

Docket Number: 1479

TRI-STATE ASPHALT CORPORATION

Stuart J. Moskovitz, Esquire

\*cg. of address

~~509 Stillwells Corner Road~~

Freehold, NJ 07728

819 Highway 33

Freehold, NJ 07728

VS.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

~~Kenneth L. Soble, Chief Claims Attorney~~

~~Stephen S. Stawitz, Assistant Counsel~~

Jeffrey W. Davis, Assistant Counsel

**October 29, 1990**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$1,424,701.10+.

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**November 5, 1990**

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

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**November 7, 1990**

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant November 6, 1990.

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**November 14, 1990**

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General November 13, 1990.

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**November 26, 1990**

Motion of Commonwealth of Pennsylvania, Department of Transportation to Stay Proceedings Pending Supreme Court Review filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**December 12, 1990**

Plaintiff's Reply to Motion of Commonwealth of Pennsylvania, Department of Transportation, To Stay Proceedings Pending Supreme Court Review filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**January 17, 1991**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 17th day of January, 1991, it is **ORDERED** and **DECREED** that the Motion to Stay Proceedings shall be, and is hereby, **GRANTED**. It is further **ORDERED** and **DECREED** that the Defendant, Commonwealth of Pennsylvania, Department of Transportation, shall file its Answer to the Complaint within 30 days of the issuance of an Order of the Supreme Court denying the Petition for Allowance of Appeal herein." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**January 22, 1991**

Acceptance of Service of Opinion and Order dated January 17, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 18, 1991.

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**February 7, 1991**

Acceptance of Service of Opinion and Order dated January 17, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 1, 1991.

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**June 7, 1991**

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

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**July 22, 1991**

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

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**September 19, 1991**

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

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**January 19, 1994**

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

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**May 3, 1994**

Defendant's Answers to Plaintiff's Interrogatories to Defendant - First Set filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**April 1, 1997**

Letter forwarded to parties requesting status. Response due from parties May 1, 1997.

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**February 11, 1998**

Letter forwarded to parties requesting status. Response due from parties March 11, 1998.

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**February 24, 1998**

Status letter received from attorney for Defendant advising that the parties are still in discovery.

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**March 2, 1998**

Status letter received from attorney for Plaintiff advising that the parties are in discovery.

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**October 7, 1998**

Acceptance of Service of Opinion and Order dated September 9, 1999, filed by Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 1, 1999.

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**October 26, 1998**

Status letter received from attorney for Defendant advising that the parties are in the discovery phase of litigation.

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**June 8, 1999**

Letter forwarded to parties requesting status. Response due from parties July 8, 1999.

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**August 25, 1999**

Letter forwarded to parties requesting status. Response due from parties August 27, 1999.

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**October 6, 1999**

Letter received from attorney for Plaintiff advising that the parties are in discovery.

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**June 2, 2000**

Letter forwarded to parties requesting status. Response due from parties July 3, 2000.

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**July 21, 2000**

Board forwarded 2nd letter forwarded to parties requesting status. Response due from parties August 21, 2000.

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**August 7, 2000**

Status letter received from attorney for Plaintiff advising that the parties are in discovery.

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**March 19, 2001**

Letter forwarded to parties requesting status. Response due from parties April 19, 2001.

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**May 23, 2001**

Letter forwarded to parties requesting status. Response due from parties June 25, 2001.

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**July 11, 2001**

Status letter received from attorney for Plaintiff advising that the parties are still in the discovery phase.

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**January 28, 2002**

Letter forwarded to parties requesting status. Response due February 28, 2002.

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**February 11, 2002**

Letter received from attorney for Plaintiff advising that the parties are in discovery.

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**September 6, 2002**

Letter forwarded to parties requesting status. Response due from parties October 7, 2002.

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**September 18, 2002**

Status letter received from attorney for Plaintiff advising that the parties continue in the discovery phase.

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**April 11, 2003**

Letter forwarded to parties requesting status. Response to parties May 12, 2003.

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**April 23, 2003**

Status letter received from attorney for Plaintiff advising that Plaintiff is involved at the present time with two very extremely complex multiparty litigations and hopes to be free within the next several months. Upon completion of these litigations, attorney for Plaintiff will contact attorney for Defendant to determine the best course for resolving this matter.

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**January 26, 2004**

Board forwarded letter requesting status from parties.

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**February 5, 2004**

Plaintiff filed status letter advising that the parties are determining what the next course of action would be or if a hearing will need to be set.

