

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

Before Commissioners: Andrew J. French, Chairperson
Dwight D. Keen
Annie Kuether

In the Matter of the Investigation of **D & M**)
Marketing LLC, of Larned, Kansas, Regarding)
the Violation(s) of the Motor Carrier Safety)
Statutes, Rules and Regulations and the) Docket No. 24-TRAM-258-PEN
Commission’s Authority to Impose Penalties,)
Sanctions and/or the Revocation of Motor Carrier)
Authority.)

ORDER APPROVING UNANIMOUS SETTLEMENT AGREEMENT

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

I. BACKGROUND

1. On July 18, 2023, a Commission technical staff (“Staff”) Special Investigator (“SI”) Gregory Askren and SI Jeff Stipe conducted a compliance review on the motor carrier operations of D & M Marketing LLC (“Carrier”). As a result of the review, the SIs identified four violations, accounting for three counts, of the Motor Carrier Safety Regulations, which carry a penalty according to the FY2024 Uniform Penalty Assessment Matrix.¹

2. On September 12, 2023, Staff submitted a Report and Recommendation (“R&R”) based, in part, on the SIs’ findings stated in their compliance review. In the R&R, Staff recommended that, among other things, a penalty of \$4,500 be issued to Carrier based on the frequency, timeline and severity of the violations discovered.

¹ Order Designating Guidance Document and Approving Staff’s Use of the Transportation Division’s Uniform Penalty Assessment Table at 11-26 (June 29, 2023) (the “Penalty Matrix”).

3. Consistent with the R&R, on September 26, 2023, the Commission issued a Penalty Order assessing a \$4,500 civil penalty against Carrier and adopting all other recommendations made by Staff.

4. On February 8, 2024, Michael C. Robinson of Bell and Robinson LLC submitted on behalf of Carrier a request for hearing on the Penalty Order.

5. On April 23, 2024, the Commission issued under K.S.A. 77-516 an order designating Kyler C. Wineinger, Assistant General Counsel of the Commission, as Presiding Officer over this Docket.

6. On May 7, 2024, Mr. Wineinger issued an Order setting the Docket for a prehearing conference to, among other things, have the parties identify the issues involved and explore the possibilities of stipulations and settlement.

7. After the Prehearing Conference on May 22, 2024, Mr. Robinson and Ahsan A. Latif, Litigation Counsel for Staff, exchanged correspondence informally discussing the possibility of a settlement. As a result, Staff and Carrier were able to reach agreeable terms to resolve the contested issues. Further, Staff reduced the terms to writing and sent the draft to Carrier for approval and signature.

8. On June 21, 2024, Staff filed a *Joint Motion for Approval of Unanimous Settlement Agreement*. The *Unanimous Settlement Agreement* (the “Agreement”) is attached to this Order as **Exhibit 1** and incorporated by reference.

9. In the Agreement, the parties agreed to the following:

(a) Staff will modify the violation found in Count One of the R&R, alleging that Carrier “was found to be in violation of using a driver known to have tested positive for a controlled substance”—a violation of 49 C.F.R. 382.215 as

adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 66-1,129. The Commission updates the R&R to state that Carrier used a driver who was prohibited from safety sensitive functions in the Federal Drug and Alcohol Clearinghouse. Carrier was unaware its driver, Travis Edwards, was a prohibited driver because Carrier was not enrolled in the Federal Drug and Alcohol Clearinghouse and therefore had not conducted a pre-employment query on Mr. Edwards.

(b) Carrier will, among other things, to withdraw its request for hearing and pay fines totaling \$4,500 for the violations stated in the Penalty Order. Staff agreed to extend the timeline for total payment of those fines to June 30, 2024.

(c) Carrier remains obligated under the terms of the Penalty Order to allow at least one follow-up safety compliance review that will be conducted within 18 months from the date the Penalty Order was issued. Staff will contact Carrier at a later date to determine an appropriate time for that review.

II. FINDINGS AND CONCLUSIONS

10. Under K.S.A. 66-1,108b, 66-1,111, 66-1,112, and 66-1,114b, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. 390.5 and as adopted by K.A.R. 82-4-3f, 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 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.

