

Docket Number: 955

CONN CONSTRUCTION COMPANY

Jack W. Plowman, Esquire  
Kenneth W. Lee, Esquire

CLOSED

VS.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION and  
BEAVER COUNTY

Robert J. Shea, Assistant Counsel  
John P. Dohanich, Assistant County Solicitor

**August 28, 1984**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$688,521.91.

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**August 29, 1984**

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General.

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**September 28, 1984**

Preliminary Objections and Brief in Support of Preliminary Objections to Plaintiff's Complaint filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 4, 1984**

Preliminary Objections filed by attorney for Beaver County. Copies forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Beaver County.

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**October 15, 1984**

Brief in Support of Preliminary Objections filed by attorney for Beaver County. Copies forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Beaver County.

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**October 31, 1984**

Answer to Preliminary Objections of Beaver County filed by attorney for Plaintiff. Copy forwarded to attorney for Beaver County by attorney for Plaintiff.

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**October 31, 1984**

Answer to Preliminary Objections of Department of Transportation filed by attorney for Plaintiff. Copy forwarded to attorney for Beaver County by attorney for Plaintiff.

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**October 31, 1984**

Brief in Opposition to Defendants' Preliminary Objections of Beaver County filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant and attorney for Beaver County.

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**April 19, 1985**

Request for Production filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 13, 1985**

Praecipe to Reinstate Complaint with attached Complaint filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 17, 1985**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 17th day of May, 1985, it is **ORDERED** and **DIRECTED** that in that said request to Reinstate the Complaint by Praecipe is reasonable and within the requirements of the Pa. Rules of 1009(a) and 2104(c), the Board shall and does Grant said Praecipe and will mark the Complaint in capital letters '**REINSTATED**'. Copies forwarded to attorney for Plaintiff, attorney for Defendants and attorney for Additional Defendant.

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**June 10, 1985**

Sheriff's Return of Service of Reinstated Complaint filed by attorney for Plaintiff.

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**June 10, 1985**

Preliminary Objections and Brief in Support of Preliminary Objections to Plaintiff's Complaint filed by attorney for Defendant (Beaver County). Copies forwarded to attorney for Plaintiff and attorney for Defendant (Transportation) by attorney for Defendant (Beaver County).

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**June 26, 1985**

Petition for Order Impleading County of Beaver and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendants by attorney for Plaintiff.

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**June 26, 1985**

Petition for Order Impleading County of Beaver and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendants by attorney for Plaintiff.

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**\*July 2, 1985**

The Board made the following Order: "**AND NOW**, to wit, this 2nd day of July, 1985, upon consideration of Plaintiff's Petition for Order Impleading County of Beaver, it appearing to the Board that the County of Beaver was named as a Defendant in the Complaint, and that the County of Beaver has preliminary objected thereto on grounds of subject matter jurisdiction, and it further appearing to the Board that the County of Beaver is alleged to have acted as agent for the

Commonwealth, an undisclosed or partially disclosed principal, and that the presence of the County of Beaver is necessary for a complete determination of Plaintiff's claim, it is therefore **ORDERED** that the County of Beaver be, and it hereby is, impleaded as a party Defendant, and that the preliminary objections filed by it to subject matter jurisdiction be, and they hereby are, **DISMISSED**. COUNTY OF BEAVER IS HEREBY GRANTED THIRTY (30) DAYS FROM THE DATE OF THIS ORDER TO FILE RESPONSIVE PLEADINGS." Copies forwarded to attorney for Plaintiff and attorneys for Defendants.

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**July 18, 1985**

Petition to Amend or Modify Order and Two Proposed Orders filed by attorney for Defendant (County of Beaver). Copies forwarded to attorney for Plaintiff and attorney for Defendant (Transportation) by attorney for Defendant (County of Beaver).

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**July 18, 1985**

Amended Preliminary Objections filed by attorney for Defendant (Transportation). Copies forwarded to attorney for Plaintiff and attorney for Defendant (County of Beaver) by attorney for Defendant (Transportation).

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**July 29, 1985**

Motion to Compel Discovery and Proposed Order filed by attorney for Plaintiff. Copies forwarded to attorneys for Defendants by attorney for Plaintiff.

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**July 31, 1985**

Answer filed by attorney for Defendant (County of Beaver). Copy forwarded to attorney for Plaintiff and attorney for Defendant (Transportation) by attorney for Defendant (County of Beaver).

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**August 2, 1985**

Plaintiff's Memorandum in Opposition to Defendant (County of Beaver's) Petition to Amend or Modify Order filed by attorney for Plaintiff. Copies forwarded to attorneys for Defendants by attorney for Plaintiff.

