

FILE

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Atlas Concrete Walls, :  
Inc., Notice of Apparent Violation and :  
Intent to Assess Forfeiture. :  
:

Case No. 07-740-TR-CVF  
(OH3251003902D)

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SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Atlas Concrete Walls, Inc. (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this settlement agreement and urge the Commission to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the Public Utilities Commission of Ohio (Commission). This agreement however, is based on the Respondent's and the Staff's desire to arrive at a reasonable result considering the law, facts and circumstances. Accordingly, the Respondent and the Staff believe that the Commission should adopt this Settlement Agreement.

This settlement agreement is submitted on the condition that the Commission adopts the agreed upon terms. The Parties agree that if the Commission rejects all or any part of this Settlement Agreement or otherwise materially modifies its terms, either Party shall have the right, within thirty (30) business days of the Commission's order, either to file an application for rehearing or to terminate and withdraw from this agreement by filing a notice with the

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Commission. If an application for rehearing is filed, and if the Commission does not, on rehearing, accept the Settlement Agreement without material modification, either Party may terminate and withdraw from this agreement by filing a notice with the Commission within ten (10) business days of the Commission's order or entry on rehearing. In such an event, a hearing shall go forward, and the Parties shall be afforded the opportunity to present evidence through witnesses, to cross-examine all witnesses, to present rebuttal testimony, and to file briefs on all issues.

## **II. Procedural History**

- A. On January 20, 2006, a vehicle operated by Respondent and driven by Kerry D. Smith was inspected within the State of Ohio. The inspection resulted in the discovery of two out-of-service violations of the federal motor carrier safety regulations. The violations were: failure to medical certificate on the driver's possession in violation of 49 C.F.R. §391.41(a); and driver not physically qualified for failure to wear corrective lenses in violation of 49 C.F.R. §391.11(b)(4).
- B. On June 13, 2007, Respondent was timely served with a notice of preliminary determination in accordance with Rule 4901:2-7-12, O.A.C. for Case No. OH3251003902D. The preliminary determination assessed Respondent \$350.00 for the violations.
- C. On June 20, 2007, Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13, O.A.C.

- D. The parties have negotiated this settlement agreement which the parties believe resolves all the issues raised in the notice of preliminary determination.

### **III. Settlement Agreement**

The parties hereto agree and recommend that the Commission find as follows:

- A. Respondent agrees to violations of 49 C.F.R. §§391.41(a) and 391.11(b)(4), and recognizes that they may be included in the Respondent's Safety-Net Record and Respondent's history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- B. Respondent agrees to pay a civil forfeiture of \$100.00 for the violations. Respondent has provided proof sufficient to Staff that its driver, Kerry D. Smith, had undergone LASIK corrective surgery and did not require the use of corrective lenses at the time of inspection. Respondent acknowledges that its driver, Kerry D. Smith, did not have his medical certificate or the certificate of his corrective surgery in his possession at the time of the inspection.
- C. Payment will be due thirty (30) days from Commission approval of this settlement agreement. Payment should be made by certified check or money order to "Treasurer State of Ohio," and mailed to: PUCO FISCAL, 180 East Broad St., Columbus, OH 43215-3793.
- D. This settlement agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry of the Commission order adopting the settlement agreement shall be considered the effective date of the settlement agreement.

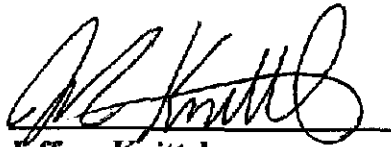
E. This settlement agreement is made in settlement of all factual or legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.

### III. Conclusion

The Signatory parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to adopt the same. The undersigned respectfully request that the Commission issue an entry in accordance with the terms set forth in this Settlement Agreement.

The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 5 <sup>January 2010</sup> day of ~~December~~, 2009.

On behalf of Atlas Concrete Walls, Inc.



Jeffrey Knittel  
Vice President  
Atlas Concrete Walls, Inc.  
44901 St. Rt. 18  
Wellington, OH 44090

On behalf of the Staff of the Public  
Utilities Commission of Ohio



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