

Docket Number: 1593

DICK ENTERPRISES, INC.

Kenneth W. Lee, Esquire

VS.

**CLOSED**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

~~Kenneth L. Sable, Chief Claims Attorney  
John J. Buchy, Assistant Counsel~~

**December 9, 1991**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$78,054.16+.

**December 11, 1991**

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

**February 3, 1992**

Answer filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**February 10, 1992**

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

**CLOSED**

**February 11, 1992**

Motion to Convene the Western Panel of the Board of Claims filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**February 10, 1992**

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

**March 6, 1992**

Plaintiff's Motion for Judgment on the Pleadings or Alternatively Preliminary Objections in the Nature of a Motion to Strike and a Motion for More Specific Pleading filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**March 6, 1992**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 6th day of March, 1992, it is **ORDERED** and **DECREED** that the Plaintiff's Motion to Convene the Western Panel of the Board of Claims is hereby **DENIED**. The parties hereto are **DIRECTED** to complete all discovery within sixty (60) days. Thereafter, within forty-five (45) days of the conclusion of discovery, the Board of Claims will then review the matter and advise the parties of whether or not the case shall be heard by a Panel or the full Board, and the location thereof." Copy forwarded to attorney for Plaintiff

and attorney for Defendant.

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**March 23, 1992**

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

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**March 26, 1992**

Defendant's Request for an Oral Hearing filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**April 3, 1992**

Plaintiff's Reply to Defendant's Request for an Oral Hearing filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**April 3, 1992**

Defendant's response to Plaintiff's first set of continuing Interrogatories to Defendant filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**April 8, 1992**

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

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**April 17, 1992**

Defendant's Reply and Renewed Petition for an Oral Hearing filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**May 12, 1992**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 12th day of May, 1992, the Plaintiff's Motion for Judgment on the Pleadings or Alternatively Preliminary Objections in the Nature of a Motion to Strike and a Motion for More Specific Pleadings is **DENIED**. The Defendant's Request for an Oral Hearing is **DENIED**."

This case is to proceed with dispatch, evidencing mutual courtesy in pursuing the discovery necessary to place both parties in the position that, at the time of a hearing, they can set forth their clients' positions to the best of their ability." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

**October 19, 1995**

Motion to Consolidate filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 18, 1995**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 18th day of December, 1995, it is **ORDERED** and **DECREED** that the above-referenced two (2) cases be consolidated for trial by the Board of Claims." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**February 15, 1996**

Department's Second Set of Interrogatories Directed to Plaintiff, Desk Enterprises, Inc. filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff, attorney for Defendant.

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**CLOSED**

**February 15, 1996**

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

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**March 20, 1996**

Stipulation for Protective Order, executed by parties, filed by attorney for Plaintiff.

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**April 29, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**April 30, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**May 1, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**May 2, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**May 3, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**May 6, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**May 7, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**CLOSED**

**May 10, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**May 11, 1996**

Hearing held this date in Board's Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m. Case completed.

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**June 14, 1996**

Testimony of hearing held April 29 & 30, 1996, and May 1 & 2, 1996, filed.

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**June 18, 1996**

Testimony of hearing held May 3, 1996, filed.

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**June 25, 1996**

Testimony of hearing held May 6, 1996, filed.

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**June 26, 1996**

Copies of testimony of hearing held April 29 & 30, 1996; May 1, 2 & 3, 1996; and May 6, 1996, forwarded to attorney for Defendant.

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**July 25, 1996**

Acceptance of Service of testimony of hearing held April 29 and 30, 1996; May 1, 2 and 3, 1996; and May 6, 1996, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 22, 1996.

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**July 25, 1996**

Acceptance of Service of testimony of hearing held May 7, 8 and 9, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 23, 1996.

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**CLOSED**

August 15, 1996  
Letter received from attorney for Plaintiff, via fax, requesting an extension of time for both parties to file their Findings of Fact.  
August 19, 1996

Letter received from attorney for Plaintiff, via mail, requesting an extension of time for both parties to file their Findings of Fact.

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**August 20, 1996**

Letter forwarded to attorney for Plaintiff granting request for an extension of time for both parties to file their Findings of Fact. Plaintiff's Findings of Fact due 9/6/96. Defendant's Findings of Fact due 10/22/96.