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**May 3, 2004**

The Board rendered the following scheduling Order. Order as follows: **'AND NOW**, this 3<sup>rd</sup> day of May, 2004, it is hereby **ORDERED** and **DECREED** as follows: 1. All depositions and discovery shall be completed by September 22, 2004; 2. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than October 1, 2004; at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7<sup>th</sup> Floor, Harrisburg, PA 17101; 4. The last day for filing pre-trial motions is October 15, 2004; and 5. This matter is set for hearing before the Board beginning on Monday, November 29, 2004, and running through Friday, December 17, 2004, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6<sup>th</sup> Floor, Harrisburg, PA 17101, commencing at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

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**May 10, 2004**

Acceptance of Service of Scheduling Order dated May 3, 2004 received from Plaintiff. Receipt of same acknowledged by Plaintiff May 7, 2004.

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**August 10, 2004**

Defendant filed Motion for Judgment of Non Pros and Supporting Brief. Copy forwarded to Plaintiff.

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**August 13, 2004**

Defendant filed Notice of Service of Defendant's First Set of Interrogatories Directed to Plaintiff.

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**September 16, 2004**

Plaintiff's Reply in Opposition to Motion for Judgment of Non Pros and Brief in Support filed. Copy forwarded to Defendant.

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**September 21, 2004**

Defendant filed Reply Brief in Support of Defendant's Motion for Entry of Judgment of Non Pros. Copy forwarded to Plaintiff.

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**September 22, 2004**

Plaintiff filed status letter advising of two inaccuracies in the Defendant's Brief in Support of Defendant's Motion for Entry of Judgment of Non Pros.

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**September 23, 2004**

Defendant's Motion for Discovery Sanctions in Support of its Motion for Entry of Judgment of Non Pros. Copy forwarded to Plaintiff.

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**September 29, 2004**

Plaintiff filed Reply in Opposition to Defendant's Motion for Discovery Sanctions. Copy forwarded to Defendant.

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**September 30, 2004**

Plaintiff filed letter requesting an extension of the Pre-trial conference scheduled for October 8, 2004 due to a conflict of scheduling.

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**October 1, 2004**

Defendant filed Pre-trial Statement.

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**October 1, 2004**

Board rendered the following Amended Scheduling Order. Order as follows: **"AND NOW**, this 1<sup>st</sup> day of October, 2004, it is hereby **ORDERED** and **DECREED** as follows: The pre-trial conference originally scheduled for Friday, October 8, 2004, at 1:00 p.m. is rescheduled. The Pre-trial conference shall be held on Friday, October 15, 2004, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7<sup>th</sup> Floor, Harrisburg, PA 17101. All other conditions of the original Scheduling Order remain the same." Copy faxed and sent U.S. Mail to Plaintiff and Defendant.

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**October 5, 2004**

Defendant filed letter outlining Plaintiff's continuing unacceptable actions in the prosecution of this case.

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**October 5, 2004**

Plaintiff filed Pre-Trial Statement via facsimile.

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**October 6, 2004**

Plaintiff filed Pre-Trial Statement via U.S. Mail.

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**October 7, 2004**

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 7th day of October, 2004, it is hereby **ORDERED, ADJUDGED** and **DECREED** by the Board of Claims of the Commonwealth of Pennsylvania that the Defendant's Motion for Entry of Judgment of Non Pros and Defendant's Motion for Discovery Sanctions in support of its Motion for Entry of Judgment of Non Pros are hereby **GRANTED**. The pre-trial conference and hearing are, accordingly, canceled. Plaintiff's Complaint is hereby **DISMISSED** with prejudice." Copy forwarded to Plaintiff and Defendant.

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**November 8, 2004**

Commonwealth Court filed Petition for Review. [2372 CD 2004]

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**November 8, 2004**

Plaintiff filed Petition for Review.

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**November 12, 2004**

Plaintiff filed copy of Docketing Statement as filed in Commonwealth Court.

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**November 19, 2004**

File transferred to Commonwealth Court.

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**June 1, 2005**

Commonwealth Court issued Opinion and Order. Order as follows: **"AND NOW**, this 1<sup>st</sup> day of June, 2005, the October 7, 2004, order of the Board of Claims, which granted the Department of Transportation's motions for entry of judgment non pros and discovery sanctions against Tri-State Corporation (Tri-State) and dismissed Tri-State's complaint with prejudice, is hereby vacated, and this case is remanded for further proceedings consistent with this opinion. Jurisdiction relinquished."

