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Decision 90-12-086 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
COMBINED TRANSPORT, INC., for )  
authority to depart from the terms )  
and provisions of Sections 494 and )  
532 of the Public Utilities Code )  
and to dispense with the require- )  
ments that undercharges be collected )  
from Owens-Libbey-Ford, Inc. and )  
PPG Industries, Inc. )

ORIGINAL

Application 90-07-017  
(Filed July 10, 1990)

Investigation on the Commission's )  
own motion into the operations, )  
rates, and practices of Combined )  
Transport, Inc., dba Richard Card )  
Trucking, an Oregon corporation, )  
Libbey-Owens-Ford Co., a Delaware )  
corporation, and PPG Industries )  
Inc., a Pennsylvania corporation, )  
shipper respondents. )

I.89-05-014  
(Filed May 10, 1989)

Ellis R. Anderson and Edward G. Poole,  
Attorneys at Law, for Combined  
Transport, Inc., applicant and  
respondent.

Ida M. Passamonti, Attorney at Law, and  
William G. Waldorf, for the  
Transportation Division.

O P I N I O N

Combined Transport, Inc., dba Richard Card Trucking,  
(Combined) transports property over the highways of California for  
compensation and operates pursuant to a highway common carrier  
certificate, a highway contract carrier permit, and a heavy  
specialized carrier permit. Combined is an Oregon corporation and  
operates out of an office in Central Point, Oregon. The shipper  
respondent, PPG Industries, Inc. (PPG), operates out of an office  
in Fresno, California and obtained transportation services from

Combined. The shipper respondent, Libbey-Owens-Ford Co. (Libbey), operates out of an office in Toledo, Ohio and obtained transportation services from Combined.

A staff investigation revealed that Combined may have violated Public Utilities (PU) Code § 494 by failing to charge PPG the applicable rates set forth in its tariff on file and in effect with the Commission and that Combined may have violated PU Code §§ 3667 and 3737 by failing to charge Libbey the applicable delay time rates set forth in its Contract No. T-138,570-01 on file and in effect with the Commission.

Accordingly, the Commission issued, on May 10, 1989, its Order Instituting Investigation (OII) to determine:

1. Whether Combined violated PU Code §§ 3667 and 3737 by failing to charge Libbey the applicable contract rates.
2. Whether Combined violated PU Code § 494 by failing to charge PPG the applicable tariff rates.
3. Whether a fine in the amount of any undercharges should be imposed upon Combined under PU Code §§ 2100 and 3800.
4. Whether Combined should be ordered to collect from PPG and Libbey the difference between the payments actually received and the applicable rates and charges pursuant to PU Code §§ 2100 and 3800.
5. Whether any or all of the operating authority of Combined should be canceled, revoked, or suspended, or in the alternative, a fine should be imposed under PU Code §§ 1070 and 3774.
6. Whether Combined should be ordered to cease and desist from any unlawful operations or practices.
7. Whether any other order should be entered in the lawful exercise of the Commission's jurisdiction.

This investigation encompasses transportation charges paid by PPG and Libbey to Combined, as evidenced by freight invoices identified in Attachments A and B to the OII and all supporting documents.

On July 10, 1990, Combined filed its application for authority to depart from the terms and provisions of PU Code §§ 494 and 532 and to dispense with the requirements that undercharges be collected from Libbey and PPG (Application (A.) 90-07-017). The application requested it be consolidated with the OII and that the rates charged and collected from PPG and Libbey, from May 1986 through January 1988, be declared just and reasonable and that the rates be made retroactive to the time such transportation services began. No protests were filed.

#### Procedural Background

Copies of the OII were duly served upon the respondents and they appeared by counsel or representative at a prehearing conference on June 11, 1990. The OII and A.90-07-017 were consolidated by Administrative Law Judge's Ruling on July 30, 1990. Settlement discussions were held between Combined and staff and, just prior to the evidentiary hearing, agreements were reached between Combined and the staff that resolved all outstanding issues in the OII and A.90-07-017. These agreements are embodied in a document entitled "Settlement Agreement" which is signed by Michael Card for Combined and staff counsel and is dated November 6, 1990. This Settlement Agreement is annexed as Appendix A to this opinion and is incorporated herein as though set forth verbatim.

#### Findings of Fact

1. The Settlement Agreement in this proceeding is reasonable, consistent with law, and in the public interest.
2. The Settlement Agreement is recommended by the staff.
3. The Settlement Agreement is uncontested.

