

FILE

BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

In the Matter of La Brun Transport, Inc., ) Case No. 09-468-TR-CSS  
Notice of Apparent Violation and Intent to ) (OHCR07C433)  
Assess Forfeiture.

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SETTLEMENT AGREEMENT

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I. Introduction

Pursuant to Rule 4901:2-7-11 of the Ohio Administrative Code (O.A.C.), La Brun Transport, 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, either

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party may terminate and withdraw consent to the agreement within 30 days of issuance of the Commission's order, by filing with the Commission.

## II. Procedural History

- A. On August 28, 2007 a compliance review of the Respondent's facility located at 478 Strable Road in Rockford, Ohio, was conducted by Staff. The Staff discovered the following violations:

<u>Code</u>	<u>Violation</u>
49 C.F.R. § 382.305(b)(1)	Failing to conduct random alcohol testing
49 C.F.R. § 382.305(b)(2)	Failing to conduct random drug testing
49 C.F.R. § 390.15(b)	Failing to maintain an accident register for a period of three years
49 C.F.R. § 391.45(b)(1)	Using a driver who has not been medically examined and certified
49 C.F.R. § 391.51(b)(5)	Failing to maintain a note relating to the annual review of a driver's driving record
49 C.F.R. § 391.51(b)(6)	Failing to maintain a list relating to violations
49 C.F.R. § 395.3(a)(1)	Requiring or permitting driver to drive more than eleven cumulative hours following ten consecutive hours off duty

- 49 C.F.R. § 395.3(a)(2)      Requiring or permitting driver to drive after  
the end of the 14<sup>th</sup> hour after coming on duty
- 49 C.F.R. § 395.8(e)      False reports of duty status
- 49 C.F.R. § 395.8(f)      Failing to prepare records of duty status in  
form and manner prescribed
- 49 C.F.R. § 396.3(b)      Failing to keep minimum records of vehicle  
inspections
- 49 C.F.R. § 396.11(a)      Failing to require driver to prepare vehicle  
inspection reports

- B. Respondent was timely served with a notice of preliminary determination in accordance with Rule 4901:2-7-12 O.A.C. for Case No. OHCR07C433. The preliminary determination assessed Respondent \$6,350.00 for the 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 preliminary determination.

### **III. Settlement Agreement**

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

- A. Respondent agrees to the violations listed above and recognizes that the violations 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 \$3,175.00. Respondent will pay this amount in six equal monthly installments, with the first payment being 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., 4<sup>th</sup> Floor, Columbus, OH 43215-3793.
- C. Respondent agrees to grant consensual access to the Staff to conduct compliance reviews, without notice, of all its facilities located in the State of Ohio, at any time during the period of one year from the effective date of this settlement agreement.
- D. In the event that compliance reviews of Respondent's facilities or roadside inspections of Respondent's vehicles, conducted during the period of one year following the effective date of this settlement agreement, reveal a pattern of violations of the Federal Motor Carrier Safety Rules, 49 C.F.R. Parts 382, 383, 387, and 390 through 397, by the Respondent, the Respondent agrees to make payment of an additional civil forfeiture of \$3,175.00.

- E. Respondent and Staff agree that nothing in this settlement agreement shall prevent Staff from assessing civil forfeitures pursuant to Chapter 4901:2-7, O.A.C., as the result of future compliance reviews or roadside inspections.
- F. This settlement agreement shall not become effective until adopted by an Opinion and Order of the Commission. The date of the entry or of the Commission 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 of only this case. It is not intended to have any effect 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 this Settlement Agreement by affixing their signatures below on this 26 day of ~~December, 2009~~.

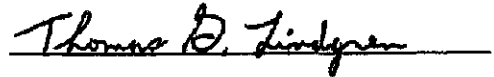
*Jan 2010*

On behalf of La Brun Transport, Inc.



Don La Brun  
President  
La Brun Transport, Inc.  
478 Strable Road  
Rockford, Ohio 45882

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



Thomas G. Lindgren  
Assistant Attorney General  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, OH 43215