**June 3, 2005**

Commonwealth Court filed Opinion and Order. Order as follows: AND NOW, this 1<sup>st</sup> day of June 2005, the October 7, 2004, order of the Board of Claims, which granted the Department of Transportation's motions for entry of judgment non pros and discovery sanctions against Tri-State Asphalt Corporation (Tri-State) and dismissed Tri-State's complaint with prejudice, is hereby vacated, and this case is remanded for further proceedings consistent with this opinion. Jurisdiction relinquished.

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**June 10, 2005**

Board forwarded letter to Defendant requesting clarification from Defendant as to whether or not it wishes to withdraw or pursue its motion for judgment non pros.

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**June 22, 2005**

Defendant filed letter advising that they do wish to pursue their motion for judgment non pros and further requests the Board to issue a scheduling order for a hearing after August 15, 2005.

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**June 29, 2005**

Plaintiff filed letter advising requesting the Board's permission to delay filing Plaintiff's response to interrogatories until after the hearing and ruling on Defendant's renewed Motion for Non Pros.

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**July 5, 2005**

Board rendered Opinion and Order. Order as follows: **"AND NOW,** this 5<sup>th</sup> day of July, 2005, it is hereby **ORDERED** and **DECREED** as follows: 1. All prior scheduling orders in this case are hereby revoked; 2. The period for discovery in this matter and for the purpose of the pending Motion for Entry of Judgment of Non Pros shall be extended to September 30, 2005. Any additional discovery shall be accomplished within this extended period, and any motions to compel filed at least 45 days in advance of hearing; 3. Plaintiff shall not be relieved of its responsibility to respond to Defendant's currently outstanding discovery requests, but shall be granted an extension of time to July 31, 2005, in which to respond thereto; 4. Defendant shall not be relieved of its responsibility to respond to Plaintiff's currently outstanding

discovery requests, but shall be granted an extension of time to July 31, 2005, in which to respond thereto; 5. In light of the extension of time in which to respond to Defendant's currently outstanding discovery requests granted in paragraph 3 above, Defendant's Motion for Sanctions filed with this Board on September 23, 2004, is hereby denied as moot; 6. An evidentiary hearing on Defendant's Motion for Entry of Judgment of Non Pros shall be held before the Board beginning on Tuesday, October 11, 2005 and running through Wednesday, October 12, 2005, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6<sup>th</sup> Floor, Courtroom No. 1, Harrisburg, PA 17101, commencing at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

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**July 13, 2005**

Board rendered an Amending Order. Order as follows: " **AND NOW**, this 13<sup>th</sup> day of July, 2005, it is hereby **ORDERED** and **DECREED** as follows: By Board Order of July 5, 2005, an evidentiary hearing on Defendant's Motion for Entry of Judgment of Non Pros was scheduled for October 11-12, 2005. Said hearing is rescheduled and shall be held before the Board beginning on Wednesday, October 19, 2005 26, 2005 and running through Thursday, October 27, 2005, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6<sup>th</sup> Floor, Courtroom No. 1, Harrisburg, PA 17101, Commencing at 9:30 a.m. All other aspects of this Board's Order of July 5, 2005, remaining in full force and effect." Copy forwarded to Plaintiff and Defendant.

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**July 27, 2005**

Plaintiff filed letter confirming extension of time until August 8, 2005 in which to respond to Interrogatories.

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**October 18, 2005**

Plaintiff filed letter via facsimile requesting to postpone the hearing on the motion for non-pros due to a conflict of schedule for one of Plaintiff's key witnesses. Copy forwarded to Defendant.

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**October 20, 2005**

Board rendered Amending Order. Order as follows: "**AND NOW**, this 20<sup>TH</sup> day of October, 2005, it is hereby **ORDERED** and **DECREED** that, pursuant to the request of Plaintiff, Tri-State Asphalt Corporation, the evidentiary hearing on the Motion for

Entry of Judgment of Non Pros submitted by the Defendant, Commonwealth of Pennsylvania, Department of Transportation, scheduled to be held October 26 & 27, 2005, is rescheduled and shall be held on Tuesday, January 31, 2006 and running through Wednesday, February 1, 2006, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6<sup>th</sup> Floor, Courtroom No. 1, Harrisburg, PA 17101, commencing at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

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**October 27, 2005**

Plaintiff filed Acceptance of Service of Amending Order dated October 20, 2005. Receipt of same acknowledged October 22, 2005.

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**January 31, 2006**

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 9:30 AM. Case complete.

