Revocation of Motor Carrier )  
Authority. )

Docket No. 14-GIMM-575-KHP

## 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 or about March 13, 2014, Kansas Highway Patrol Trooper F.J. Veverka conducted a routine “Level II – Walk-Around” inspection on a commercial motor vehicle operated by Miller’s of Claflin, Inc. (Respondent).

2. As a result of this inspection, Kansas Highway Patrol Trooper F.J. Veverka identified one (1) apparent violation of the Kansas motor carrier safety rules and regulations. This violation was documented in Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200.

3. On or about March 17, 2014, the Commission issued a Notice of Violation and Invoice No. H000546598, filed in this docket on June 17, 2014, assessing Respondent a \$150.00 civil penalty.

4. On or about June 26, 2014, Respondent; Mike Hoeme, Director of the Commission's Transportation Division; and Robert E. Vincent, 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.

5. In the Stipulated Settlement Agreement Respondent stipulates to the violation as set out in the Notice of Violation and Invoice No. H0000546598.

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

7. 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**

5. 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.

**THE COMMISSION THEREFORE ORDERS THAT:**

A. The Joint Motion to Approve the Stipulated Settlement Agreement entered into by Miller's of Claflin of Claflin, Kansas, and Staff is hereby granted. The terms of the Stipulated Settlement Agreement are approved and are hereby incorporated by reference.

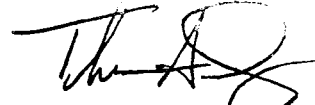
B. The parties have fifteen (15) days, plus three (3) days if service of this order is by mail, from the date this order was received in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 2013 Supp. 66-118b; K.S.A. 2013 Supp. 77-529(a)(1).

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.**

Albrecht, Chair; Emler, Com.; Apple, Com.

Dated: JUL 29 2014



ORDER MAILED JUL 30 2014

Thomas A. Day  
Acting Executive Director

REV

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

In the Matter of the Investigation of **Miller's of** )  
**Claflin, Inc. of Claflin, Kansas**, Pursuant to the )  
Kansas Highway Patrol Issuance of a Notice of )  
Violation for Violation(s) of the Kansas Motor Carrier ) Docket No. 14-GIMM-575-KHP  
Safety Statutes, Rules and Regulations and the )  
Commission's Authority to Impose Penalties, )  
Sanctions and/or the Revocation of Motor Carrier )  
Authority. )

**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 Colby Miller, Fleet Manager of Miller's of Claflin, Inc. (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. 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. 66-1,108, 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. 2013 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. 2013 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. 2013 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. 2013 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. 2013 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 or about March 13, 2014, Kansas Highway Patrol Trooper F.J. Veverka conducted a routine "Level II – Walk-Around" inspection on a commercial motor vehicle operated by the Respondent.

9. As a result of this inspection, Kansas Highway Patrol Trooper F.J. Veverka identified one (1) apparent violation of the Kansas motor carrier safety rules and regulations. This violation was documented in Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200.

10. On or about March 17, 2014, the Commission issued a Notice of Violation and Invoice No. H000546598, filed in this docket on June 17, 2014, assessing Respondent a \$150.00 civil penalty.

11. On or about June 26, 2014, Respondent; Mike Hoeme, Director of the Commission's Transportation Division; and Robert E. Vincent, 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**

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

13. 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.

14. Respondent stipulates to the violations identified in the March 13, 2014, Kansas Highway Patrol Driver/Vehicle Examination Report No. H000546598.

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

16. 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.

17. Pursuant to K.S.A. 2013 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.

18. Pursuant to K.S.A. 2013 Supp. 77-526, the Commission expressly reserves and maintains the right and authority to enforce the terms of this Agreement.

19. 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 THE INVOICE ASSESSING CIVIL PENALTY**

20. Staff hereby agrees and requests that Invoice No. H000546598 dated March 13, 2014, be amended as follows:

- a. The penalty for Violation 393.75A be dismissed.

21. Staff's recommendation for modification of the civil penalty for the violations stated in Invoice No. H000546598 is based upon the following mitigating factors:

- a. Respondent is making a good faith effort to revise its operating procedures and to 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.

- b. Respondent took immediate corrective action upon notice of the violation, and is engaged in continuing safety management practices designed to prevent future violations.
- c. A review of Respondent's company history indicates widespread and effective safety management procedures and policies. Staff believes the assessment of a civil penalty will not serve as deterrence to future violations.

#### **V. DUTIES OF THE RESPONDENT.**

22. 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. BREACH OF THIS AGREEMENT**

23. Respondent understands and agrees that failure to fully comply with all terms of this Agreement shall constitute a breach of the Agreement.

24. A future violation of Kansas law governing the regulation of motor carriers that was not initially identified in the Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200, or adjusted in this Agreement shall not constitute a breach of this Agreement.

25. Respondent understands and agrees that Staff will, upon discovery of a breach of this Agreement, proceed to enforce the terms of the Agreement pursuant to the Kansas administrative procedure act, K.S.A. 77-501 *et seq.*

26. If the Commission finds that Respondent breached the terms of this Agreement, the Commission may proceed to determine if the Respondent violated 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 thereunder as found in the Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200, based solely on the facts as stipulated herein. Respondent shall have the opportunity for a hearing only on the following issues:

- a. Did Respondent breach the Agreement?
- b. Did Respondent violate 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 as set forth in Kansas Highway Patrol Driver/Vehicle Examination Report No. KS00UG005200 based solely on the stipulated facts herein?

27. Staff agrees to recommend to the Commission that this Agreement be approved. Staff further agrees that upon approval by the Commission, and barring a breach by the Respondent as described in ¶ 23, above, this Agreement shall constitute a final resolution of this matter.

## **VII. RESERVATIONS**

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

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

**IN WITNESS WHERETO**, Staff and Colby Miller hereby execute and approve this Stipulated Settlement Agreement by subscribing their signatures below.

By: \_\_\_\_\_

Robert E. Vincent, S. Ct. #26028  
Litigation Counsel  
Kansas Corporation Commission  
1500 S.W. Arrowhead Road  
Topeka, Kansas 66604-4027  
Phone: 785-271-3273  
Fax: 785-271-3167  
Email: r.vincent@kcc.ks.gov

Attorney for Commission Staff

By: \_\_\_\_\_

Colby Miller, Fleet Manager  
Miller's of Claflin, Inc.  
P.O. Box 285  
200 Main Street  
Claflin, KS 67525  
Phone: 620-587-3601

Respondent

IN RE: DOCKET NO. 14-GIMM-575-KHP

DATE JUL 29 2014

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET  
TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
ROBERT VINCENT, LITIGATION ATTORNEY KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 ***Hand Delivered***		
COLBY W. MILLER, FLEET MANAGER MILLER'S OF CLAFLIN, INC. PO BOX 285 CLAFLIN, KS 67525		

ORDER MAILED JUL 30 2014

The Docket Room hereby certified that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.