

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney’s Office for the Western District of New York and on behalf of the United States Department of Defense (collectively the "United States"), YRC Freight, Inc., Roadway Express, Inc. (“Roadway”), and Yellow Transportation, Inc. (“Yellow”), (collectively the “Defendants”); and James Hannum (the “Relator”) (all hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. During the time period covered by this agreement, Defendants were incorporated freight companies that transported industrial, commercial, and retail goods across North America. In 2003, Yellow purchased Roadway and began a merger process that would result in the creation in 2009 of YRC, Inc. (now YRC Freight, Inc.). Although operating independently and with separate corporate structures until the finalization of the merger in 2009, Yellow and Roadway began coordinating some corporate functions and freight transportation practices. Throughout the relevant time period, including after the 2009 merger, the Defendants contracted with transportation commands within the Department of Defense to transport military freight across the continental United States. In addition to formal contracting procedures, the Department of Defense awarded freight business to the Defendants through tender agreements governed by Department of Defense regulations.

B. On November 3, 2008, James Hannum filed a *qui tam* action in the United States District Court for the Western District of New York captioned *United States ex rel.*

*James Hannum v. Roadway Express, Inc., et al.*, No. 1:08-cv-00811-RJA-MJR, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleged that Yellow and Roadway knowingly and systematically submitted or caused the submission of false claims for payment to the Department of Defense by overbilling for shipments that, after weighing the shipments themselves, Yellow and Roadway knew weighed less than the weights for which they charged the Department of Defense. Relator also alleged that Yellow and Roadway conspired to align their weighing practices to routinely overbill the United States for shipments. The United States intervened in the Civil Action on November 26, 2018 and filed the United States’ Complaint in Intervention on December 12, 2018.

C. The United States contends that it has certain civil claims against the Defendants arising from the following conduct (the “Covered Conduct”) during the period from September 2005 through October 2013. The United States contends that Defendants knowingly submitted or caused the submission of false claims to the Department of Defense by overcharging for thousands of inflated cargo shipments. Defendants — first Yellow and Roadway, and then YRC after 2009 — systematically charged the United States for shipments based on heavier weights than Defendants knew to be accurate based on their own measurements. The United States further contends that Defendants made false statements or records that they would comply with DOD freight transport rules that required Defendants to correct discrepancies uncovered during the reweigh process.

D. This Settlement Agreement is neither an admission of liability by the Defendants nor a concession by the United States that its claims are not well founded.

The Defendants deny the United States' allegations in Paragraph C and the Relator's allegations in the Civil Action.

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Defendants shall pay to the United States Six Million Eight Hundred Forty-Nine Thousand Eight Hundred Eighteen dollars (\$6,849,818.00) (Settlement Amount), of which Two Million Four Hundred Ninety Thousand Eight Hundred Forty-Three dollars (\$2,490,843.00) is restitution, and interest on the Settlement Amount at a rate of 1.125% per annum from December 13, 2021, no later than fourteen (14) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount plus interest due under Paragraph 1 and as soon as feasible after receipt, the United States shall pay One Million Three Hundred Thirty-Five Thousand Seven Hundred Fifteen dollars (\$1,335,715.00), plus 19.5 percent of the interest paid by the Defendants, to Relator by electronic funds transfer ("Relator's Share").

3. Defendants shall pay to the Relator Four Hundred Twenty Thousand dollars (\$420,000) in fees and Twenty-Three Thousand dollars (\$23,000) in expenses, no later than fourteen (14) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the Relator.

4. Subject to the exceptions in Paragraph 7 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, the United States releases Defendants, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 7 below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns (collectively, "Relators Releasers") releases Defendants from any civil monetary claim Relator has on behalf of the United States for the conduct described in his aforementioned *qui tam* complaint under the False Claims Act, 31 U.S.C. §§ 3729-3733. Further, the Relator Releasers shall release Defendants from any claim of any kind or nature whatsoever from the beginning of time through the Effective Date of this Settlement Agreement that Relator and Relator Releasers may have, may gain, or may assert against any or all of the

Defendants, including but not limited to any and all federal and state claims, whether disclosed or undisclosed, which Relator and Relator Releasers have asserted, could have asserted, or may assert now in the future against any or all of the Defendants related to the Civil Action, the Covered Conduct, and the Relator's investigation and prosecution thereof.

