

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of	)	
	)	
<b>GEMINI TRANSPORT LLC</b>	)	Case No. <b>MI-2011-0273-US1244</b>
<b>DBA GEMINI TRANSPORT</b>	)	
<b>2154 MILVERTON DRIVE</b>	)	USDOT No. <b>1035057</b>
<b>TROY, MI 48083</b>	)	

**SETTLEMENT AGREEMENT**

The Parties to this agreement are:

**GEMINI TRANSPORT LLC DBA GEMINI TRANSPORT** (hereinafter called the **RESPONDENT**);

and

The **FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION** of the Department of Transportation (hereinafter called the **FMCSA**).

The Parties agree as follows:

1. A. The FMCSA has a pending claim against the **RESPONDENT** for violations of Federal statutes and regulations, including the Federal Motor Carrier Safety Regulations, (hereinafter referenced as FMCSRs), Hazardous Materials Regulations (hereinafter referenced as the HMRs) and/or the Federal Motor Carrier Commercial Regulations (hereinafter referenced as the FMCCRs) as follows:

In Case Number **MI-2011-0273-US1244** the FMCSA has a claim for **\$81,050.00** against the **RESPONDENT** for the following violations:

Two (2) violations of 49 CFR § 382.305(b)(1) – Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.

Six (6) violations of 49 CFR § 382.305(b)(2) – Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.

Fifty-Three (53) violations of 49 CFR § 395.8(e) – False reports of records of duty status.

- B. This claim was served to the **RESPONDENT** on **July 11, 2011**.

2. The statutory basis for the claim as set forth and detailed in the above-referenced civil penalty proceeding is found in 49 USC Subtitle III, General and Intermodal Programs; 49 USC Subtitle IV, Interstate Transportation, Part B, Motor Carriers, Water Carriers, Brokers, and Freight Forwarders; 49 USC Subtitle VI, Motor Vehicle and Driver Programs, Part B, Commercial; including, but not limited to, 49 USC § 521 (“Civil Penalties”); 49 USC § 5123(c) (“Civil Penalty”); and 49 USC § 14901 (“General Civil Penalties”). Pursuant to the Federal Claims Collection Act of 1966, 31 USC Chapter 37, Subchapter II, and the regulations of the Federal Motor Carrier Safety Administration in 49 CFR Part 386, the parties desire to settle the claims. This agreement for settlement of the claims is made pursuant to 49 C.F.R § 386.22.
3. The FMCSA agrees to conditionally suspend **\$32,420.00** of the total claim of **\$81,050.00** in Case Number **MI-2011-0273-US1244** subject to the following terms and conditions:
  - A. **RESPONDENT’S** successful compliance with 49 CFR Parts 382 and/or 395. Successful compliance with 49 CFR Parts 382 and/or 395 means that, at the conclusion of any investigation conducted within the next two (2) years from the date of execution of this settlement agreement by the Field Administrator, no violations of acute regulations and/or no violations of critical regulations at a violation rate equaling or exceeding a 10% in 49 CFR Parts 382 and/or 395 is/are discovered. Acute and critical violations are listed in 49 CFR Part 385, Appendix B, section VII.
  - B. Discovery of a violation of an acute regulation in 49 CFR Parts 382 and/or 395 may constitute failure to abide by the terms of this agreement. A violation rate that equals or exceeds 10% for critical regulations in 49 CFR Parts 382 and/or 395 may constitute failure to abide by the terms of this agreement, (a critical violation rate for 49 CFR Parts 382 and/or 395 regulation is determined by dividing the number of violations discovered by the number of documents examined). Violation of an acute regulation or a violation rate that equals or exceeds 10% for critical regulations will constitute a breach of this agreement and may lead to further enforcement action, including notice of breach and demand for the suspended civil penalties.
  - C. **RESPONDENT** pays the non-suspended portion of the civil penalty in accordance with the terms of this settlement agreement, including all due dates and procedures for payment.
  - D. Except as to payment of the non-suspended portion of the civil penalty, and subject to the terms and conditions of this settlement agreement, the terms related to the conditional suspension of a portion of the penalty shall terminate two (2) years from the date of execution of this settlement agreement by the Field Administrator. If at the conclusion of the period of conditional suspension **RESPONDENT** has complied completely with all provisions of this settlement agreement, the conditionally suspended portion of the penalty will be permanently forgiven.
4. In consideration of the settlement of the above-described claim, and subject to the terms and conditions of this settlement agreement, **RESPONDENT** agrees to pay the FMCSA, and FMCSA agrees to accept the unsuspended amount of **\$48,630.00**, in eighteen (**18**) payments. The Parties stipulate this settlement agreement resolves only the claim set forth in Paragraph 1 of this settlement agreement. Further, the Parties stipulate nothing in this settlement agreement shall be construed to relieve or limit **RESPONDENT’S** duty to comply with all applicable United States Department of Transportation statutes and implementing regulations, including the FMCSRs, HMRs, and the FMCCRs.