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**August 5, 1985**

Supplemental Brief in Opposition to Defendant's (Transportation) Preliminary Objections to Complaint filed by attorney for Plaintiff. Copies forwarded to attorneys for Defendants by attorney for Plaintiff.

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**August 12, 1985**

Motion to Amend Answer to Add Counterclaim, Proposed Order and Amended Answer filed by attorney for Defendant (County of Beaver). Copies forwarded to attorney for Plaintiff and attorney for Defendant (Transportation) by attorney for Defendant (County of Beaver).

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**August 29, 1985**

Notice of Deposition and Designation of Witness Pursuant to Pa. R.A.P. 4007.1(e) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 11, 1985**

Designation of Witnesses filed by attorney for Plaintiff. Copies forwarded to attorneys for Defendants by attorney for Plaintiff.

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**\*\*June 2, 1986**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 12th day of June, 1986, the Petition of the Defendant, County of Beaver, to Amend the Board's Order of July 2, 1985, to enable the County of Beaver to perfect an Appeal to the Commonwealth Court of the Commonwealth of Pennsylvania, in accordance with Pa. R.A.P. 311 and 312 is **DENIED**." Copies forwarded to attorney for Plaintiff, attorney for Defendant and County Solicitor.

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**June 12, 1986**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 12th day of June, 1986, the Motion of the Defendant, County of Beaver, to file an Amended Complaint is **GRANTED**. The Defendant, County of Beaver, is given twenty (20) days from the date of this Order to file its Amended Answer with Counterclaim." Copies forwarded to attorney for Plaintiff, attorney for Defendant and County Solicitor.

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**June 16, 1986**

Acceptance of Service of Opinion and Order dated June 12, 1986 relative to Petition to Amend Board's Order received from Defendant. Receipt of same acknowledged by Defendant June 13, 1986.

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**June 16, 1986**

Acceptance of Service of Opinion and Order dated June 12, 1986, relative to Motion to File Amended Complaint received from Defendant. Receipt of same acknowledged by Defendant June 13, 1986.

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**June 23, 1986**

Acceptance of Service of Opinion and Order dated June 12, 1986, relative to Petition to Amend Board's Order received from County Solicitor. Receipt of same acknowledged by County Solicitor June 18, 1986.

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**June 23, 1986**

Acceptance of Service of Opinion and Order dated June 12, 1986, relative to Motion to File Amended Complaint received from County Solicitor. Receipt of same acknowledged by County Solicitor June 18, 1986.

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**July 2, 1986**

Acceptance of Service of Opinion and Order, dated June 12, 1986, relative to Petition to Amend Board's Order received from Plaintiff. Receipt of same acknowledged by Plaintiff June 30, 1986.

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**July 2, 1986**

Acceptance of Service of Opinion and Order dated June 12, 1986 relative to Motion to File Amended Complaint received from Plaintiff. Receipt of same acknowledged by Plaintiff June 30, 1986.

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**July 21, 1986**

Request for Production as well as Notice of Service of Interrogatories filed by attorney for Plaintiff. Copies of Request for Production and Interrogatories forwarded to attorneys for Defendant by attorney for Plaintiff.

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**July 24, 1986**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 24th day of July, 1986, all Preliminary Objections as filed by the Defendant are **DENIED**. The Defendant is granted thirty (30) days from the date of this Order to file appropriate Responsive Pleadings."

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**July 25, 1986**

Copies of Opinion and Order dated July 24, 1986, forwarded to attorney for Plaintiff, attorney for Defendant and Assistant County Solicitor.

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**July 28, 1986**

Acceptance of Service of Opinion and Order dated July 24, 1986 received from Defendant. Receipt of same acknowledged by Defendant July 25, 1986.

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**July 30, 1986**

Acceptance of Service of Opinion and Order dated July 24, 1986 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff July 28, 1986.

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**July 30, 1986**

Acceptance of Service of Opinion and Order dated July 24, 1986 received from Assistant County Solicitor. Receipt of same acknowledged by Assistant County Solicitor July 28, 1986.

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**August 18, 1986**

Plaintiff's First Set of Interrogatories to Defendants filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 21, 1987**

Answers to Plaintiff's First Set of Interrogatories to Defendant's filed by attorney for Defendant (Department of Transportation). Copy forwarded to attorney for Plaintiff and attorney for Defendant (County of Beaver) by attorney for Defendant (Department of Transportation).

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**February 9, 1988**

Hearing scheduled for April 12, 13, 14 and 15, 1988, and if necessary, April 19, 20, 21 and 22, 1988, to be held in Board's Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:00 a.m.