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**February 28, 2006**

Testimony of hearing held January 31, 2006 filed.

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**March 2, 2006**

Board forwarded copy of testimony of hearing held January 31, 2006 to Defendant.

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**April 26, 2006**

Defendant filed letter via facsimile advising that Plaintiff and Defendant have agreed to an extension of time until May 8, 2006 for Defendant to file their Findings of Fact, Conclusions and Brief.

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**April 26, 2006**

Board forwarded letter granting Defendant's request for an extension of time until May 8, 2006 for Defendant to file their Findings of Fact, Conclusions and Brief.

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**May 8, 2006**

Defendant filed Findings of Fact, Proposed Conclusions of Law and Arguments in Support thereof. Copy forwarded to Plaintiff.

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**June 8, 2006**

Plaintiff filed Findings of Fact, Conclusions of Law and Brief. Copy forwarded to Defendant.

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**September 13, 2006**

Board rendered Opinion and Order. Order as follows: "**AND NOW** this 13<sup>th</sup> day of September, 2006, after a hearing on Defendant's Motion for Entry of Judgment Non Pros, it is hereby **ORDERED** and **DECREED** that Defendant's Motion is **DENIED**. A future scheduling order will follow." Copy forwarded to Plaintiff, Defendant and Attorney General.

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**September 18, 2006**

Plaintiff filed Acceptance of Service of Opinion and Order dated September 13, 2006. Receipt of same acknowledged September 16, 2006.

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**September 20, 2006**

Defendant filed Acceptance of Service of Opinion and Order dated September 13, 2006. Receipt of same acknowledged September 19, 2006.

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**September 22, 2006**

Board forward letter to parties requesting a proposed scheduling order.

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**October 12, 2006**

Plaintiff filed (via facsimile) Proposed Scheduling Order. Copy forwarded to Defendant.

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**October 16, 2006**

Plaintiff filed (via U.S. Mail) Proposed Scheduling Order. Copy forwarded to Defendant.

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**October 17, 2006**

Board rendered Order. Order as follows: "**AND NOW**, this 17<sup>th</sup> day of October, 2006, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to all parties is December 18, 2006; 2.

The last day for defendant's expert report, if any, to be provided to all parties is January 17, 2007; 3. All discovery, including exchange of expert rebuttal reports shall be completed by February 16, 2007\*; 4. The last day for filing pre-trial motions is March 2, 2007\*; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than April 4, 2007 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, April 11, 2007 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Tuesday, May 29, 2007, and running through Friday, June 8, 2007, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m. \*All discovery motions shall be filed at least 30 days in advance of the close of discovery to allow for a 15 day response period and decision by the Board prior to the close of the discovery." Copy forwarded to Plaintiff and Defendant.

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**November 22, 2006**

Plaintiff filed Acceptance of Service of Scheduling Order dated October 17, 2006. Receipt of same acknowledged November 19, 2006.

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**April 3, 2007**

Plaintiff filed Pre-trial Statements. Copy forwarded to Defendant.

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**April 6, 2007**

Defendant filed Pre-trial Statements. Copy forwarded to Plaintiff.

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**April 11, 2007**

Board pre-trial conference held at 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 1:00 p.m.

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**April 12, 2007**

Board rendered Order. Order as follows: "**AND NOW**, this 12<sup>th</sup> day of April, 2007, pursuant to the foregoing and further discussion at the pre-trial conference, the Board **ORDERS** as follows: (1) The parties shall file such joint stipulations of fact as they are able to agree upon with this Board at least 10 days before the scheduled commencement of hearing in this matter, and (2) Both parties shall exchange with the other and file with this Board at least 10 days before the scheduled commencement of hearing in this matter any additional exhibits which they intend to use at hearing (including any illustrative or demonstrative exhibits) not otherwise specifically identified on Plaintiff's exhibit list submitted with the pre-trial statements.

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**April 18, 2007**

Plaintiff filed Acceptance of Service of Order dated April 12, 2007. Receipt of same acknowledged April 14, 2007.

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**May 1, 2007**

Defendant filed letter addressed to Plaintiff forwarding a copy of Defendant's Proposed Exhibits as well as a copy of two videos of the project.

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**May 4, 2007**

Defendant filed Proposed Exhibits. Copy forwarded to Plaintiff.

