

Docket Number: 1130

LIBERTY EXCAVATORS, INC.

John A. Gill, Esquire

VS.

**CLOSED**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Patricia A. Carey, Assistant Counsel  
Stephen J. Busterna, Assistant Counsel

**July 24, 1987**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$36,126.81+.

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**July 29, 1987**

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

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**July 31, 1987**

Acceptance of Service of Claim received from Defendant. Receipt of same acknowledged by Defendant July 30, 1987.

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**August 7, 1987**

Acceptance of Service of Claim received from Office of Attorney General. Receipt of same acknowledged by Office of Attorney General August 4, 1987.

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**CLOSED**

**September 1, 1987**

Preliminary Objections as well as Memorandum in Support of Defendant's Preliminary Objections to Plaintiff's Claim filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 30, 1987**

Plaintiff's Memorandum of Law in Opposition to Defendant's Preliminary Objections to Plaintiff's Claim filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 11, 1987**

The Board rendered an Opinion and made the following Order: **"AND NOW,** this 11th day of December, 1987, upon consideration of the Defendant's, Commonwealth of Pennsylvania, Department of Transportation, Motion for More Specific Pleading, as to the time of the alleged breach, it is hereby **ORDERED** that the Motion is **GRANTED** and Plaintiff, Liberty Excavators, Inc., shall file an

Amended Complaint setting forth sufficient material facts so as to enable Defendant to identify the accrual of the Claim on January 27, 1987. The Defendant's Motion for a More Specific Pleading, regarding the issue of whether or not all conditions precedent were satisfied, is hereby **DENIED**. Plaintiff shall have thirty (30) days from the date of this Order in which to file an Amended Complaint." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

**December 15, 1987**

Acceptance of Service of Opinion and Order dated December 11, 1987 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December, 14, 1987.

**December 16, 1987**

Acceptance of Service of Opinion and Order dated December 11, 1987 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff of December 15, 1987.

**CLOSED**

**December 21, 1987**

Amended Complaint/Claim filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**December 23, 1987**

Amended Complaint/Claim forwarded to attorney for Defendant and Chief Deputy Attorney General.

**December 28, 1987**

Acceptance of Service of Amended Complaint/Claim received from Defendant. Receipt of same acknowledged by attorney for Defendant December 23, 1987.

**January 7, 1988**

Acceptance of Service of Amended Complaint/Claim received from Office of Attorney General. Receipt of same acknowledged by Office of Attorney General December 30, 1987.

**February 8, 1988**

Answer and New Matter to Plaintiff's Amended Complaint filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**March 4, 1988**

Plaintiff's Reply to Defendant's Reply to New Matter filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**March 23, 1988**

Stipulation to Amend Defendant's Reply to New Matter filed by attorney for Plaintiff. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**March 30, 1988**

The Board made the following Order: "AND NOW, this 30th day of March, 1988 upon receipt of Stipulation to Amend New Matter filed with the Board on date of March 27, 1988 it is hereby ORDERED and DECIDED that the Amendment to New Matter as Stipulated to by the parties be made of record and part of the reading."

**April 1, 1988**

Copy of Order dated March 30, 1988 forwarded to attorney for Plaintiff and attorney for Defendant.

**April 4, 1988**

Acceptance of Service of Order dated March 30, 1988 received from Defendant. Receipt of same acknowledged by Defendant April 1, 1988.

**April 21, 1988**

Acceptance of Service of Order dated March 30, 1988 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 18, 1988.

**June 3, 1988**

Defendant's Interrogatories to Plaintiff, Liberty Excavators, Inc. - First Set and Defendant's Request for Production of Documents filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**July 5, 1988**

Answers to Defendant's Interrogatories to Plaintiff, Liberty Excavators, Inc. - First Set as well as Plaintiff's Answer to Defendant's Request for Production of Documents filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**July 8, 1988**

Motion to Amend Defendant PennDOT's Amended Answer and New Matter to Plaintiff's Amended Complaint filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**July 19, 1988**

Plaintiff's Reply in Opposition to Defendant's Motion to Amend its Amended Answer and New Matter to Plaintiff's Amended Complaint filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**July 19, 1988**

Deposition of Jack Miller and Richard Witmer filed.

**July 29, 1988**

Defendant's Reply to Plaintiff's New Matter and Plaintiff's Opposition to Defendant's Motion to Amend filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**August 16, 1988**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 16th day of August, 1988, upon consideration of Defendant's Motion to Amend the Amended Answer and New Matter to Plaintiff's Amended Complaint and the replies filed hereto, it is hereby **ORDERED** and **DECREED** that Defendant's aforesaid Motion to Amend is **GRANTED**. Such amendment shall be filed within twenty (20) days from the date hereof."