Conclusions of Law

1. The Settlement Agreement should be adopted.
2. A.90-07-017 should be dismissed.
3. Since this matter is resolved by the Settlement Agreement, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Combined Transport, Inc., dba Richard Card Trucking, (Combined) shall pay a fine of \$2,000 to the Commission on or before January 2, 1991.
2. Combined shall take all reasonable steps, including legal action if necessary, to collect undercharges in the amount of \$17,000 from Libbey-Owens-Ford Co. (Libbey) and PPG Industries, Inc. (PPG). At least \$11,500 of this amount shall be paid on or before January 2, 1991. The balance shall be paid no later than February 18, 1991.
3. The obligation of Combined to pay the Commission \$17,000 is not contingent upon its ability to collect these undercharges from Libbey or PPG and the payments shall be made regardless of whether Combined is successful in collecting the undercharges from Libbey or PPG. Payment shall be made as specified in Paragraph 3 of the Settlement Agreement.
4. This investigation is terminated and the application is dismissed.
5. All respondents in I.89-05-014 shall hence forth not be subject to any future undercharges, sanctions, or fines arising from transportation performed by Combined for Libbey or PPG from May 1, 1986 and to February 1, 1990 and shall be relieved of

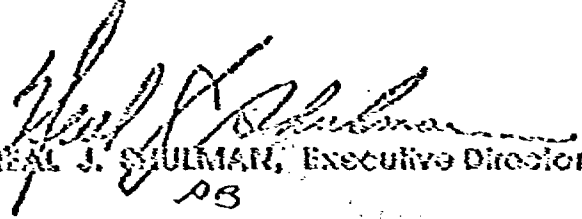
liability for the payment of any amounts other than those specifically agreed to be paid in the Settlement Agreement annexed hereto as Appendix A.

This order is effective today.

Dated December 19, 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SULMAR, Executive Director  
03

APPENDIX A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 COMBINED TRANSPORT, INC., for )  
 authority to depart from the terms )  
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 532 of the Public Utilities Code )  
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 collected from Owens-Libbey-Ford, )  
 Inc. and PPG Industries, Inc. )

Application 90-07-017  
 (Filed July 10, 1990)

Investigation on the Commission's )  
 own motion into the operations, )  
 rates, and practices of Combined )  
 Transport, Inc., dba Richard Card )  
 Trucking, an Oregon corporation, )  
 Libbey-Owens-Ford Co., a Delaware )  
 corporation, and PPG Industries )  
 Inc., a Pennsylvania corporation, )  
 as shipper respondents, )

I.89-05-014  
 (Filed May 10, 1989)

SETTLEMENT AGREEMENT

COMBINED TRANSPORT, INC., and the Transportation Division of CALIFORNIA PUBLIC UTILITIES COMMISSION, parties to the above-referenced proceedings consolidated by Order of Administrative Law Judge Ann Watson on July 30, 1990, desiring to avoid a protracted, complex, and adversarial proceeding, have agreed upon a settlement of said issues and desire to submit this Settlement Agreement for approval and adoption by the Public Utilities Commission.

NOW, THEREFORE, COMBINED TRANSPORT, INC., and the Transportation Division do stipulate as follows:

APPENDIX A

1. COMBINED TRANSPORT, INC. agrees to pay a fine in the amount of two thousand dollars (\$2,000.00) pursuant to Public Utilities Code Sections 1070 and 3774 on or before November 15, 1990.

2. Pursuant to Sections 2100 and 3800 of the Public Utilities Code, COMBINED TRANSPORT, INC. agrees to collect the sum of seventeen thousand dollars (\$17,000.00) from the respondent shippers and shall cause the same to be paid to the California Public Utilities Commission the sum of seventeen thousand dollars (\$17,000.00). Eleven thousand and five hundred dollars (\$11,500.00) of this amount shall be paid on or before November 15, 1990. The balance shall be paid on or before December 31, 1990.

3. All monies described in paragraphs 1 and 2 above shall be delivered in the form of a cashier's check to the San Francisco Office of the California Public Utilities Commission, to the attention of: William Waldorf, Transportation Division, and shall then be deposited in the State Treasury to the credit of the General Fund.

4. The parties specifically agree that this agreement is in settlement of the above-referenced consolidated action as related to the transportation services performed by COMBINED TRANSPORT, INC. from May 1, 1986, to February 1, 1990.