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**March 21, 1988**

Notice of Deposition of J. Eric Mann, the individual or individuals designated by the Commonwealth of Pennsylvania, Department of Transportation, and the individual or individuals designated by the Beaver County Board of County Commissioners filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendants by attorney for Plaintiff.

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**March 28, 1988**

Answer and New Matter of Commonwealth of Pennsylvania, Department of Transportation filed by attorney for Defendant. Copies forwarded to attorneys for Plaintiff and attorney for Defendant (County of Beaver) and attorney for Defendant (Transportation).

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**April 4, 1988**

Notice of Deposition of James T. Nest and the individual or individuals designated by Conn Construction filed by attorney for Defendant (County of Beaver). Copies forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Defendant (County of Beaver).

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**April 12, 1988**

Reply to New Matter filed at time of hearing by attorney for Plaintiff. Copies given to attorney for Defendant and attorney for Additional Defendant at time of hearing by attorney for Plaintiff.

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**April 12, 1988**

Stipulation as to the Authenticity of Documents filed by parties at time of hearing.

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**April 12, 1988**

Hearing held in Board's Courtroom No. 1 commencing at 2:15 p.m. Case settled.

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**April 15, 1988**

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 15th day of April, 1988, upon the records in the file, all pleadings and documents, the statements of counsel and the matters of record, it is **ORDERED** and **DIRECTED** that the case be marked settled and closed upon the following terms and conditions: The Claimant shall pay a total sum of Four Hundred Thousand Dollars (\$400,000.00) of which Three Hundred Twenty-Two Thousand Five Hundred Eighty Dollars (\$322,580.00) is allocated to principal and Seventy-Seven Thousand Four Hundred Twenty Dollars (\$77,420.00) is



**April 15, 1988 - Continued -**

allocated to interest. It is agreed further that both the Department of Transportation and Beaver County will do everything in their power to obtain approval of the Federal Highway Administration, and it was anticipated that this would be completed within a period of ninety (90) days. Further, it was set forth that Beaver County would immediately notify Conn Construction Company's surety, that Transamerican Insurance Company that the Bond on this project is to be released immediately, and further, that Beaver County will assume responsibility for certain remedial work required by the Inspection Report of the Federal Highway Administration dated January 12, 1988. If all of the terms and conditions are not consummated, then the Board shall be put on notice to reopen the record and permit the parties to proceed with the case on the merits. In the event all monies due and payable under the Settlement Agreement are received by the Claimant, then on that event, the Claimant or its counsel shall notify the Board of receipt of said monies and that the case be settled and closed with prejudice. Copies forwarded to attorney for Plaintiff and attorney for Defendant.

**April 20, 1988**

Acceptance of Service of Opinion and Order dated April 15, 1988 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 19, 1988.

**April 21, 1988**

The Board rendered an Amended Opinion and made the following Order:

**"AND NOW**, this 21st day of April, 1988, upon the records in the file, all pleadings and documents, the statements of counsel and the matters of record, it is **ORDERED** and **DIRECTED** that the case be marked settled and closed upon the following terms and conditions:

The Claimant shall pay a total sum of Four Hundred Thousand Dollars (\$400,000.00) of which Three Hundred Twenty-Two Thousand Five Hundred Eighty Dollars (\$322,580.00) is allocated to principal and Seventy-Seven Thousand Four Hundred Twenty Dollars (\$77,420.00) is allocated to interest. It is agreed further that both the Department of Transportation and Beaver County will do everything in their power to obtain approval of the Federal Highway Administration, and it was anticipated that this would be completed within a period of ninety (90) days. Further, it was set forth that Beaver County would immediately notify Conn Construction Company's surety, that Transamerican Insurance Company that the Bond on this project is to be released immediately, and further, that Beaver County will assume responsibility for certain remedial

**April 21, 1988 - Continued -**

work required by the Inspection Report of the Federal Highway Administration dated January 12, 1988. If all of the terms and conditions are not consummated, then the Board shall be put on notice to re-open the record and permit the parties to proceed with the case on the merits. In the event all monies due and payable under the Settlement Agreement are received by the Claimant, then in that event, the Claimant or its counsel shall notify the Board of receipt of said monies and that the case be settled and closed with prejudice."

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**April 22, 1988**

Statement of Facts and selected exhibits filed by attorney for Plaintiff as presented at hearing.

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**April 22, 1988**

Copies of Amended Opinion and Order dated April 21, 1988 forwarded to attorney for Plaintiff and attorney for Defendants.

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**April 19, 1988**

Acceptance of Service of Amended Opinion and Order dated April 21, 1988 received from attorney for Defendant (County of Beaver). Receipt of same acknowledged by attorney for Defendant (County of Beaver) April 27, 1988.

