

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Continuum	)	Case No. 11-5422-TR-CVF
Transportation Services, Ltd., Notice of	)	(CR11H105)
Apparent Violation and Intent to Assess	)	
Forfeiture.	)	Case No. 11-5477-TR-CVF
	)	(OH3242007577C)
	)	
	)	Case No. 11-5478-TR-CVF
	)	(OH3259006155C)

FINDING AND ORDER

The Commission finds:

- (1) On July 26, 2011, a Staff conducted a roadside inspection of a commercial motor vehicle (CMV) operated by Continuum Transportation Services, Inc. (Continuum or Respondent). This inspection is the subject of Case No. 11-5478-TR-CVF (11-5478). On July 30, 2011, another CMV operated by Continuum was subject to a roadside inspection by Staff, and the results of this inspection are the subject of Case No. 11-5477-TR-CVF (11-5477). On August 16, 2011, Staff conducted a compliance review of a facility operated by Continuum. The compliance review is the subject of Case No. 11-5422-TR-CVF (11-5422).
- (2) As a result of the July 26, 2011, roadside inspection, Continuum was served with a notice of preliminary determination (NPD) in accordance with Rule 4901:2-7-12, O.A.C., that assessed \$800.00 for the following violations:
  - (a) 49 CFR 393.209(d) - steering system components worn
  - (b) 49 CFR 396.3(a)(1) - brakes out of service, as brakes were defective
  - (c) 49 CFR 393.45 - brake tubing and hose had audible air leak
  - (d) 49 CFR 393.47(d) - insufficient brake linings

On October 17, 2011, pursuant to Rule 4901:2-7-12, Ohio Administrative Code (O.A.C.), Respondent requested an administrative hearing concerning 11-5478.

- (3) As a result of the July 30, 2011, roadside inspection, Continuum was served with an NPD in accordance with Rule 4901:2-7-12, O.A.C., that assessed \$680.00 for the following violations:
- (a) 49 CFR 396.3(a)(1) - brakes out of service - number of defective brakes
  - (b) 49 CFR 393.48(a) - inoperative or defective brakes
  - (c) 49 CFR 393.65(c) - improper securement of fuel tank
  - (d) 49 CFR 393.83(g) - exhaust leak under truck

On October 17, 2011, pursuant to Rule 4901:2-7-12, O.A.C., Respondent requested an administrative hearing concerning 11-5477.

- (4) As a result of the August 16, 2011, compliance review, Respondent was served with an NPD, pursuant to Rule 4901:2-7-12, O.A.C. The NPD assessed \$3,750.00 for the following violations:
- (a) 47 CFR 177.800(c) -- failure to instruct certain employees regarding hazardous materials
  - (b) 49 CFR 382.305(b)(1) -- failure to conduct random alcohol testing at proper annual rate
  - (c) 49 CFR 396.11(a) -- failure to require driver to prepare vehicle for inspection
  - (d) 49 CFR 382.305(b)(2) - failure to conduct random drug testing at proper annual rate
  - (e) 49 CFR 395.3(a)(1) -- requiring or permitting driver to drive more than 10 hours
  - (f) 49 CFR 395.3(a)(2) -- requiring or permitting a driver to drive after the end of 14 hours from the time of coming on duty

- (g) 49 CFR 395.3(b)(2) -- requiring or permitting a driver to drive after having been on duty more than 70 hours in 8 consecutive days
- (h) 49 CFR 395.8(a) -- failure to require a driver to prepare a record of duty status
- (i) 49 CFR 395.8(e) -- false reports in record of duty status
- (j) 49 CFR 391.23(a) - failure to investigate driver's background
- (k) 49 CFR 391.23(i)(1) - failure to provide driver written notification that he has the right to review safety performance history provided by former employer
- (l) 49 CFR 391.21(d) - failure to inform driver that his former employer will be contacted to investigate safety performance.

On October 11, 2011, pursuant to Section 4901:2-7-13, O.A.C., Respondent requested an administrative hearing.

- (5) On May 11, 2012, the parties filed a settlement agreement in which the parties agree and recommend that the Commission find as follows:
  - (a) Regarding the compliance review which is the subject of 11-5422, Staff agrees, for purposes of settlement only and conditioned upon corrective actions taken by Respondent, to reduce the \$3,750.00 assessment by 30%. As part of this agreement, Respondent has taken various measures to improve its safety rating. Respondent filed a Petition to Upgrade Safety Rating, which documents the corrective actions taken by Respondent, with the Federal Motor Carrier Safety Administration (FMCSA). Staff has obtained information from FMCSA indicating that Respondent has obtained a satisfactory motor carrier safety rating as a result of these corrective actions. Finally, for purposes of settlement only and not as an admission that the violations occurred as alleged, Respondent agrees to pay \$2,625.00 and agrees that the

compliance review violations may be included in the Respondent's Safety-Net Record and history of violations, insofar as it may be relevant for purposes of determining future penalty actions.