6. In consideration of the obligations of Defendants in this Agreement, conditioned upon Defendants' full payment of the Settlement Amount plus interest due under Paragraph 1, the Department of Defense releases and refrains from instituting, directing, or maintaining any administrative action seeking debarment, suspension or ineligibility from any government program, including but not limited to tenders, contracts or other agreements with transportation commands within the Department of Defense to transport military freight across the continental United States, based on the Covered Conduct. Nothing in this paragraph precludes the United States from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 7, below.

7. Notwithstanding the releases given in Paragraphs 4 and 6 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved (the "Reserved Claims") and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability or enforcement right, or any administrative remedy,

including the suspension and debarment rights of any federal agency;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

The above reservation is without prejudice to Defendants' right to assert defenses to the Reserved Claims, including on the basis that one or more applicable statutes of limitations bars the Reserved Claims.

8. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

9. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Defendants, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs. Provided, however, that, by this release, the Relator is not releasing any future claims related to his employment with Defendants that may accrue after the effective date of this settlement agreement.

10. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

11. Defendants fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

12. Defendants fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relator, related to his *qui tam* complaint and the Relator's investigation and prosecution thereof.

13. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. §§ 31.205-47) incurred by or on behalf of Defendants, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Defendants makes to the United States pursuant to this Agreement and any payments that Defendants may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.



c. Treatment of Unallowable Costs Previously Submitted for

Payment: Within 90 days of the Effective Date of this Agreement, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendants or any of its subsidiaries or affiliates from the United States. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Defendants' books and records and to disagree with any calculations submitted by Defendants or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amount of such payments.

14. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Defendants shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

15. This Agreement is intended to be for the benefit of the Parties only.

16. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1) and subject to the terms of this Agreement.

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except as provided for in paragraph 3 above.

18. Each Party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Western District of New York. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

20. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

23. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.


24. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

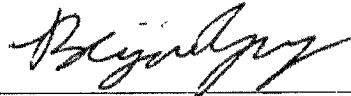
25. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

26. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

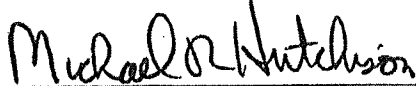
SIGNATURE PAGES FOLLOW

THE UNITED STATES OF AMERICA


DATED: 3/9/2022 BY:   
David Coriell  
Assistant United States Attorney  
Western District of New York

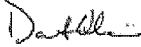
DATED: March 9, 2022 BY:   
Benjamin Young  
John F. Schifalacqua  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

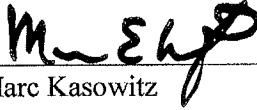
AGENCY

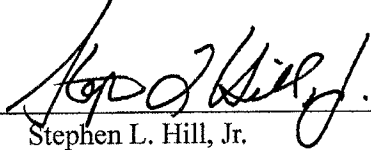
DATED: 9 MAR 22 BY:   
Michael R. Hutchison  
Deputy to the Commander  
Military Surface Deployment  
and Distribution Command  
Department of Defense

DEFENDANTS

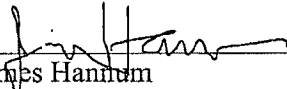
DATED: March 8, 2022 BY:   
Darren D. Hawkins  
Chief Executive Officer  
Yellow Corporation


DATED: March 8, 2022 BY:   
Daniel L. Olivier  
Chief Financial Officer  
Yellow Corporation

DATED: March 8, 2022 BY:   
Marc Kasowitz  
Ronald R. Rossi  
Kasowitz Benson Torres LLP  
Counsels for Defendants

DATED: March 8, 2022 BY:   
Stephen L. Hill, Jr.  
Dentons US LLP  
Counsel for Defendants

RELATOR

DATED: \_\_\_\_\_ BY:  \_\_\_\_\_  
James Hannum

DATED: March 8, 2022 BY:  \_\_\_\_\_  
Daniel C. Oliverio  
Hodgson Russ LLP  
Counsel for James Hannum