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**March 6, 1997**

Motion to Correct the Record filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.  
**Response due from Defendant 4/10/97.**

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**March 13, 1997**

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

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**March 17, 1997**

Plaintiff's Motion for Reconsideration of Denial of Motion to Amend Pleadings and Brief in Support thereof filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.  
**Response due from Defendant 4/10/97.**

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**March 31, 1997**

Letter received from attorney for Defendant requesting an extension of time until May 15, 1997 to file a response to Plaintiff's Motion to Correct the Record; response and brief to Plaintiff's Motion for Reconsideration of Denial of Motion to Amend Pleadings; and Defendant's Findings of Fact, Conclusions of Law, and Brief in Support.

**Same granted 4/22/97.**

**Response to Plaintiff's Motion to Correct the Record due 5/15/97.**

**Response and Brief to Plaintiff's Motion for Reconsideration of Denial of Motion to Amend Pleadings due 5/15/97.**

**Defendant's Findings of Facts, Conclusions of Law, and Brief due 5/15/97.**

**CLOSED**

**May 15, 1997**

Letter received from attorney for Defendant requesting an extension of time until May 31, 1997 to file a response to Plaintiff's Motion to Correct the Record; response and brief to Plaintiff's Motion for Reconsideration of Denial of Motion to Amend Pleadings; and Defendant's Findings of Fact, Conclusions of Law, and Brief in Support.

**Same granted 5/22/97.**

**Response to Plaintiff's Motion to Correct the Record due 5/31/97.**

**Response and Brief to Plaintiff's Motion for Reconsideration of Denial of Motion to Amend Pleadings due 5/31/97.**

**Defendant's Findings of Fact, Conclusions of Law, and Brief due 5/31/97.**

**June 9, 1997**

Department's Proposed Findings of Fact, Conclusions of Law, and Brief in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**June 17, 1997**

Department's Answer to Plaintiff's Motion to Correct Record filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**June 17, 1997**

Department's Motion to Correct Record filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**June 24, 1997**

Stipulation of the parties filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**June 27, 1997**

Stipulation of the parties signed by Judge David C. Clipper, this date. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**July 7, 1997**

Acceptance of Service of Stipulation of the Parties received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 30, 1997.

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**CLOSED**

**July 24, 1997**

Plaintiff's Answer to Defendant's Motion to Correct the Record and Plaintiff's Reply to Defendant's Answer to Plaintiff's Motion to Correct Record filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**July 24, 1997**

Plaintiff's Reply Brief to Defendant's Brief in Support of Defendant's Proposed Findings of Facts and Conclusions of Law filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 30, 1997**

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 30th day of December, 1997, the Board finds in favor of the Plaintiff, Dick Enterprises, Inc., and against the Defendant, Commonwealth of Pennsylvania, Department of Transportation, in the amount of One Hundred Four Thousand Five Hundred Seventy-Eight Dollars and Eighty Cents (\$104,578.80) on its claim under Docket No. 1527 and six percent (6%) interest from April 11, 1991, the date of commencement of this action as filed with the Board of Claims and in favor of Defendant and against Plaintiff on the claim filed under Docket No. 1593 filed with the Board of Claims. Upon receipt of said award, Plaintiff shall forthwith file with the Board of Claims a Praecipe that the case be marked settled, discontinued and ended

with prejudice. Each party to bear its own costs and attorneys' fees." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**January 7, 1998**

Acceptance of Service of Opinion and Order dated December 30, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 2, 1998.

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**January 12, 1998**

Plaintiff's Motion for Post-Trial Relief and Brief in Support thereof filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**CLOSED**

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Department's Motion for Post-Trial Relief and Brief in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**January 30, 1998**

Petition for Review as filed in Commonwealth Court, filed by attorney for Plaintiff. [No. 308 C.D. 1998]

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**February 5, 1998**

Petition for Review received from Commonwealth Court. [No. 308 C.D. 1998]

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**February 9, 1998**

Cross Petition for Review, as filed in Commonwealth Court, filed by attorney for Defendant. [No. 412 C.D. 1998]

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**February 12, 1998**

Cross Petition for Review received from Commonwealth Court. [No. 412 C.D. 1998]

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**February 13, 1998**

Petitioner's Motion for Declaratory Relief and Brief in Support thereof, as filed in Commonwealth Court, filed by attorney for Plaintiff.

