

**FILE**

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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**PUCO**

In the Matter of Nicholas Conley dba : Case No. 10-808-TR-CVF  
General Towing Notice of Apparent : (CR10H042)  
Violation and Intent to 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.), Nicholas Conley dba General Towing (Respondent) and the Staff of the Transportation Department of the Public Utilities Commission of Ohio (Staff) enter into this Settlement Agreement and urge the Public Utilities Commission of Ohio (Commission) to adopt the same.

It is understood by the Respondent and the Staff that this Settlement Agreement is not binding upon the 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 date of the Commission's entry or order, to file an

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application for rehearing that includes a request to terminate and withdraw from the Settlement Agreement. Upon the application for rehearing and request to terminate and 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 January 26, 2010, the Staff conducted a compliance review at the Respondent's facility located at 1429 Woodland Avenue, N.W., Canton, Ohio, 44703. That inspection resulted in the discovery of multiple violations including:

1)	382.115(a)	Failing to implement an alcohol and/or controlled substance testing program;	\$1000.00
2)	391.11(b)(6)	Annual list of violations;	\$ 0.00
3)	391.21(a)	Using a driver who has not completed and furnished an employment application;	\$ 0.00
4)	391.25(a)	Failing to make and inquiry into the driving record of each driver to the appropriate State Agency once every 12 months;	\$ 0.00
5)	391.25(b)	Failing to review the driving record of each driver to determine whether that driver meets the minimum requirements for safe driving or is disqualified to drive;	\$ 0.00
6)	391.51(b)(2)	Failing to maintain inquiries into driver's driving record in DQ file;	\$ 500.00
7)	396.11(a)	Failing to require a driver to prepare vehicle	\$1925.00

inspection report;

8) 396.17(a) Using a CMV not periodically inspected; \$ 500.00

- B. The Staff timely served the Respondent with a notice of preliminary determination in accordance with O.A.C. Rule 4901:2-7-12. The total forfeiture assessed the Respondent by the Staff was \$3,925.00 for the alleged violations.
- C. The Respondent made a timely formal request for an administrative hearing pursuant to O.A.C. Rule 4901:2-7-13.
- D. The parties have negotiated this Settlement Agreement, which they believe resolves all of the issues raised in the notice of preliminary determination.

### **III. SETTLEMENT AGREEMENT**

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

- A. With respect to the civil forfeiture amount identified for the violations listed above, the Staff and the Respondent agree as follows:
- Respondent shall pay a reduced civil forfeiture amount of \$1,962.50. This amount shall be payable in six consecutive monthly installments of \$327.08 each. The first installment shall be due on January 15, 2011 with each subsequent installment due by the 15<sup>th</sup> day of each successive month until paid in full.

- The balance of the total civil forfeiture amount assessed, \$1962.50, shall be held in abeyance pending the outcome of a compliance review to be conducted within 12 months of the date of the Commission entry or order adopting this Settlement Agreement. Respondent agrees to grant consensual access to the Staff to conduct, without notice, this compliance review at any time within this 12-month period. If the same pattern of violations is discovered in the next compliance review, Respondent agrees to pay an additional civil forfeiture of \$1962.50. Nothing in this Settlement Agreement shall prevent Staff from assessing civil forfeitures as a result of future compliance reviews.

B. In support of this proposed civil forfeiture payment arrangement, the Staff notes remedial action taken by the Respondent, including Respondent's successful compliance with the following requirements:

1. Reference 382.301(a) failing to implement an alcohol and controlled substance testing program.
  - Respondent has provided a copy of the contract with the alcohol and controlled substance testing company.
  - Respondent has provided copies of random alcohol and controlled substance tests conducted to date for 2010
  - Respondent has provided copies of pre-employment controlled substance test results for any CDL driver hired in 2010
2. 391.51(b)(2) Failing to maintain copies of drivers' driving records in DQ file.

- Respondent has provided copies of the two CDL drivers' driving record
  - Respondent has provided a statement that they are maintaining this information in DO file of drivers
3. 391.11(a) Failing to require a driver to prepare a daily vehicle inspection report.
- Respondent has provided a statement that they are requiring drivers to prepare post-trip inspections in compliance with the requirements of Federal Motor carrier Safety Regulations and maintaining such information as required
4. 396.17(a) Using a CMV not periodically inspected.
- Respondent has provided copies of the two missing annual inspection reports on its vehicles
- C. For purposes of settlement, and not as an admission or evidence that the violations occurred, the Staff and the Respondent agree that the violations 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.
- D. Respondent shall pay the civil forfeiture monthly installments identified in III(A) by a certified check or money order made payable to "Treasurer State of Ohio" and mailed to PUCO Fiscal, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. The routing number (CR10H042) should be written on each certified check or money order to ensure proper crediting.

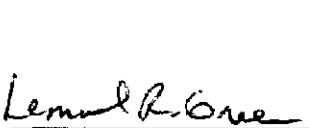
- E. This Settlement Agreement shall become effective upon its adoption by the Commission. The date of the Commission entry or order shall be considered the effective date of the Settlement Agreement.
- F. This Settlement Agreement is made in settlement of all factual or legal issues in this case only. It is not intended to have any affect whatsoever in any other case or proceeding before any other administrative or other body.

#### **IV. CONCLUSION**

This Settlement 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 or order in accordance with the terms set forth in this Settlement Agreement.

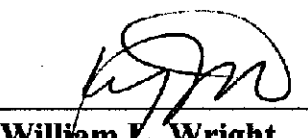
The parties have manifested their consent to the Settlement Agreement by affixing their signatures below on this 18<sup>th</sup> day of November, 2010.

On behalf of the Respondent:

 *by [Signature] / per Electronic authority*  
**Lemuel R. Green**  
Attorney at Law  
1227 Ridge Road, N.W.  
Canton, OH 44703  
330.224.0441 (telephone)  
[lemgreen@cjgreen.net](mailto:lemgreen@cjgreen.net)

**On behalf of Nicholas Conley dba  
General Towing**

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

  
**William L. Wright**  
Section Chief  
Public Utilities Section  
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**On behalf of the Transportation Staff of  
the Public Utilities Commission of Ohio**