5. The parties agree that Attachment A and Attachment B to this Agreement list the freight bills evidencing the transportation services that are the subject of the above-

APPENDIX A

referenced consolidated action. Specifically, Attachment A lists the freight bills for the transportation services by Combined Transport, Inc. for Libbey-Owens-Ford Co., and Attachment B lists the freight bills that evidence the transportation services by Combined Transport, Inc. for PPG Industries, Inc.

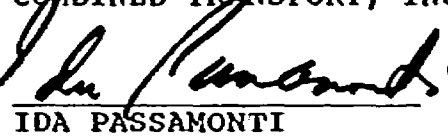
6. The parties hereto have read this agreement, understand all of its terms, and voluntarily execute the same.

7. It is understood and agreed that the terms herein are binding upon the two parties when approved by the California Public Utilities Commission.

DATED: 11/6/90

  
MICHAEL CARD  
COMBINED TRANSPORT, INC.

DATED: 12/31, 1990

  
IDA PASSAMONTI  
Staff Counsel for  
The Transportation Division



COMBINED TRANSPORT, INC., dba  
RICHARD CARD TRUCKING  
Central Point, Oregon

T-138,570

DEBTOR: LIBBEY-OWENS-FORD CO.  
Toledo, Ohio

\* Some parts have been deleted.

<u>Part No.</u>	<u>Freight Bill</u>	<u>Date</u>
2	12065A	5/08/86
4	12207A	5/19/86
11	12826A	6/05/86
12	12827A	6/05/86
13	13206A	6/19/86
14	13424A	6/26/86
16	13513A	6/30/86
18	13662A	7/02/86
19	13727A	7/07/86
20	13824A	7/14/86
21	13886A	7/14/86
22	13946A	7/14/86
23	14055A	7/18/86
26	14167A	7/21/86
27	14242A	7/22/86
29	14655A	8/06/86
30	14725A	8/07/86
33	15044A	8/18/86
34	15077A	8/19/86
35	15151A	8/21/86
36	15323A	8/29/86
37	15550A	9/05/86
38	15715A	9/10/86
39	15716A	9/12/86
40	15760A	9/15/86
41	15761A	9/12/86
42	15799A	9/16/86
43	15906A	9/22/86
45	16204A	9/23/86
46	16248A	9/29/86
48	16625A	10/10/86
49	16626A	10/14/86
51	16660A	10/10/86
52	16737A	10/15/86
54	16862A	10/20/86
57	17274A	10/28/86
58	17356A	10/28/86
59	17408A	10/30/86
61	17511A	11/10/86

<u>Part No.</u>	<u>Freight Bill</u>	<u>Date</u>
63	17629A	11/06/86
64	17677A	11/10/86
66	17703A	11/12/86
69	17808A	11/14/86
73	17991A	11/20/86
74	18141A	12/02/86
77	18450A	12/15/86
78	18481A	12/08/86
79	18820A	12/22/86
80	18875A	12/22/86
81	18922A	12/18/86
82	18951A	12/22/86
84	19443A	1/14/87
85	19550A	1/19/87

COMBINED TRANSPORT, INC., dba  
RICHARD CARD TRUCKING  
Central Point, Oregon

T-138,570

DEBTOR: PPG INDUSTRIES, INC.  
Fresno, California

<u>Part No.</u>	<u>Freight Bill</u>	<u>Date</u>
1	12069A	5/07/86
2	12096A	5/07/86
3	12113A	5/08/86
4	12272A	5/14/86
5	12368A	5/15/86
6	12369A	5/16/86
7	12451A	5/20/86
8	12489A	5/20/86
9	12523A	5/22/86
10	12651A	5/27/86
11	12681A	5/28/86
12	12743A	5/30/86
13	14280A	7/22/86
14	14281A	7/22/86
15	14759A	8/07/86
16	14994A	8/14/86
17	15518A	9/04/86
18	15712A	9/08/86
19	17053A	10/21/86
20	17114A	10/22/86
21	17711A	11/12/86
22	17738A	11/12/86
23	17853A	11/12/86
24	18040A	11/20/86
25	18260A	11/26/86
26	18318A	12/08/86
27	18350A	12/02/86
28	18454A	12/04/86
29	18485A	12/08/86
30	18614A	12/09/86
31	18652A	12/10/86
32	18715A	12/15/86
33	18874A	12/17/86
34	18972A	12/29/86
35	19128A	12/30/86
36	19169A	12/31/86
37	19318A	1/08/87
38	19420A	1/09/87
39	19543A	1/14/87
40	19544A	1/15/87