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**February 13, 1998**

Letter received from attorney for Defendant requesting a two-week extension of time to file Defendant's Reply and Brief in response to Plaintiff's Motion for Post-Trial Relief.

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**February 17, 1998**

Praecipe to Enter Appearance on Behalf of Dick Enterprises, Inc., as filed in Commonwealth Court, filed by attorney for Plaintiff.

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**February 17, 1998**

Motion to Consolidate, as filed in Commonwealth Court, filed by attorney for Plaintiff.

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**CLOSED**

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The Board made the following Order: "AND NOW, this 18th day of February, 1998, it is **ORDERED** and **DECREED** that a stay Order is entered as to all proceedings concerning the Motions for Post-Trial Relief and further that the requirement that reply briefs be filed by either party is continued indefinitely pending a decision by Commonwealth Court on the Motion for Declaratory Relief filed by the Plaintiff, Dick Enterprises, Inc." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**February 20, 1998**

Answer to Petitioner's Motion for Declaratory Relief and Brief in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 23, 1998**

Copy of Order received from Commonwealth Court. Order as follows: "NOW, February 18, 1998, upon consideration of the motion to consolidate, filed by Dick Enterprises, Inc., the motion is granted and the above petitions for review are hereby consolidated."

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**February 24, 1998**

Answer to Motion to Stay filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 24, 1998**

Acceptance of Service of Order dated February 18, 1998, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 19, 1998.

**February 27, 1998**

Acceptance of Service of Order dated February 18, 1998, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 20, 1998.

**March 3, 1998**

Reply Brief of Dick Enterprises, Inc., to Respondent's Brief in Response to Petitioner's Motion for Declaratory Relief as filed in Commonwealth Court, filed by attorney for Plaintiff.

**March 11, 1998**

File transmitted to Commonwealth Court.

**March 17, 1998**

Copy of Order received from Commonwealth Court. Order as follows: "NOW, March 13, 1998, upon consideration of petitioner's motion for declaratory relief, in No. 308 C.D. 1998, the brief in support thereof, the respondent's brief in opposition and the reply brief, and it appearing that such an ancillary motion in this appellate jurisdiction matter is not envisioned by the Rules of Appellate Procedure, said motion for declaratory relief is denied. Upon consideration of the motion to stay filed by Dick Enterprises, Inc. and the answer thereto, said motion to stay is denied to the extent that it is requesting an advisory opinion from this court and is granted to the extent that this court shall take no further action on this matter until May 13, 1998, or until such time as the Board of Claims rules on the parties' post-trial motions, whichever is earlier. On May 13, 1998, the parties shall file a joint status report concerning the Board of Claims' disposition of the post-trial motions."

**May 6, 1998**

The Board made the following Order: "AND NOW, this 6th day of May, 1998, upon consideration of Plaintiff's, Dick Enterprises, Inc., Motion for Post-Trial Relief, the Findings of Fact, Conclusions of Law, and Opinion and Order of the Board are hereby affirmed." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

**May 6, 1998**

The Board made the following Order: "AND NOW, this 6th day of May, 1998, upon consideration of Defendant's, Commonwealth of Pennsylvania, Department of Transportation, Motion for Post-Trial Relief, the Findings of Fact, Conclusions of Law, and Opinion and Order of the Board are hereby affirmed." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**May 28, 1998**

Petition for Review (relative to Plaintiff's Motion for Post Trial Relief) as filed in Commonwealth Court filed by attorney for Plaintiff.

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**June 3, 1998**

Petition for Review, as filed in Commonwealth Court, filed by attorney for Plaintiff [No. 1505 C.D. 1998]

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**June 3, 1998**

Petition for Review received from Commonwealth Court [No. 1454 C.D. 1998]

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**June 5, 1998**

Petition for Review received from Commonwealth Court. [No. 1505 C.D. 1998]

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**June 10, 1998**

Motion to Consolidated, as filed in Commonwealth Court, filed by attorney for Plaintiff.

