

Docket Number: 3501A

PENN TRANSPORTATION SERVICES, INC.

Jeffrey S. Proden, Esquire

VS.

~~P.J. DICK, INC.~~

~~Jesse H. Sweet, Esquire~~
~~Mark F. Nowak, Esquire~~

AND

GEOMECHANICS, INC.

Mark E. Ramsier, Esquire

November 16, 2005

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 16th day of November, 2005, it is hereby **ORDERED** and **DECREED** that the case of Limbach Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc. is severed from the third party case of Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc. The case of Limbach Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc. will retain the docket no. 3501, and the case of Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc. will be assigned docket no. 3501A. It is further **ORDERED** that the stay with respect to the case of Limbach Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc., docket no. 3501, is hereby lifted and vacated. The stay with respect to Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc., docket no. 3501A, is maintained in full force and effect." Copy forwarded to all parties of record.

AS FILED IN DOCKET NO. 3501 (PRIOR TO SEVERENCE)

October 31, 2003

Additional Defendant filed Additional Defendant's Motion for Permission to Join P.J. Dick, Inc., and Geomechanics, Inc., as Additional Defendants in Docket 3501, as well as Brief in Support.

December 1, 2003

Defendant filed Commonwealth's Reply to Additional Defendant Penn Transportation Services, Inc.'s Motion for Permission to Join P.J. Dick and Geomechanics as Additional Defendants and Brief in Support.

January 15, 2004

Board rendered an Opinion and Order. Order as follows: **AAND NOW**, this 15th day of January, 2004, the Motion of Penn Transportation, Inc. For Permission to Join P.J. Dick, Inc. and GeoMechanics, Inc. As Additional Defendants is **GRANTED**. Penn Transportation, Inc., shall be allowed twenty (20) days from the exit date of this Order to file its statements of claim. Copy forwarded to all parties of record.

January 29, 2004

Acceptance of Service of Opinion and Order dated January 15, 2004, received from attorney for Additional Defendant. Receipt of same acknowledged January 21, 2004

February 6, 2004

Additional Defendant (Penn Transportation Services, Inc.) filed a Complaint Against Additional Defendants P.J. Dick, Inc., and GeoMechanics, Inc.

February 11, 2004

Board issued Acknowledged letter and forwarded Complaint Against Additional Defendants to P.J. Dick, Inc., and GeoMechanics, Inc. to Chief Deputy Attorney General.

February 19, 2004

Chief Deputy Attorney General filed Acceptance of Service of Complaint Against Additional Defendants, P. J. Dick, Inc. And GeoMechanics, Inc. Receipt of same accepted February 12, 2004.

March 1, 2004

Dick, Inc.'s Preliminary Objections and Brief in Support of Preliminary Objections filed.

March 3, 2004

Penn filed a letter advising that they are opposing the Commonwealth's request to amend the Board's Order of January 15, 2004, as well as, the fact a supporting brief was not attached with the application, and it was not filed in a timely manner of thirty (30) days as required by the rules established by the Board. Penn intends to submit a formal response and brief in opposition to same.

March 5, 2004

GeoMechanics filed letter requesting an extension of time in which to file their responsive pleading to the Complaint to Join Additional Defendants.

March 12, 2004

Board forwarded letter to (GeoMechanics Inc.) granting them an extension of time to file a responsive pleading to the Complaint to Join Additional Defendants. Copy forwarded to Plaintiff, Defendant and other Additional Defendant (Penn).

March 16, 2004

Board rendered an Opinion and Order. Order as follows: **AND NOW**, this 15th day of January, 2004, the Motion of Penn Transportation Services, Inc. for Permission to Join P.J. Dick, Inc. and GeoMechanics, Inc. as Additional Defendants is **GRANTED**. Penn Transportation Services, Inc. shall be allowed twenty (20) days from the exit date of this Order to file its Statement of Claim. However, it is the opinion of the Board that this Order involves a controlling question of law as to which there is the substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter. Therefore, immediate appeal to the Commonwealth Court is hereby permitted. This Amended Order is entered this 16th day of March, 2004.