11. Settlements are favored by the law. *Bright v. LSI Corp.*, 254 Kan. 853 (1994). A settlement of issues, all or part, with or without unanimous agreement, will be entertained by the Commission.

12. The Commission has reviewed the Agreement attached to the *Joint Motion for Approval of Unanimous Settlement Agreement* and concludes that its terms are an appropriate and reasonable disposition of this matter. The Commission therefore adopts and incorporates by reference the terms of the Agreement.

THEREFORE, THE COMMISSION ORDERS:

A. The *Joint Motion for Approval of Unanimous Settlement Agreement* is granted. The terms of the Agreement are approved and are incorporated by reference.

B. Carrier is to pay the \$4,500 civil penalty no later than June 30, 2024. Failure to pay the civil penalty, could result in the suspension of its authority without further notice.

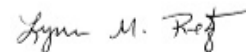
C. Carrier must allow at least one follow-up safety compliance review that will be conducted within 18 months from the date the Penalty Order was issued.

D. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.²

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 07/09/2024



Lynn M. Retz
Executive Director

KCW

² K.S.A. 66-118b; K.S.A. 77-529(a)(1).

Exhibit 1

**THE STATE CORPORATION COMMISSION
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UNANIMOUS SETTLEMENT AGREEMENT

This Unanimous Settlement Agreement (Agreement) is entered into by and between the Staff of the Corporation Commission of the State of Kansas (Staff and Commission, respectively), and D & M Marketing LLC (Carrier). 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. 66-1,108b, 66-1,111, 66-1,112 and 66-1,114b, the Commission is given full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. Part 390.5 and as adopted by K.A.R. 82-4-3f, 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. 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 an entity under the Commission's jurisdiction and issue an order on the Commission's own motion when the Commission believes the entity is in violation of the law or any order of the Commission.

II. BACKGROUND

4. On July 18, 2023, a Commission Staff (Staff) Special Investigator (SI) conducted a compliance review on Carrier's motor carrier operations. As a result of the review, the SI identified four (4) violation(s), accounting for three (3) count(s), of the Motor Carrier Safety Regulations.

5. On September 26, 2023, the Commission issued a Penalty Order in this docket assessing a \$4,500 civil penalty against Carrier.

6. On February 8, 2024, Carrier requested a hearing on the Penalty Order.

7. On May 22, 2024 and in subsequent correspondence thereafter, Michael Robinson, Attorney of Carrier, and Ahsan Latif, Litigation Counsel for Staff (Staff), informally discussed the possibility of a settlement. During the informal discussions, Staff and Carrier were able to reach mutually agreeable terms in anticipated settlement of the contested issues. It was agreed that Staff would subsequently reduce the terms to writing and forward the draft to Carrier for approval and signature.

III. TERMS OF THE UNANIMOUS SETTLEMENT AGREEMENT

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

9. 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.

10. Carrier agrees not to contest the violations as listed in the Commission's Penalty Order, which are hereby incorporated by reference.

11. 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.

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

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

IV. MODIFICATION OF PENALTY ORDER

14. Staff agrees to modify the violation found in Count One of Staff's Report and Recommendation (R&R), attached as Attachment A to the September 26, 2023, Penalty Order. Count One alleged Carrier "was found to be in violation of using a driver known to have tested positive for a controlled substance," which is a violation of 49 C.F.R. 382.215, as adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 66-1,129. The Commission updates the R&R to state that Carrier used a driver who was prohibited from safety sensitive functions in the Federal Drug and Alcohol Clearinghouse. Carrier was unaware its driver, Travis Edwards, was a prohibited driver because D & M Marketing LLC was not enrolled in the Federal Drug and Alcohol Clearinghouse and therefore had not conducted a pre-employment query on Mr. Edwards.

15. Staff's R&R is updated to read as follows:

Count One (1 of 3)

Jurisdiction: 49 C.F.R. 382.215 and 49 C.F.R. 382.217, adopted by K.A.R. 82-4-3c, and authorized by K.S.A. 66-1,129.