<u>Part No.</u>	<u>Freight Bill</u>	<u>Date</u>
41	19545A	1/16/87
42	19564A	1/20/87
43	19757A	1/21/87
44	20040A	1/29/87
45	20151A	1/30/87
46	20225A	2/04/87
47	20495A	2/10/87
48	20536A	2/12/87
49	20583A	2/13/87
50	20623A	2/13/87
51	20888A	2/25/87
52	21026A	2/25/87
53	21073A	2/26/87
54	21137A	3/02/87
55	21293A	3/04/87
56	21325A	3/05/87
57	21402A	3/06/87
58	21530A	3/18/87
59	21612A	3/11/87
60	21770A	3/16/87
61	21856A	3/18/87
62	21920A	3/19/87
63	21923A	3/20/87
64	21973A	3/20/87
65	21977A	3/20/87
66	22025A	3/23/87
67	22037A	3/24/87
68	22106A	3/24/87
69	22139A	3/25/87
70	22217A	3/26/87
71	22248A	3/27/87
72	22323A	3/27/87
73	22413A	4/01/87
74	22493A	4/02/87
75	22575A	4/03/87
76	22772A	4/09/87
77	22855A	4/10/87
78	22941A	4/14/87
79	23069A	4/16/87
80	23139A	4/21/87
81	23140A	4/20/87
82	23235A	4/20/87
83	23285A	4/22/87
84	23327A	4/23/87
85	23379A	4/24/87
86	23455A	4/28/87
87	23541A	4/28/87
88	23755A	5/01/87

<u>Part No.</u>	<u>Freight Bill</u>	<u>Date</u>
89	23829A	5/05/87
90	23888A	5/06/87
91	23952A	5/07/87
92	24027A	5/08/87
93	24057A	5/08/87
94	24131A	5/12/87
95	24192A	5/13/87
96	24380A	5/19/87
97	24439A	5/20/87
98	24493A	5/21/87
99	24761A	5/29/87
100	24873A	6/02/87
101	24875A	6/02/87
102	24965A	6/03/87
103	25009A	6/04/87
104	25252A	6/10/87
105	25336A	6/12/87
106	25337A	6/12/87
107	25425A	6/15/87
108	25462A	6/16/87
109	25523A	6/17/87
110	25644A	6/19/87
111	25792A	6/23/87
112	25793A	6/24/87
113	25848A	6/24/87
114	25844A	6/25/87
115	25914A	6/26/87
116	25915A	6/26/87
117	25969A	6/29/87
118	25845A	6/30/87
119	26370A	7/09/87
120	26404A	7/10/87
121	26486A	7/13/87
122	26942A	7/30/87
123	26971A	7/30/87
124	27059A	7/31/87
125	27103A	7/31/87
126	27461A	8/11/87
127	27659A	8/13/87
128	27981A	8/24/87
129	28096A	8/25/87
130	28569A	9/04/87
131	28484A	9/09/87
132	28629A	9/08/87
133	28912A	9/16/87
134	28951A	9/16/87
135	29050A	9/22/87
136	29105A	9/23/87

<u>Part No.</u>	<u>Freight Bill</u>	<u>Date</u>
137	29108A	9/23/87
138	29199A	9/23/87
139	29214A	9/25/87
140	29941A	10/13/87
141	30002A	10/14/87
142	30200A	10/19/87
143	30308A	10/20/87
144	30311A	10/21/87
145	30379A	10/22/87
146	30380A	10/22/87
147	30551A	10/27/87
148	30630A	10/28/87
149	30909A	11/04/87
150	30929A	11/05/87
151	31119A	11/09/87
152	31166A	11/11/87
153	31286A	11/13/87
154	31287A	11/13/87
155	31563A	11/19/87
156	31564A	11/19/87
157	31609A	11/20/87
158	31731A	11/24/87
159	31813A	11/25/87
160	32077A	12/03/87
161	32139A	12/04/87
162	32251A	12/08/87
163	32366A	12/09/87
164	32443A	12/10/87
165	32556A	12/14/87
166	32557A	12/15/87
167	32641A	12/16/87
168	32707A	12/18/87
169	32735A	12/21/87
170	32798A	12/22/87
171	32848A	12/22/87
172	32858A	12/23/87
173	32900A	12/24/87
174	32942A	12/29/87
175	33182A	1/06/88
176	33212A	1/07/88
177	33213A	1/07/88