

Docket Number: 3549

MASHUDA CORPORATION, ex rel., for the use and benefit of HOWARD  
CONCRETE PUMPING COMPANY, INC.

~~David A. Levine, Esquire~~  
~~Steven P. Engel, Esquire~~  
\*Cornelius J. O'Brien, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA TURNPIKE COMMISSION

~~William A. Chestnut, Chief Counsel~~  
~~Colleen Lynch, Esquire~~  
~~Michael S. Rosenberg, Esquire~~  
~~Scott J. Etish, Esquire~~  
\*William G. Frey, Esquire  
Jennifer L. Seme, Esquire

**September 26, 2002**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$2,900,000.00+.

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**October 2, 2002**

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT 11/1/02.

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**October 4, 2002**

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 3, 2002.

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**October 9, 2002**

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 3, 2002.

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**October 28, 2002**

Entry of Appearance of attorneys for Defendant. (William G. Frey, Esquire and Colleen Lynch, Esquire.

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**November 15, 2002**

Answer and New Matter of Pennsylvania Turnpike Commission filed by attorney for Defendant. **Response due from Plaintiff 12/26/02.**

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**December 26, 2002**

Reply to New Matter filed by attorney for Plaintiff.

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**March 10, 2003**

Notices of Intent to Serve Subpoena upon Trumbull Corporation; Maple Creek Mining, Inc.; D□Applonia Engineering Division of Ground Technology, Inc.; CQ Energy Partners, LTD filed by attorney for Plaintiff. (Howard Concrete Pumping Company)

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**March 12, 2003**

Notice of Intent to Serve Subpoena upon Mine Safety Health Administration filed by attorney for Plaintiff.

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**March 31, 2003**

Certificate Prerequisite to Service of Subpoena Pursuant to Rule 4009.22 on D

Inc.,: D ☐Appolonia Engineering Division of Ground Technology, Inc.,  
Mine Safety Health Administration; Trumbull Corporation; CQ Energy  
Partners, LTD, Maple Creek Mining, Inc., filed by attorney for  
Plaintiff.

☐Appolonia

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**April 3, 2003**

Plaintiff filed Affidavits of Service of Subpoenas to Maple Creek,  
CQ Energy Partners, LTD, Trumbull Corporation, and D ☐Appolonia  
Engineering Division of Ground Technology.

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**April 3, 2003**

Affidavit of Service filed by attorney for Plaintiff.

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**July 9, 2003**

Defendant filed a withdrawal of appearance of Colleen K. Lynch,  
Esquire on behalf of Pennsylvania Turnpike Commission.

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**July 9, 2003**

Defendant filed an entry of appearance of Michael S. Rosenberg,  
Esquire on behalf of Pennsylvania Turnpike Commission.

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**November 5, 2003**

Board issued letter to parties requesting a status report. Status  
Report due on or before **December 5, 2003.**

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**February 2, 2004**

Defendant filed Certificate Prerequisite to Service of a subpoena  
pursuant to Rule 4009.22.

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**February 18, 2004**

Defendant filed Affidavit of Service. (Michael Rosenberg).

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**April 14, 2004**

Defendant filed Proposed Order, Motion to Compel Production of  
Documents Responsive to Subpoena Directed to GAI Consultants, Inc.

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**May 3, 2004**

Defendant filed Praecipe to Withdraw Motion to Compel.

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**May 12, 2004**

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 12th day of May 2004, it is hereby, **ORDERED** and **DECREED** that Defendant's Motion to Compel, filed with the Board on April 14, 2004, is hereby considered **WITHDRAWN** without prejudice. Copies forwarded to all parties of record.

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**May 19, 2004**

Defendant filed Acceptance of Service of Opinion and Order. Receipt of same acknowledged by attorney for Defendant May 17, 2004.

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**May 24, 2004**

Plaintiff filed Acceptance of Service of Opinion and Order. Receipt of same acknowledged by Plaintiff May 20, 2004.

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**January 7, 2005**

Board issued letter to parties requesting a status report.

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**February 7, 2005**

Defendant filed letter/status report advising that its Motion to Compel the production of documents from non-party GAI Consultants Inc., was withdrawn in May 2004.

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**February 7, 2005**

Plaintiff filed Status Report advising that information is being reviewed for purposes of preparing the necessary depositions and follow-up written discovery requests in preparation for trial.

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**April 3, 2006**

Plaintiff filed Proposed Order and Motion to Compel Production of Documents Responsive to Subpoena directed to Maple Creek Mining, Inc.

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**April 7, 2006**

Board issued letter to Defendant directing them to file a response to Plaintiff's Motion to Compel.

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**April 19, 2006**

Defendant filed letter advising that it does not oppose the relief sought in Plaintiff's Motion.