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**June 10, 1998**

Praecepte to Enter Appearance on Behalf of Dick Enterprises, Inc., as filed in Commonwealth Court, filed by attorney for Plaintiff.

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**June 15, 1998**

Motion to Quash and Brief in Support thereof, as filed in Commonwealth Court, filed by attorney for Plaintiff.

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**June 15, 1998**

Courtesy copy of Order received from Commonwealth Court. Order as follows: "NOW, June 11, 1998, upon consideration of the motion to consolidate, filed by Dick Enterprises, Inc., the motion is granted and the above petitions for review are hereby consolidated."

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**July 1, 1998**

Courtesy copy of Motion of Dick Enterprises, Inc., to Quash Appeal filed at Docket No. 1505 C.D. 1998, as filed in Commonwealth Court, received from attorney for Plaintiff.

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**July 1, 1998**

Courtesy copy of Amended Motion for Declaratory Relief of Dick Enterprises, Inc., as filed in Commonwealth Court, received from attorney for Plaintiff.

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**July 1, 1998**

Courtesy copy of Brief of Dick Enterprises, Inc. in Response to Motion to Quash and Brief in Support thereof of the Commonwealth of Pennsylvania, as filed in Commonwealth Court, received from attorney for Plaintiff.

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**July 1, 1998**

Copy of Order received from Commonwealth Court. Order as follows: "Now, July 1, 1998, it is hereby ordered: 1. The Chief Clerk is directed to list the Department of Transportation's motion to quash in No. 1454 C.D. 1998 and Dick Enterprises' motion to quash in No. 1505 C.D. 1998 with the merits of the petitions for review. 2. The parties are directed to file 15 copies of their briefs in support of and in opposition to the motions to quash. 3. Dick Enterprises' amended motion for declaratory relief is dismissed in light to these cases being in this court's appellate jurisdiction."

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**July 10, 1998**

Courtesy copy of Petitioner's Brief in Opposition to Motion to Quash, as filed in Commonwealth Court, received from attorney for Defendant.

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**August 14, 1998**

Courtesy copy of Notice to Proceed Pursuant to PA. R.A.P. 2154(b) filed by attorney for Plaintiff.

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**October 9, 1998**

Copy of Order received from Commonwealth Court. Order as follows: "Now, October 7, 1998, upon consideration of Respondent, Comm. of PA, Dept. of Transportation's request for extension of time to serve advanced form briefs, and it appearing that said request is not opposed, said request is granted and Respondent, Comm. of PA, Dept. of Transportation's advanced form briefs shall be served on or before November 13, 1998. No further extension will be granted absent extraordinary circumstances."

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**October 29, 1998**

Copy of Order received from Commonwealth Court. Order as follows:  
"AND NOW, this 27th day of October, 1998, the application for permission to file brief in excess of fifty pages is **DENIED.**"

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**April 22, 1999**

Copy of Notice of argument, scheduled for Monday, June 14, 1999 at 1:00 p.m. received from Commonwealth Court.

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**January 24, 2000**

Copy of Opinion and Order received from Commonwealth Court. Order as follows: "**NOW**, January 21, 2000, the order of the Board of Claims involving the appeals docketed at Nos. 1454 and 1505 C.D. 1998 is affirmed, and the appeal docketed at Nos. 338 and 412 C.D. 1998 are hereby dismissed."

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**March 30, 2000**

Copy of Order received from Commonwealth Court. Order as follows: "NOW, March 28, 2000, having considered the application for reargument filed by respondent, Commonwealth of Pennsylvania, Department of Transportation, and petitioner's answer, the application is denied."

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**March 30, 2000**

Copy of Order received from Commonwealth Court. Order as follows: "NOW, March 28, 2000, having considered the application for reargument filed by petitioner, Dick Enterprises, and respondent's answer, the application is denied."

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**October 10, 2000**

Petition for Allowance of Appeal from Commonwealth Court Denied. (Supreme Court's Docket No. 285 W.D. Alloc. Dkt. 2000 & No. 286 W.D. Alloc. Dkt. 2000)

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**January 3, 2001**

File returned from Commonwealth Court.

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**January 29, 2001**

Praecipe to Satisfy Award and Judgment filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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