5. Payment may be made electronically through the SAFER website at <http://safer.fmcsa.dot.gov/> by selecting the "Online Fine Payment" option under the FMCSA Services section. Alternatively, payments may be made by mailing a **cashier's check, certified check or money order** payable to the **Federal Motor Carrier Safety Administration**. To expedite processing and ensure proper credit, checks should be annotated with the FMCSA Case Number. Payments are to be mailed to:

Federal Motor Carrier Safety Administration  
Midwestern Service Center  
4749 Lincoln Mall Dr, Suite 300A  
Matteson, IL 60443-3800

The first payment of **\$2,713.00** is due no later than **10/10/2011**.  
The second payment of **\$2,701.00** is due no later than **11/10/2011**.  
The third payment of **\$2,701.00** is due no later than **12/10/2011**.  
The fourth payment of **\$2,701.00** is due no later than **01/10/2012**.  
The fifth payment of **\$2,701.00** is due no later than **02/10/2012**.  
The sixth payment of **\$2,701.00** is due no later than **03/10/2012**.  
The seventh payment of **\$2,701.00** is due no later than **04/10/2012**.  
The eighth payment of **\$2,701.00** is due no later than **05/10/2012**.  
The ninth payment of **\$2,701.00** is due no later than **06/10/2012**.  
The tenth payment of **\$2,701.00** is due no later than **07/10/2012**.  
The eleventh payment of **\$2,701.00** is due no later than **08/10/2012**.  
The twelfth payment of **\$2,701.00** is due no later than **09/10/2012**.  
The thirteenth payment of **\$2,701.00** is due no later than **10/10/2012**.  
The fourteenth payment of **\$2,701.00** is due no later than **11/10/2012**.  
The fifteenth payment of **\$2,701.00** is due no later than **12/10/2012**.  
The sixteenth payment of **\$2,701.00** is due no later than **01/10/2013**.  
The seventeenth payment of **\$2,701.00** is due no later than **02/10/2013**.  
The eighteenth payment of **\$2,701.00** is due no later than **03/10/2013**.

6. **(a)** Failure to comply with the terms and conditions of this settlement agreement, **other than those pertaining to the amount and/or date of payment**, shall be considered a breach of this settlement agreement and may result in the reinstatement of any penalties held in abeyance and may also result in the loss of any reduction in civil penalties asserted in the Notice of Claim, in which case FMCSA will take further enforcement action, including notice of breach and demand for the original amount asserted in the Notice of Claim (less any payments previously made). **(b)** Failure to make an installment payment on schedule or to otherwise pay in accordance with the terms of this settlement, shall be considered a breach of this settlement agreement and may result in the reinstatement of any penalties held in abeyance and the loss of any reduction in civil penalties asserted in the Notice of Claim, in which case the original amount asserted in the Notice of Claim will be due immediately. **If the entire amount is not paid within ninety (90) days of the missed due date for the installment payment, RESPONDENT will be prohibited from operating in interstate commerce and, if applicable, RESPONDENT'S registration will be suspended or revoked in accordance with 49 CFR §§ 386.83 and 386.84.** In addition, the remaining debt is subject to interest, penalties, and administrative charges at the maximum allowable rate and in accordance with FMCSA procedures. Any payment(s) made after a breach of any term and/or condition of this settlement agreement, including failure to pay in accordance with the terms of this settlement agreement, will be applied toward the balance of the original amount claimed, and shall not affect any right of FMCSA to pursue any remedy for breach of this settlement agreement.