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**May 17, 2006**

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 17th day of May, 2006, upon consideration of plaintiff's motion to compel production of documents it is hereby **ORDERED** and **DECREED** that said motion is **GRANTED**. It is **ORDERED** that Maple Creek Mining, Inc. shall produce: a. copies of the documents that Plaintiff's counsel selected during his review of Maple Creek's supplemental document production, including documents relating to the agreement between Maple Creek Mining and the Pennsylvania Turnpike Commission and the weekly and yearly inspection reports submitted to MSHA by Maple Creek; b. documents relating to the calculation of the amount of the agreement with the Turnpike Commission; c. documents relating to the design and construction of the dike that was constructed across the Slurry Pond; and d. documents relating to citations that were issued by MSHA relating to the Slurry Pond. These materials shall be produced within 30 days of the exit date of this Order or appropriate sanctions may be imposed following subsequent application to the Board. Copies forwarded to Plaintiff and Defendant.

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**May 24, 2006**

Plaintiff filed Acceptance of Service of Opinion and Order dated May 17, 2006. Receipt of same acknowledged by Plaintiff May 22, 2006.

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**May 25, 2006**

Defendant filed Acceptance of Service of Opinion and Order dated May 17, 2006. Receipt of same acknowledged by Defendant May 22, 2006.

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**August 23, 2006**

Board forwarded letter to parties requesting a status report.

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**September 22, 2006**

Defendant filed Status Report advising that depositions will commence at the end of October, 2006, and the case will be ready for hearing.

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**September 25, 2006**

Plaintiff filed status letter advising that both parties are currently working to arrange for depositions to take place over the next several months.

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**March 9, 2007**

Defendant filed a withdrawal of appearance of Michael S. Rosenberg, Esquire on behalf of Pennsylvania Turnpike Commission.

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**April 24, 2009**

Defendant filed a withdrawal of appearance of William G. Frey, Esquire on behalf of Commonwealth of Pennsylvania, Turnpike Commission.

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**April 24, 2009**

Defendant filed an entry of appearance of Scott J. Etish, Esquire on behalf of Commonwealth of Pennsylvania, Turnpike Commission.

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**April 24, 2009**

Defendant filed an entry of appearance of William G. Frey, Esquire on behalf of Commonwealth of Pennsylvania, Turnpike Commission.

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**\*March 26, 2012**

Plaintiff filed Praecipe to Substitute Counsel withdrawing Robert J. Blumling, Esquire, David A. Levine, Esquire and Steven P. Engel, Esquire and Entry of Appearance of Cornelius J. O'Brien, Esquire.

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**April 24, 2012**

Defendant filed Motion for Entry of Judgment Non Pros, Memorandum of Law in Support and Affidavit of William G. Frey.

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**April 24, 2012**

Board forwarded letter to Plaintiff requesting a response to Defendant's Motion for Entry of Judgment Non Pros.

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**May 22, 2012**

Plaintiff filed letter via facsimile requesting an extension of time until May 30, 2012 in which to file Plaintiff's response to Defendant's Motion for Judgment Non Pros.

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**May 22, 2012**

Board forwarded letter to Plaintiff granting Plaintiff's request for an extension of time until May 30, 2012 in which to file Plaintiff's response to Defendant's Motion for Judgment Non Pros.

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**May 30, 2012**

Plaintiff filed Verified Response to Defendant's Motion for Judgment of Non Pros and Brief in Support.

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**June 1, 2012**

Plaintiff filed Verified Responses to Defendant's Motion for Judgment of Non Pros and Brief in Support with original signatures.

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**June 6, 2012**

Defendant filed Reply Memorandum of Law in Further Support of Motion for entry of a Judgment of Non Pros.

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**June 15, 2012**

Board rendered Opinion and Order. Order as follows: **"AND NOW, this 15<sup>th</sup> day of June, 2012, after consideration of the Defendant's motion for entry of a judgment of non pros, the Defendant's supporting briefs and affidavits and the Plaintiff's response and brief, it is ORDERED and DECREED that the motion is DENIED."** Copy forwarded to Plaintiff and Defendant.

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**June 20, 2012**

Plaintiff filed Acceptance of Service of Opinion and Order. Receipt of same acknowledged by Plaintiff June 18, 2012.

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**July 25, 2012**

Plaintiff filed letter outlining the parties agreed discovery schedule.

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**July 25, 2012**

Board forwarded letter clarifying the discovery schedule and requesting scheduling information.

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**December 11, 2012**

Plaintiff filed proposed case management schedule and requested a case management conference be scheduled on a date to be determined by the Board any time after September 30, 2013.

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**December 12, 2012**

Board rendered the following Case Management Order: **"AND NOW,** this 12<sup>th</sup> day of December, 2012, it is ORDERED that: All discovery shall be completed by May 30, 2013; 1. Plaintiff shall identify and submit curriculum vitae and expert reports for all expert witnesses which plaintiff intends to have testify before the Board no later than June 30, 2013; 2. Defendant shall identify and submit curriculum vitae and expert reports for all expert witnesses which Defendant intends to have testify before the Board no later than July 30, 2013; 3. Dispositive motions shall be filed no later than August 30, 2013 with responsive briefs to be filed no later than September 30, 2013; and 4. A Case Management conference shall be scheduled on a date to be determined by the Board any time after September 30, 2013. The parties shall be prepared to address at the Case Management Conference the filing of stipulations, motions in limine, pre-trial memoranda and dates for the hearing."