March 22, 2004

GeoMechanics filed Acceptance of Service of Opinion and Order. Receipt of same acknowledged March 18, 2004.

March 29, 2004

Penn filed Answer to Dick's Preliminary Objections and Brief in Support.

April 2, 2004

P.J. Dick Reply to Penn's Opposition to Preliminary Objections.

April 6, 2004

GeoMechanics, Inc.'s Preliminary Objections and Brief in Support of Preliminary Objections.

May 3, 2004

Penn Transportation Services= Inc., Brief in Opposition to Commonwealth's Petition for Permission to Appeal.

May 10, 2004

Penn Answer to GeoMechanics, Preliminary Objections and Brief in Support.

July 15, 2004

Commonwealth Court faxed copy of Order. Order as follows: ANOW, May 21, 2004, upon consideration of petitioner's petitions for permission to appeal in these three cases and Penn Transportation's brief in opposition thereto, said petitions are granted and the appeals are allowed from the orders entered by the Board of Claims at Docket Nos. 3501, 3568 and 3630; the issue in these cases shall be restricted to the sole issue set forth in petitioner's petitions for permission to appeal concerning whether a contractor may join the construction manager as an additional defendant in these cases. The Chief Clerk is directed to list oral argument on the merits of these matters on the October 2004 argument list in Pittsburgh. The Board of Claims shall certify the record in these matters to this Court on or before June 30, 2004. Petitioner shall file and serve its brief (15 copies) and reproduced record (5 copies) on or before August 10, 2004. Respondents shall file and serve their briefs (15 copies) on or before September 10, 2004. Any reply brief (15 copies) shall be filed and served no later than September 22, 2004. All proceedings in these matters before the Board of Claims are stayed pending resolution of the instant appeals. In addition to mailing copies of this Order to counsel of record, the Chief Clerk shall mail a copy of same to the Chief Administrative Judge of the Board of Claims. The above petitions for review are consolidated.@"

July 16, 2004

Board forwarded file to Commonwealth Court.

July 16, 2004

Commonwealth Court rendered Order. Order as follows: ANow, July 14, 2004, it appearing that the above-captioned Petition for Review was filed on April 15, 2004, and that a notice to certify the record was sent on May 21, 2004, and that the record has not be certified, it is hereby ordered that the Board of Claims shall certify the record to this Court within twenty (20) days of the date of this Order.@"

December 6, 2004

Commonwealth Court rendered Opinion and Order. Order as follows: "AND NOW, this 6th day of December, 2004, the orders of the Board of Claims at Docket Nos. 3501, 3568 and 3630 are hereby reversed. The case is remanded for further proceedings in accordance with this opinion. Jurisdiction relinquished."

January 6, 2005

Penn Transportation filed copy of Petition for Allowance of Appeal as filed in Supreme Court.

January 7, 2005

Supreme Court's Notice of Petition for Allowance of Appeal filed January 4, 2005.

July 11, 2005

Board forwarded letter to parties advising that the Board wishes to schedule a conference.

July 15, 2005

Board rendered an Order. Order as follows: "**AND NOW**, this 15th day of July, 2005, in order to expedite disposition of the multiple claims arising out of the construction of the Fayette State Correctional Institution, it is **ORDERED** that a status conference shall be held on July 29, 2005, at 200 North Third Street, Suite 700, Harrisburg, Pennsylvania 17101 commencing at 10:00 a.m. Any party may participate by teleconference provided that a party wishing so to participate contacts the Board at least five (5) days prior to the conference and places the teleconference call as the Board directs." Copy forwarded to all parties of record.

July 21, 2005

P.J. Dick filed Acceptance of Service of Order dated July 15, 2005. Receipt of same acknowledged July 18, 2005.

July 21, 2005

P.J. Dick filed a letter advising that P.J. Dick would like to attend the status conference by telephone.

July 22, 2005

GeoMechanics filed Acceptance of Service of Order dated July 15, 2005. Receipt of same acknowledged July 18, 2005.