7. The Parties stipulate the claim set forth in the above-described Notice of Claim is valid. By signing this settlement agreement, **RESPONDENT** waives any right it may have to subsequently challenge the validity of such claim. The Parties further stipulate this settlement agreement is a contract voluntarily entered into by the Parties which may be enforced. **FMCSA may pursue any action for violations of the FMCSRs, HMRs, and/or the FMCCRs, and/or for enforcement of this settlement agreement, and/or for recovery of the full penalty asserted in the Notice of Claim.** Any forbearance by FMCSA in exercising any right or remedy under this settlement agreement or provided by law, including, without limitation, FMCSA's acceptance of late payment(s) or payment(s) in amounts less than the amount due, shall not act as a waiver of or preclude the exercise of any right or remedy hereunder or otherwise available by law, nor shall it in any way affect the validity of this settlement agreement or any part thereof.
8. This settlement agreement **is to be executed by the RESPONDENT** and returned to **FMCSA**. This settlement agreement is not binding upon FMCSA until executed by the Field Administrator. Prior to the execution of this agreement by the Field Administrator, this agreement is an offer in compromise by the **RESPONDENT** and may not be withdrawn for a period of thirty (30) days after it is executed by the **RESPONDENT**. Upon execution of this settlement agreement by the Field Administrator, the settlement agreement will become the Final Agency Order in this proceeding. If this settlement agreement requires approval by the Assistant Administrator or the Administrative Law Judge, neither party may withdraw its consent to the settlement agreement for a period of thirty (30) days from the date the Field Administrator signs the Agreement, and the Settlement Agreement becomes the Final Agency Order in this proceeding as provided by 49 CFR § 386.22(c)-(e).
9. **RESPONDENT** acknowledges that it has received adequate notice of the FMCSA's claim and waives any and all rights it may have to further notice or to further details of the allegations that gave rise to the claim. Further, **RESPONDENT** expressly acknowledges that FMCSA had a reasonable basis in law and fact and was substantially justified in pursuing the claim against **RESPONDENT**.
10. Execution of this settlement agreement will constitute admission of the violation(s) set forth in this agreement and these violations shall constitute prior offenses under 49 USC § 521(b)(2)(D), and/or 14901(c), and/or 5123(c), which will lead to higher penalties in future enforcement actions.
11. This settlement agreement, including all enumerated conditions related to suspension of a portion of the assessed penalty, shall apply to, be binding upon, and enforceable against **RESPONDENT** and **RESPONDENT's** successors and assigns, including but not limited to, subsequent purchasers, transferees, and/or successor entity(ies).
12. This settlement agreement may be executed in counterparts, all of which when taken together shall constitute a fully executed original. A facsimile signature on this settlement agreement shall constitute an original signature for purposes of execution.
13. This settlement agreement shall be considered jointly drafted by the Parties, and constitutes the final and exclusive agreement between the Parties in this proceeding. All prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written, are hereby superseded. Notwithstanding this provision, the Notice of Claim, as referenced in Paragraph 1 of this settlement agreement, is incorporated by reference in this Agreement.
14. **RESPONDENT** hereby acknowledges, represents, and warrants that he or she or its

representative has carefully read and understands this Agreement, all of its terms and conditions, and its final and binding effect, and has been afforded sufficient time and opportunity to review this settlement agreement with advisors or attorneys of his, her, or its choice, has had an opportunity to negotiate with regard to the terms of this settlement agreement, is fully competent to enter into this settlement agreement, and has signed this settlement agreement knowingly, freely, and voluntarily. Each signatory acting on behalf of a partnership, corporation, limited liability company, or other entity represents and warrants that he or she is authorized to act on behalf of, and bind the entity in the signing of this settlement agreement.

- 15. Should any provision of this settlement agreement be held invalid or illegal, such illegality shall not invalidate the whole settlement agreement, but, rather, the settlement agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

**GEMINI TRANSPORT LLC  
DBA GEMINI TRANSPORT  
US DOT #: 1035057**

By: Alvin Bach Alston / CLAIMS MGR.  
Company Representative & Title

Date: September 13, 2011

**\* RETURN THE SIGNED AGREEMENT TO: Federal Motor Carrier Safety Administration;  
Midwestern Service Center; 4749 Lincoln Mall Dr, Suite 300A; Matteson, IL 60443-3800**

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
MIDWESTERN SERVICE CENTER**

By: Darin G. Jones  
**DARIN G. JONES  
FIELD ADMINISTRATOR**

Date: 9/13/2011