

FILE

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV
2007 JAN 16 PM 3:22
PUCO

In the Matter of Koivisto Constructors : Case No. 06-744-TR-CVF
and Erectors, Inc., Notice of Apparent : (CR05C205)
Violation and Intent to Assess :
Forfeiture.

SETTLEMENT AGREEMENT

I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), Koivisto Constructors and Erectors, 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. In the event the Commission rejects any part of the Settlement Agreement, or adds to, or otherwise materially modifies its terms, each party shall have the right, within thirty days of the Commission's order, to either file an

application for rehearing or terminate and withdraw the Settlement Agreement by filing notice with the Commission. Upon rehearing, any party shall have the right within fifteen days of the Commission's order on rehearing to file a notice of termination or withdrawal of the Settlement Agreement. Upon notice of termination or withdrawal by either party, pursuant to the above provisions, the Settlement Agreement shall immediately become null and void. In such event, the parties shall proceed to a hearing as if this Settlement Agreement had never been executed.

II. Procedural History

- A. This Compliance Review was initiated on April 28, 2005 and finished on May 11, 2005 at 3250 US RT 6 Andover, Ohio, during a Non-Punitive Safety Audit of Respondent's business. The carrier, which is a not for hire of private property, was found to be using non-CDL drivers to operate a Class "A" vehicle from a combination of one of two Ford F-350 pick-ups and one equipment trailer with a GVWR of 17,000 pounds. The inspection resulted in the discovery of several violations. A list of the violations cited Respondent by Staff under the Federal Motor Carrier Safety Regulations are:

- | | |
|--------------------------|---|
| 49 C.F.R. § 382.115(a) | Failing to implement an alcohol and/or controlled substances testing program. |
| 49 C.F.R. § 383.23(a) | Operating a CMV without a valid CDL. |
| 49 C.F.R. § 391.51(b)(1) | Failing to maintain driver's employment application in driver's qualification file. |

49 C.F.R. § 391.51(b)(2)	Failing to maintain driver's employment application in driver's qualification file.
49 C.F.R. § 391.51(b)(5)	Failing to maintain a note relating to the annual review of the driver's driving record as required by § 391.25(c)(2).
49 C.F.R. § 391.51(b)(6)	Failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27.
49 C.F.R. § 395.8(a)	Failing to require driver to make a record of duty status.
49 C.F.R. § 395.8(a)	Failing to require driver to make a record of duty status.
49 C.F.R. § 395.8(e)	False reports of records of duty status.
49 C.F.R. § 395.8(f)(5)	Failing to require driver to prepare record of duty status showing Commercial motor vehicle identification.

- B. Respondent was timely served with a notice of apparent violation and intent to assess forfeiture in accordance with Rules 4901:2-07-05 and 4901:2-07-07 of the O.A.C. for Case No. CR05C205. The Staff assessed Respondent \$4,180.00 for these violations.
- C. Respondent made a timely formal request for an administrative hearing pursuant to §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 apparent violation and intent to assess forfeiture.

III. Settlement Agreement

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

- A. Respondent agrees to pay a combined civil forfeiture of \$2,090.00 for all of the violations cited to under the Federal Motor Carrier Safety Regulations by Staff from Respondent's Compliance Review in this case. Respondent and staff also agree that another \$2,090.00 forfeiture amount will be held in abeyance for a period of one (1) year following the effective date of this Settlement Agreement.
- B. For purposes of settlement, and not as an admission or evidence that the violations occurred, Respondent agrees that the findings of these violations in Paragraph A of this Settlement Agreement may be included in the Respondent's Safety-Net record and history of violations insofar as they may be relevant for purposes of determining future penalty actions.
- C. Respondent shall pay the combined civil forfeiture of \$2,090.00 within 30 days following Commission approval of this Settlement Agreement. Respondent shall submit payment by certified check or money order to "Treasurer State of Ohio," and mail to: PUCO FISCAL, 180 E. Broad St., 10th Floor, Columbus, Ohio 43215-3793.

- D. If, as a result of a future compliance review conducted by Staff at Respondent's business within one year from the Commission's adoption of this Settlement Agreement, there is a repeat violation of any one or more of the citations presented in this case are revealed, the amount held in abeyance (\$2,090.00) shall be forfeited and paid by Respondent. However, the parties agree there can be no forfeiture of the abeyance amount until there is a final disposition by the Commission upholding any future violation(s) cited within the one (1) year period. The parties agree that a final disposition in any new case may occur outside the one (1) year probationary period for the amount held in abeyance.
- E. The parties agree that nothing in this Settlement Agreement shall prevent Staff from assessing new civil forfeitures pursuant to Chapter 4901:2-7, O.A.C., as the result of future compliance reviews being conducted by Staff. The parties also agree that nothing in this Settlement Agreement shall prevent Staff from proposing that the Commission make a Compliance Order pursuant to Chapter 4901:2-7, O.A.C., as the result of future compliance reviews being made by Staff.
- F. 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.

G. 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.

H. In the event Respondent defaults in its obligations under this agreement, the Commission may order the Respondent to pay the full amount of \$4,180.00, which includes the amount held in abeyance.

IV. Conclusion

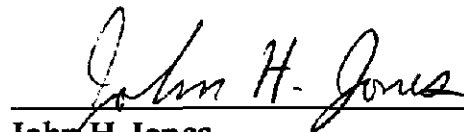
This agreement, which is subject to the Rules of the Commission, constitutes the entire agreement of the parties. The Signatory parties agree that this Settlement Agreement is in the best interest of all parties, and urge the Commission to adopt the same. The undersigned respectfully request that the 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 27th day of January, 2007.

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



Robert F. Burkey
Counsel for Koivisto Constructors
and Erectors, Inc.
200 Chestnut Place
200 Chestnut Ave., N.E.
Warren, Ohio 44483
(330) 393-3200



John H. Jones
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, OH 43215-3793
(614) 466-4395