July 22, 2005

Penn Transportation filed Acceptance of Service of Order dated July 15, 2005. Receipt of same acknowledged July 19, 2005.

July 22, 2005

GeoMechanics filed a letter advising that Board that GeoMechanics would like to participate by teleconference for the status conference of July 29, 2005.

July 28, 2005

GeoMechanics filed notice that GeoMechanics would be attending the July 29, 2005 status conference by telephone.

August 8, 2005

Supreme Court rendered Order. Order as follows: "**AND NOW**, this 4th day of August 2005, we hereby **GRANT** the Petition for Allowance of Appeal.

August 18, 2005

P.J. Dick filed letter (via fax) with P.J. Dick's comments regarding case management and scheduling.

August 18, 2005

GeoMechanics filed letter with GeoMechanics' comments regarding case management and scheduling.

August 19, 2005

Penn Transportation filed letter with Penn Transportation's comments regarding case management and scheduling.

August 22, 2005

P.J. Dick filed letter (via U.S. mail) with P.J. Dick's comments regarding case management and scheduling.

October 7, 2005

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 7th day of October, 2005, proceedings in this case are hereby **STAYED** until such time as a ruling has been handed down from the Pennsylvania Supreme Court in the case of Department of General Services vs. Limbach Company and Penn Transportation Services, Inc. Docket No. 5 WAL 2005." Copy forwarded to all parties of record.

October 13, 2005

P.J. Dick filed Acceptance of Service of Opinion and Order dated October 7, 2005. Receipt of same acknowledged October 11, 2005.

October 14, 2005

Geomechanics filed Acceptance of Service of Opinion and Order dated October 7, 2005. Receipt of same acknowledged October 11, 2005.

October 26, 2005

Penn Transportation filed Acceptance of Service of Opinion and Order dated October 7, 2005. Receipt of same acknowledged October 18, 2005.

November 16, 2005

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 16th day of November, 2005, for the reasons stated above, the current consolidation of cases under Docket No. 3464 will stand as is, and the Board will not consolidate further the above-captioned cases either for the purpose of discovery or hearing, nor will it bifurcate hearings for the purpose of liability and damages. We will reserve the decision on whether or not to further consolidate one or more of these cases for the purpose of judgment for the reasons stated, and may reconsider same at a later date upon motion of one or more of the parties. Finally, it is **ORDERED** and **DECREED** that the following unified discovery schedule and status conference is set for each of the above-captioned cases: Last day for plaintiffs to provide expert reports to defendant and to file same with the Board - June 30, 2006; Last day for defendant to provide its expert reports to plaintiffs and additional defendants and to file same with the Board - August 15, 2006; Last day for any/all expert rebuttal reports by any party to be exchanged and filed with the Board - September 15, 2006; Completion of all depositions and

other discovery - October 15, 2006; Status conference for all cases in Board of Claims' Courtroom No. 1 beginning at 1:00 p.m. - October 25, 2006." Copy forwarded to all parties of record.

November 16, 2005

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 16th day of November, 2005, it is hereby **ORDERED** and **DECREED** that the case of Limbach Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc. is severed from the third party case of Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc. The case of Limbach Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc. will retain the docket no. 3501, and the case of Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc. will be assigned docket no. 3501A. It is further **ORDERED** that the stay with respect to the case of Limbach Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc., docket no. 3501, is hereby lifted and vacated. The stay with respect to Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc., docket no. 3501A, is maintained in full force and effect." Copy forwarded to all parties of record.

AS FILED IN DOCKET NO. 3630A (AFTER SEVERENCE)

November 21, 2005

P.J. Dick filed Acceptance of Service of Opinion and Order dated November 16, 2005. Receipt of same acknowledged November 17, 2005.

November 23, 2005

P.J. Dick, Inc. filed Acceptance of Service of Opinion and Order dated November 16, 2005. Receipt of same acknowledged November 21, 2005.

December 1, 2005

Penn Transportation filed Acceptance of Service of Opinion and Order dated November 16, 2005. Receipt of same acknowledged November 29, 2005.