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**May 21, 2007**

Board rendered an Amended Scheduling Order. Order as follows: "**AND NOW**, this 21<sup>st</sup> day of May, 2007, it is hereby **ORDERED** that, at the request of the parties, the hearing set in this matter to commence on Monday, May 29, 2007, is hereby postponed. The matter is now set for hearing to begin Monday, October 29 and continue through Thursday, November 1, 2007, and to resume on Monday, November 5 and continue until Friday, November 9, 2007, or as necessary. Said hearing shall be held

at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 beginning at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

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**May 29, 2007**

Plaintiff filed Acceptance of Service of Order dated May 21, 2007. Receipt of same acknowledged May 23, 2007.

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**August 10, 2007**

Defendant filed Withdraw of Appearance of Stephen Stokwitz, Assistant Counsel on behalf of Defendant. Copy forwarded to Plaintiff.

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**August 15, 2007**

Defendant filed Praecipe for Entry of Appearance of Jeffrey W. Davis, Assistant Counsel on behalf of Defendant. Copy forwarded to Plaintiff.

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**August 31, 2007**

Board rendered Amended Scheduling Order. Order as follows: "**AND NOW**, this 31st day of August, 2007, it is hereby **ORDERED** that a pre-trial conference in this matter will be held on September 24, 2007 at 1:00 p.m. at 200 North Third Street, Fulton Building, 7<sup>th</sup> Floor, Harrisburg, PA 17101. Defendant shall revise its pre-trial statement to conform to Pennsylvania Board of Claims Rule 501(b) and shall file said revised statement with the Board on or before September 24, 2007. Plaintiff shall file any revisions it needs to make to its pre-trial statement on or before September 24, 2007 as well. Hearing in this matter shall remain as scheduled pursuant to this Board's Amended Scheduling Order of May 21, 2007." Copy forwarded to Plaintiff and Defendant.

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**September 20, 2007**

Defendant filed letter advising that parties are engaged in discussions in an effort to settle the case and request the pre-trial conference be postponed for one week. Copy forwarded to Plaintiff.

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**September 21, 2007**

Board rendered Order. Order as follows: **"AND NOW**, this 21st day of September, 2007, it is hereby **ORDERED** that the pre-trial conference scheduled in this matter for September 24, 2007, will be continued until October 1, 2007 at 1:00 p.m. at 200 North Third Street, Fulton Building, 7<sup>th</sup> Floor, Harrisburg, PA 17101. Hearing in this matter shall remain as scheduled pursuant to this Board's Amended Scheduling Order of May 21, 2007." Copy forwarded to Plaintiff and Defendant.

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**September 24, 2007**

Plaintiff transmitted letter confirming pre-trial conference on October 1, 2007 and advising that it will be attending via telephone. Copy forwarded to Defendant.

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**September 27, 2007**

Plaintiff filed letter confirming pre-trial conference on October 1, 2007 and advising that it will be attending via telephone. Copy forwarded to Defendant.

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**October 1, 2007**

Defendant filed Pre-Trial Statement. Copy forwarded to Plaintiff.

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**October 1, 2007**

Board pre-trial conference held at 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 1:00 p.m.

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**October 1, 2007**

Defendant filed Revised Pre-Trial Statement. Copy forwarded to Plaintiff.

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**October 15, 2007**

Plaintiff transmitted letter advising parties have reached a settlement and requests the hearing be stay. Copy forwarded to Defendant.

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**October 15, 2007**

Plaintiff filed letter advising parties have reached a settlement and requests the hearing be stay. Copy forwarded Defendant.

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**October 16, 2007**

Board rendered Order. Order as follows: "**AND NOW**, this 16<sup>th</sup> day of October, 2007, pursuant to a letter from Plaintiff's counsel filed with this Board on October 15, 2007, advising that the parties have settled this matter and requesting a stay be placed on this case, it is hereby **ORDERED** and **DECREED** that the hearing scheduled for October 29 through November 1, 2007, and November 5 through November 9, 2007, is canceled and the case stayed until further action by the Board." Copy forwarded to Plaintiff and Defendant.

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**October 24, 2008**

Board issued letter to Plaintiff advising that a Praecipe be filed in order to close out case.

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**November 5, 2008**

Plaintiff filed Praecipe to Mark Settled and Discontinued.

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**November 7, 2008**

Board rendered an Order. Order as follows: "**AND NOW**, this 7<sup>th</sup> day of November, 2008, upon receipt of a praecipe, executed by Stuart J. Moskovitz, Esquire, on behalf of Plaintiff, Tri-State Asphalt Corporation, requesting that the Board mark the above-captioned matter satisfied, discontinued and ended with prejudice, docketed with this Board under date of November 5, 2008, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked satisfied, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.