



shall have the right, within thirty days of the Commission's order, to file an application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate/withdraw from the Settlement Agreement being granted by the Commission, 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. On September 22, 2009, Respondent's commercial motor vehicle was stopped and inspected within the State of Ohio. As a result of the inspection, Respondent was served a Driver/Vehicle Examination Report that included citations for having his #5 axle frame rail webbing cracked from top to bottom of flange on I-beam holding the axle in violation of 49 C.F.R. 393.201(a); failing to secure cargo as specified in 49 C.F.R. 393, which is a violation of 49 C.F.R. 392.9(a)(1); two citations for failing to inspect, repair, and maintain parts and accessories, being left side brake chamber and loose bolts on air tanks on trailer, in violation of 49 C.F.R. 396.3(a)(1); and having a flat and/or audible leak at #4 axle left inside tire in violation of 49 C.F.R. 393.75(a)(3).
- B. On October 1, 2009, Commission Staff sent Respondent a combined Notice of Apparent Violation and Intent to Assess Forfeiture in accordance with Rules 4901:2-7-05 and 07 for the Carrier citations. This notice contained the same Federal Motor Carrier Safety Regulation citations that were listed

in the Driver/Vehicle Examination Report that was served on the Driver at the time of the inspection. The Carrier was assessed a \$440.00 forfeiture by Staff for the violations listed in the notice.

- C. On November 18, 2009, a settlement conference was held between Staff and Respondent, but the parties were unable to settle the case at that time.
- D. On December 7, 2010, Staff sent Respondent a notice of preliminary determination, pursuant to Rule 4901:2-07-12 of the O.A.C., which contained the same Carrier citations that were included in the Driver/Vehicle Examination Report above. In response to the notice of preliminary determination, Respondent made a timely formal request for an administrative hearing pursuant to Rule 4901:2-7-13 of the O.A.C. in this case.
- E. The parties have negotiated this Settlement Agreement which the parties believe resolves all the issues raised in the case.

### **III. Settlement Agreement**

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

- A. The parties agree to no civil forfeiture for the Carrier citations.
- B. The Commission Staff and Respondent agree that the Carrier citations served on Respondent in the Driver/Vehicle Examination Report and notice of preliminary determination may be included in Respondent's Safety-Net record and history of violations for purposes of determining future penalty actions.

- C. 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.
- D. 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.

#### 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.

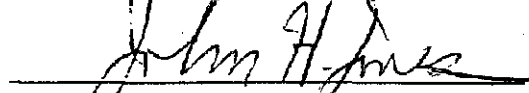
The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 21st day of June, 2010.

On behalf of the Respondent



**Michael W. Bolen**  
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On behalf of the Staff of the Public  
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