December 5, 2005

Penn Transportation filed Acceptance of Service of Opinion and Order dated November 16, 2005. Receipt of same acknowledged November 18, 2005.

December 21, 2005

Geomechanics filed Acceptance of Service of Opinion and Order dated November 16, 2005. Receipt of same acknowledged November 21, 2005.

March 31, 2006

Supreme Court rendered and Opinion and Order. Order as follows: "The Order of the Commonwealth Court is affirmed."

July 19, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW** this 19th day of July, 2006, it is hereby **ORDERED** and **DECREED** that the stay with respect to the case of Penn Transportation Services, Inc. v. P.J. Dick, Inc. and GeoMechanics, Inc., Docket No. 3501A is hereby **LIFTED** and **VACATED**." Copy forwarded to all parties of record.

July 19, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 19th day of July, 2006, it is **ORDERED** and **DECREED** that because the joinder of additional defendant, P.J. Dick has been reversed and it is no longer a party to this lawsuit, the preliminary objections of P.J. Dick are **DISMISSED** as moot. It is further **ORDERED** and **DECREED** that the preliminary objections filed by GeoMechanics to Penn Transportation's negligence and negligent misrepresentation claims are **SUSTAINED** because the Board does not have subject matter jurisdiction over these claims as pleaded. It is further **ORDERED** and **DECREED** that GeoMechanics' preliminary objections to Penn Transportation's claim for indemnification and attorney's fees are also **SUSTAINED**. Penn Transportation is **GRANTED** twenty days (20) leave from the exit date of this order to file an amended claim against GeoMechanics." Copy forwarded to all parties of record.

July 24, 2006

P.J. Dick filed Acceptance of Service of Opinion and Order dated July 19, 2006. Receipt of same acknowledged July 21, 2006.

July 24, 2006

P.J. Dick filed Acceptance of Service of Opinion and Order dated July 19, 2006. Receipt of same acknowledged July 21, 2006.

July 27, 2006

GeoMechanics filed Acceptance of Service of Opinion and Order dated July 19, 2006. Receipt of same acknowledged July 21, 2006.

July 27, 2006

GeoMechanics filed Acceptance of Service of Opinion and Order dated July 19, 2006. Receipt of same acknowledged July 21, 2006.

August 7, 2006

Penn Transportation filed Acceptance of Service of Opinion and Order dated July 19, 2006. Receipt of same acknowledged August 2, 2006.

August 7, 2006

Penn Transportation filed Acceptance of Service of Opinion and Order dated July 19, 2006. Receipt of same acknowledged August 2, 2006.

August 8, 2006

Penn Transportation filed First Amended Complaint Against Additional Defendant GeoMechanics, Inc. and proof of mailing. Amount of claim: unknown.

August 9, 2006

Board issued Acknowledgment letter and forwarded a copy of the claim to Attorney General.

August 11, 2006

Penn Transportation filed Certificate of Service of Amended Complaint against Additional Defendant GeoMechanics, Inc.

August 16, 2006

Attorney General filed Acknowledgment of Amended Complaint form. Receipt of same acknowledged August 15, 2006.

September 6, 2006

Defendant filed Preliminary Objections to Penn Transportation's First Amended Complaint Against Additional Defendant GeoMechanics, Inc. and Brief in Support. [06A101006D]

October 6, 2006

Penn Transportation filed Answer to GeoMechanics' Preliminary Objections and Brief in Support.

December 21, 2006

Board forwarded letter to parties requesting that Penn Transportation file an amendment to their claims and attach a copy complete copy of the Penn Transportation - DGS contract.

January 19, 2007

Penn Transportation filed an Exhibit Amendment to the First Amended Complaint against Additional Defendant GeoMechanics, Inc.