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**April 1, 2013**

Plaintiff requested by telephone one Subpoena 234.1 - to attend with duces tecum.

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**April 2, 2013**

Board forwarded Subpoena 234.1 - to attend with duces tecum dated April 1, 2013 to Plaintiff.

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**April 8, 2013**

Defendant filed an Entry of Appearance of Jennifer L. Seme, Esquire on behalf of Defendant.

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**July 1, 2013**

Plaintiff filed letter requesting the issuance of a revised scheduling order.

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**July 1, 2013**

Board issued Revised Case Management Order. Order as follows "**AND NOW**, this 1<sup>st</sup> day of July, 2013, it is **ORDERED** that: 1. All discovery shall be completed by August 30, 2013; 2. The last day for plaintiff's expert report, if any, to be provided to defendant is August 30, 2013; 3. The last day for defendant's expert report, if any, to be provided to plaintiff is September 30, 2013; 4. Dispositive motions shall be filed no later than October 30, 2013, with responsive briefs to be filed no later than December 6, 2013; and 5. A Case Management conference shall be scheduled on a date to be determined by the Board some time after December 6, 2013. The parties shall be prepared to address at the Case Management Conference the filing of stipulations, motions in limine, pre-trial memoranda and dates for the hearing." Copy forwarded to Plaintiff and Defendant.

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**October 30, 2013**

Defendant filed Motion for Summary Judgment as well as Memorandum of Law.

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**October 30, 2013**

Board forwarded letter to Plaintiff requesting response to Motion for Summary Judgment.

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**November 22, 2013**

Plaintiff filed a Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment and Proposed Order.

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**November 25, 2013**

Board forwarded letter to Plaintiff, with copy to Defendant, granting Plaintiff's request for an extension of time.

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**November 26, 2013**

Defendant filed a letter advising that it has no objection to Plaintiff's request for an extension.

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**December 20, 2013**

Plaintiff filed Memorandum in Response to Motion for Summary Judgment as well as Appendix of Exhibits and Proposed Order.

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**January 10, 2014**

Defendant filed a letter requesting the Board schedule a date for oral argument on its Motion and on behalf of all parties they request a case management conference be scheduled to address any additional scheduling issues.

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**January 17, 2014**

Board forwarded a letter to parties scheduling an oral argument on Defendant's Motion for Summary Judgment for February 11, 2014 at 200 North Third Street, 6<sup>th</sup> Floor, Harrisburg, PA 17101.

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**February 6, 2014**

Defendant filed Affidavit of Thomas A. Carey in Support of Motion for Summary Judgment of Pennsylvania Turnpike Commission.

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**February 7, 2014**

Board issued letter (via facsimile and U.S. Mail) rescheduling oral argument. Oral argument is now scheduled for February 13, 2014 at 1:00 p.m.

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**February 11, 2014**

Board issued letter (via facsimile and U.S. Mail) rescheduling oral argument. Oral argument is now scheduled for February 19, 2014 at 1:00 p.m.

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**February 19, 2014**

Oral argument held February 19, 2014 at 1:00 p.m. at 200 North Third Street, 6<sup>th</sup> Floor, Harrisburg, PA 17101.

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**March 21, 2014**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 21st day of March, 2014, upon consideration of Defendant's motion for summary judgment and Plaintiff's response thereto, **IT IS ORDERED** that the motion is **GRANTED** in part and **DENIED** in part. As to Counts III, VIII and IX of the complaint, the motion is **GRANTED** and these counts are **DISMISSED**. As to all other counts of the complaint, the motion is **DENIED**." Copy forwarded to Plaintiff and Defendant.

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**February 23, 2015**

Parties filed a praecipe to settled and discontinue with prejudice.

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**February 24, 2015**

Board rendered an Order. Order as follows: "**AND NOW**, this 24<sup>th</sup> day of February, 2015, upon receipt of a praecipe executed by Cornelius J. O'Brien, Esquire, on behalf of Plaintiff, Mashuda Corporation, ex rel., for the use and benefit of Howard Concrete Pumping Company, Inc., and William G. Frey, Esquire, on behalf of Defendant, Commonwealth of Pennsylvania, Pennsylvania Turnpike Commission, requesting that the Board kindly discontinue this matter with prejudice, docketed with this Board under date of February 23, 2015, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

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**March 2, 2015**

Defendant filed Acceptance of Service of Order dated February 24, 2015. Receipt of same acknowledged February 27, 2015.

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**March 2, 2015**

Plaintiff filed Acceptance of Service of Order dated February 24, 2015. Receipt of same acknowledged February 27, 2015.

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CLOSED