- (b) Regarding the July 26, 2011, roadside inspection which is the subject of 11-5478, for purposes of settlement only, and not as an admission that the violations occurred as alleged, Respondent agrees to pay \$800.00 and agrees that the following violations may be included in Respondent's Safety-Net Record and history of violations, insofar as it may be relevant for purposes of determining future penalty actions:

- i. 49 CFR 393.209(d) - steering system components worn
- ii. 49 CFR 396.3(a)(1) - brakes out of service, as brakes were defective
- iii. 49 CFR 393.45 - brake tubing and hose had audible air leak
- iv. 49 CFR 393.47(d) - insufficient brake linings

- (c) Regarding the July 30, 2011, roadside inspection, which is the subject of 11-5477, for purposes of settlement only, and not as an admission that the violations occurred as alleged, Respondent agrees to pay \$680.00 and agrees that the following violations may be included in Respondent's Safety-Net Record and history of violations, insofar as it may be relevant for purposes of determining future penalty actions:

- i. 49 CFR 396.3(a)(1) - brakes out of service - number of defective brakes
- ii. 49 CFR 393.48(a) - inoperative or defective brakes
- iii. 49 CFR 393.65(c) - improper securement of fuel tank

- iv. 49 CFR 393.83(g) - exhaust leak under truck
- (d) As an overall resolution to 11-5422, 11-5477, and 11-5478, Respondent will pay a total civil forfeiture of \$4,105.00 within thirty (30) days of the Commission's order approving this settlement agreement. The payment shall be made by certified check or money order, payable to "Treasurer of State of Ohio," and mailed to PUCO Fiscal Department, 180 East Broad Street, Columbus, OH 43215-3793. Inspection numbers OH3242007577C, OH3259006155C, and CR11H105 must appear on the face of the check.
- (e) The settlement agreement shall not become effective until adopted by the Commission. The date of the entry or order of the Commission's adoption the Agreement shall be considered the effective date of the agreement.
- (f) The settlement agreement is made in settlement of all factual and legal issues in this case. It is not intended to have any affect whatsoever in any other case or proceeding.
- (6) The Commission finds that the settlement agreement submitted in this case is reasonable. Therefore, the settlement agreement shall be approved and adopted in its entirety.

It is, therefore,

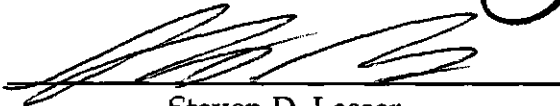
ORDERED, That the settlement agreement submitted in this case be approved and adopted in its entirety. It is, further,

ORDERED, That a copy of this finding and order be served upon Continuum and all other interested parties of record.

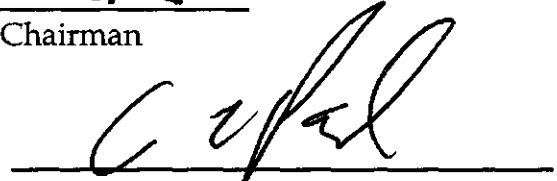
THE PUBLIC UTILITIES COMMISSION OF OHIO



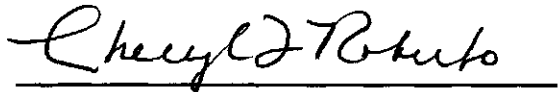
Todd A. Snitchler, Chairman



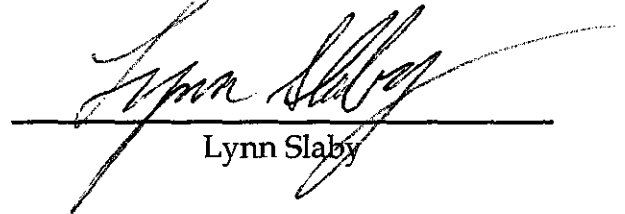
Steven D. Lesser



Andre T. Porter



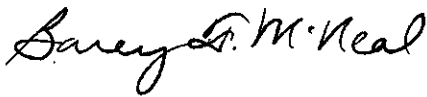
Cheryl L. Roberto



Lynn Slaby

JML/dah

Entered in the Journal  
**MAY 30 2012**



Barcy F. McNeal  
Secretary