**August 17, 1988**

Copies of Opinion and Order dated August 16, 1988 forwarded to attorney for Plaintiff and attorney for Defendant.

**August 18, 1988**

Acceptance of Service of Opinion and Order dated August 16, 1988 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 17, 1988.

**September 6, 1988**

Second Amended Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**October 11, 1988**

Defendant's Motion to Compel Discovery filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 11, 1988**

Praecipe for Entry of Appearance filed by Stephen J. Busterna, Assistant Counsel, attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 13, 1988**

Plaintiff's Interrogatories and Request for Production of Documents to Defendant, Commonwealth of Pennsylvania, Department of Transportation - First Set filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**October 14, 1988**

Plaintiff's Answer to Defendant's Motion to Compel Discovery filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**November 10, 1988**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 10th day of November, 1988, the request of the Defendant is hereby **GRANTED** and the Plaintiff is directed to either have his witness answer the question in depositions or through interrogatories."

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**November 14, 1988**

Copies of Opinion and Order dated November 10, 1988 forwarded to attorney for Plaintiff and attorney for Defendant.

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**November 15, 1988**

Acceptance of Service of Opinion and Order dated November 10, 1988 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant November 14, 1988.

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**January 23, 1989**

Notice of Service of Department's Response to Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 1, 1989**

Notice of Service of Department's Response to Plaintiff's Request for Production of Documents filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**August 16, 1989**

Hearing scheduled for November 15, 16 and 17, 1989, if necessary before the Western Panel District, to be held in Board's Courtroom No. 2, Room 707 Transportation and Safety Building, Harrisburg, Pennsylvania, commencing at 10:00 a.m.

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**October 3, 1989**

Defendant's Request for Admissions filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**CLOSED**

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Hearing held in Courtroom No.1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania, commencing at 10:00 a.m. Case completed.

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**November 16, 1989**

Stipulations of Fact executed by parties, filed at time of hearing.

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**December 22, 1989**

Testimony of hearing held November 16, 1989 filed.

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**January 4, 1990**

Copy of testimony for hearing held November 16, 1989 forwarded to attorney for Defendant.

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**January 8, 1990**

Acceptance of Service of Testimony for hearing held November 16, 1989 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 5, 1990.

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**February 2, 1990**

Plaintiff's Proposed Findings of Fact, Argument and Conclusions of Law filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**March 5, 1990**

Defendant's Proposed Findings of Fact, Argument and Conclusions of Law filed by attorney for Defendant. Receipt of same acknowledged by attorney for Defendant.

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**October 4, 1990**

Western Panel Report filed.

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**October 11, 1990**

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 11th day of October, 1990, it is hereby **ORDERED** and **ADJUDGED** that Plaintiff's Claim is **DENTED** and Defendant is permitted to retain the monies needed to correct the road condition caused by Plaintiff. **CLOSED** the agreement of both parties. Defendant, Commonwealth of Pennsylvania, Department of Transportation, is **ORDERED** to pay over to Plaintiff, Liberty Excavators, Inc., the sum of One Thousand One Hundred Forty Five Dollars and Ninety Four Cents (\$1,145.94), together with interest from August 6, 1986, which represents the difference between the amount withheld by Defendant under contract, and the actual costs incurred by Defendant in repairing the roads."

Copies forwarded to attorney for Plaintiff, Attorney for Defendant and Office of Attorney General.

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**October 18, 1990**

Acceptance of Service of Opinion and Order dated October 11, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 15, 1990.

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**October 19, 1990**

Acceptance of Service of Opinion and Order dated October 11, 1990 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 16, 1990.

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**June 14, 1991**

Letter/Praecepte filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**June 27, 1991**

The Board made the following Order: **"AND NOW**, this 27th day of June, 1991, upon receipt of Letter/Praecepte, acknowledging receipt of award, executed by John A. Gill, Esquire, on behalf of Plaintiff, Liberty Excavators, Inc., same of which is docketed with

**June 27, 1991 (cont'd)**

this Board under date of June 14, 1991, it is **ORDERED** and **DIRECTED** that said case be marked 'settled, discontinued and ended with prejudice'." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**July 1, 1991**

Acceptance of Service of Order dated June 27, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 28, 1991.

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**CLOSED**