January 31, 2007

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 31st day of January, 2007, it is **ORDERED** and **DECREED** that preliminary objections filed by GeoMechanics, Inc. to Penn Transportation Services, Inc.'s claims of contractual indemnity and/or common law indemnity against GeoMechanics are **SUSTAINED**, and the indemnity claims asserted against GeoMechanics, Inc. are **DISMISSED**. The Board further **ORDERS** and **DECREES** that the breach of contract asserted against GeoMechanics, Inc. shall proceed. Finally, the Board **ORDERS** and **DECREES** that preliminary objections to Penn Transportation Services, Inc.'s claim of third party beneficiary status to DGS or Limbach is **SUSTAINED**. Penn

Transportation is granted 20 days from the exit date of this Order to amend the first amended complaint if it can establish by documentation that the General Conditions provisions noted above are not incorporated into the Penn Transportation - GeoMechanics contract and that third party beneficiaries were intended." Copy forwarded to Penn Transportation and GeoMechanics.

February 7, 2007

Penn Transportation filed Acceptance of Service of Opinion and Order dated January 31, 2007. Receipt of same acknowledged February 2, 2007.

February 15, 2007

Penn Transportation filed Acceptance of Service of Opinion and Order dated January 31, 2007. Receipt of same acknowledged February 7, 2007.

February 21, 2007

Penn Transportation filed Second Amended Complaint against Additional Defendant GeoMechanics.

February 28, 2007

Attorney General filed acknowledgment of service of Second Amended Complaint. Receipt of same acknowledged February 26, 2007.

March 21, 2007

GeoMechanics filed preliminary objections and brief in support. [06A042007D]

April 20, 2007

Penn Transportation filed answer to GeoMechanic's preliminary objections and brief in support.

May 23, 2007

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 23rd day of May, 2007, it is **ORDERED** and **DECREED** that the preliminary objections filed by GeoMechanics to Penn Transportation's claim of contractual indemnity and/or common law

indemnity against GeoMechanics are **SUSTAINED**, and the indemnity claims asserted against GeoMechanics are **DISMISSED** with prejudice. The Board further **ORDERS** and **DECREEES** that the preliminary objections filed by GeoMechanics to Penn Transportation's claim of third-party beneficiary status for DGS and/or Limbach is **DENIED**. GeoMechanics is **GRANTED** 20 days from the exit date of this Order to file a response to the second amended complaint against Additional Defendant GeoMechanics, Inc. on the direct contract claim and the third-party beneficiary count.

June 8, 2007

Penn Transportation filed Acceptance of Service of Opinion and Order dated May 23, 2007. Receipt of same acknowledged June 6, 2007.

June 8, 2007

GeoMechanics filed a letter (via fax) requesting a twenty day extension of time to file Second Amended Complaint.

June 8, 2007

Board forwarded letter to GeoMechanics, with copy to Penn Transportation, granting extension of time to file Second Amended Complaint.

June 11, 2007

GeoMechanics filed a letter (via U.S. mail) requesting a twenty day extension of time to file Second Amended Complaint.

June 14, 2007

GeoMechanics filed an Answer to Second Amended Complaint and New Matter.

July 2, 2007

Penn Transportation filed Reply to New Matter.

July 3, 2007

Board forwarded letter to parties directing them to proceed with discovery.

December 1, 2008

Penn Transportation filed Praeipce to Mark Settled, Discontinued and Ended without prejudice.

December 2, 2008

Board forwarded letter to parties requesting clarification if closing with or without prejudice.

December 3, 2008

Board rendered an Order. Order as follows: "**AND NOW**, this 3rd day of December, 2008, upon receipt of a Praeipce executed by Jeffrey S. Proden, Esquire, on behalf of Penn Transportation Services, Inc., requesting that the Board mark the above-captioned matter settled, discontinued and ended, docketed with this Board under date of December 1, 2008, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended without prejudice." Copy forwarded to Penn Transportation and GeoMechanics.

December 8, 2008

GeoMechanics filed Acceptance of Service of Order dated December 3, 2008. Receipt of same acknowledged December 6, 2008.

December 10, 2008

Penn Transportation filed Acceptance of Service of Order dated December 3, 2008. Receipt of same acknowledged December 8, 2008.