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**May 9, 1988**

Acceptance of Service of Amended Opinion and Order dated April 21, 1988 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 3, 1988.

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**May 11, 1988**

Testimony of hearing held April 12, 1988 filed.

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**May 12, 1988**

Copies of testimony for hearing held April 12, 1988 forwarded to attorney for Defendant.

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**May 16, 1988**

Acceptance of Service of testimony for hearing held April 12, 1988 received from Defendant. Receipt of same acknowledged by Defendant May 15, 1988.

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**July 29, 1988**

Petition to Enforce Settlement and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendants by attorney for Plaintiff.

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**August 9, 1988**

Exhibit "A" to the Petition to Enforce Settlement filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendants.

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**March 15, 1989**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 15th day of March, 1989, it is evidenced from the record and supported by the statements contained in this Opinion that the Commonwealth of Pennsylvania, Department of Transportation and County of Beaver are in violation of the Board of Claims Order amended dated April 21, 1988. The Board **DIRECTS** that payment of the settlement amounts agreed to shall be paid to Conn Construction Company within forty-five (45) days of the date of this Order. In the event there is failure of compliance by the Defendants, the Board of Claims shall issue sanctions, costs, interest and enforcement against said Defendants. The Board does not seek any response other than full compliance with the Amended Order of this Board dated April 21, 1988." Copies forwarded to attorneys for Plaintiff, attorney for Defendant and County Solicitor.

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**March 17, 1989**

Acceptance of Service of Opinion and Order dated March 15, 1989, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 16, 1989.

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**March 23, 1989**

Acceptance of Service of Opinion and Order dated March 15, 1989 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff March 20, 1989.

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**June 6, 1989**

Acceptance of Service of Order dated May 9, 1989, received from County Solicitor. Receipt of same acknowledged by County Solicitor May 31, 1989.

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**June 7, 1989**

Copy of Petition for Review as filed in Commonwealth Court filed by County Solicitor.

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**June 15, 1989**

Petition for Review received from Commonwealth Court. (No. 1123 C.D. 1989).

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**June 26, 1989**

File transmitted to Commonwealth Court.

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**July 20, 1989**

Order received from Commonwealth Court stating: "NOW, July 18, 1989, it appearing that the above-captioned Petition for Review was filed on June 1, 1989, and that a notice to certify the record was sent on June 2, 1989, and that the record has not been certified, it is hereby ordered that respondents, the Board of Claims, shall certify the record to this Court within twenty (20) days of the date of this Order."

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**July 27, 1989**

Copy of Petition for Review as filed in Commonwealth Court filed by attorney for Defendant. (No. 1052 C.D. 1989)

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**September 6, 1989**

Copy of Notice of Discontinuance received from Commonwealth Court. (No. 1052 C.D. 1989 and No. 1123 C.D. 1989)

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**September 11, 1989**

Agreement and Release executed by parties filed by attorney for Plaintiff. Copies forwarded to attorney for Defendant and County Solicitor by attorney for Plaintiff.

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**October 3, 1989**

File returned from Commonwealth Court.

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**October 4, 1989**

The Board made the following Order: "**AND NOW**, this 4th day of October, 1989, upon receipt of a copy of the Agreement and Release to mark the above-captioned matter 'settled and discontinued with prejudice', executed by Converse Branscome, Jr., President, on behalf of Plaintiff, Stephen J. Busterna, Esquire, on behalf of Defendant, Gerald J. LaValle, Chairman, on behalf of Beaver County, James Albert, Commissioner, on behalf of Beaver County, and Roger L. Javens, Commissioner, on behalf of Beaver County same of which is docketed with this Board under date of September 11, 1989, acknowledging receipt of Four Hundred Twenty-Thousand Dollars (\$420,000.00) in full and final settlement plus counsel fees in the amount of Four

Thousand Two Hundred Thirty-Nine Dollars and Seventy-Eight Cents (\$4,239.78) for a total of Four Hundred Twenty-Four Thousand Two Hundred Thirty-Nine Dollars and Seventy-Eight Cents (\$424,239.78), and understanding that all Appeals have been withdrawn, it is **ORDERED** and **DIRECTED** that said case be marked 'settled and discontinued with prejudice'." Copies forwarded to attorneys for Plaintiff, attorney for Defendant, Assistant County Solicitor and Chief Deputy Attorney General.

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October 6, 1989

Acceptance of Service of Order dated October 4, 1989 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 5, 1989.

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October 12, 1989

Acceptance of Service of Order dated October 4, 1989 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 10, 1989.

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October 16, 1989

Acceptance of Service of Order dated October 4, 1989 received from Assistant County Solicitor. Receipt of same acknowledged by Assistant County Solicitor October 12, 1989.

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