Intent of Law: No MC shall permit a driver that is prohibited in the Federal Drug and Alcohol Clearinghouse to perform or continue to perform safety-sensitive functions.

Supporting Documentation: On April 5, 2023, D&M Marketing LLC required or permitted its driver to operate a commercial driver's license (CDL) required commercial motor vehicle (CMV), a 2014 Kenworth, VIN ending in 7133, GVWR 52,000 lbs., pulling a 2015 Antares trailer, VIN ending in 0282, GVWR 68,000 lbs., in intrastate commerce from Emporia, Kansas to McPherson, Kansas. At the time of this transport, the driver was involved in a double fatality accident that involved five vehicles. The transport is evidenced by a Driver/Vehicle Examination Report (DVER) Number KSHP01762252, attached hereto as **Exhibit 2**. Additionally, the MC's prohibited driver Drug and Alcohol Clearinghouse (DACH) report is attached hereto as **Exhibit 3**.

Violation: D&M Marketing LLC was found to be in violation of using a prohibited driver according to the DACH (**Exhibit 1, Page 3**). One (1) violation was discovered.

Recommendation: Staff recommends a fine of \$3,500.

16. Carrier agrees to withdraw its Request for Hearing.

17. Carrier, therefore, agrees to pay fines totaling \$4,500 for the violations alleged in the Penalty Order. Staff agrees to extend the timeline for total payment due until June 30, 2024.

18. Carrier 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.

19. Carrier agrees that it remains obligated under the terms of the September 26, 2023, Penalty Order to allow at least one follow-up safety compliance review that will be conducted within 18 months from the date the Penalty Order was issued. Staff will contact Carrier at a later date to determine an appropriate time for this review.

20. Carrier understands that failure to pay the civil penalty as set out in ¶17 above, could result in the suspension of its authority without further notice.

21. 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.

V. RESERVATIONS

21. This Unanimous Settlement 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.

A. Negotiated Settlement

22. This Agreement represents a negotiated settlement that fully resolves the issues raised in this proceeding. The Signatories represent that the terms of this Agreement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Signatories 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.

23. This Agreement is entered into by the Carrier for the purpose of settling disputed violations alleged by the Commission on the part of Carrier. This Settlement Agreement does not constitute, and shall not be construed as, an admission of negligence, fault, or liability by Carrier.

24. This Agreement is not intended to be admissible in and shall not be construed as or used as an admission of negligence, liability, and/or fault in any claim or civil lawsuit involving Carrier, including but not limited to any claim or civil lawsuit arising out of or related to any motor vehicle accident referenced in September 26, 2023, Penalty Order and any attachments thereto.

B. Interdependent Provisions

25. 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, or materially changes the Agreement terms, the Agreement shall be voidable and no Signatory Party hereto shall be bound by, prejudiced, or in any way affected by any of the terms or provisions hereof, unless otherwise provided herein.

26. 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.

27. This Unanimous Settlement Agreement shall be binding on all parties upon signing.

IN WITNESS WHERETO, the parties hereby execute and approve this Unanimous Settlement Agreement by subscribing their signatures below.

By: /s/ Ahsan A. Latif
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: 785-271-3124
Email: ahsan.latif@ks.gov

Attorney for Commission Staff

By: /s/ Michael C. Robinson
Michael C. Robinson
Bell and Robinson LLC
421 West 1st Ave., Ste A
Hutchinson, KS 67501
Phone: 620-259-4411
Email: mike@bellandrobinson.com

Attorney for D & M Marketing LLC

CERTIFICATE OF SERVICE

24-TRAM-258-PEN

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 07/09/2024.

MICHAEL C. ROBINSON
BELL AND ROBINSON LLC
421 WEST 1st AVE., STE. A
HUTCHINSON, KS 67501
mike@bellandrobinson.com

RAE RAE MUNDEN, OWNER
D & M MARKETING LLC
1852 90th AVE.
LARNED, KS 67550
raeraemunden@gmail.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
ahsan.latif@ks.gov

KYLER C. WINEINGER, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
kyler.wineinger@ks.gov

/S/ KCC Docket Room
KCC Docket Room