

Docket Number: 3568A

PENN TRANSPORTATION SERVICES, INC.

Jeffrey S. Proden, Esquire

VS.

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

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

AND

~~HOMECHANICS, INC.~~

~~Mark E. Ramsier, Esquire~~

CLOSED

**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 The Farfield 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 The Farfield Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc. will retain the docket no. 3630, and the case of Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc. will be assigned docket no. 3630A. It is further **ORDERED** that the stay with respect to the case of The Farfield Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc., docket no. 3630, is hereby lifted and vacated. The stay with respect to Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc., docket no. 3630A, is maintained in full force and effect." Copy forwarded to all parties of record.

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**AS FILED IN DOCKET NO. 3568 (PRIOR TO SEVERENCE)**

**July 23, 2003**

Defendant filed Motion for Permission to Join Penn Transportation Services, Inc., as an Additional Defendant in Docket No. 3568 as well as Brief in Support of Motion for Permission to Join Penn Transportation Services, Inc., as an Additional Defendant.

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**August 11, 2003**

Plaintiff filed Response in Opposition to Commonwealth=s Motion for Permission to Join Penn Transportation Services, Inc, as an Additional Defendant in Docket No. 3568 as well as Brief of Plaintiff in Opposition to Defendant=s Motion for Permission to Join Penn Transportation Services, Inc.

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**August 25, 2003**

Penn Transportation Services, Inc. filed Objection to Commonwealth=s Motion for Permission to Join Penn Transportation Services, Inc., as an Additional Defendant.

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**\*September 30, 2003**

Board rendered an Opinion and Order. Order as follows: **AAND NOW**, this 30th day of September, 2003, Defendant=s Motion for Permission to Join Penn Transportation Services, Inc. as an Additional Defendant is hereby **GRANTED.**≡ Copy forwarded to Plaintiff, Defendant and Additional Defendant.

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**October 3, 2003**

Defendant filed Complaint Against Additional Defendant Penn Transportation Services, Inc.

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**October 14, 2003**

Penn Transportation filed Acceptance of Service of Opinion and Order dated September 30, 2003. Receipt if same acknowledged October 6, 2003.

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**October 31, 2003**

Penn Transportation filed Motion for Permission to Join as Additional Defendants, P.J. Dick, Inc., and GeoMechanics, Inc. as well as the proposed Praecipe and Writ to join the Additional Defendant=s and Brief in Support of Additional Defendant=s Motion to Join the Additional Defendants.

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**November 10, 2003**

Penn Transportation filed Answer and New Matter to Defendant=s Complaint.

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**November 24, 2003**

Defendant filed Commonwealth=s Reply to New Matter of Penn Transportation Services, Inc.

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**December 1, 2003**

Defendant filed Commonwealth=s Reply to Additional Defendant Penn Transportation Services, Inc.=s Motion for Permission to Join P.J. Dick & Geomechanics as Additional Defendants as well as Commonwealth=s Brief in Support of DGS= Reply to Additional Defendant Penn Transportation Services, Inc.,=s Motion for

Permission to Join GeoMechanics, Inc., and P.J. Dick, Inc.

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**February 24, 2004**

The Board issued Opinion and Order: Order as follows: **AAND NOW**, this 24th day of February, 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.

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**March 1, 2004**

Defendant filed Application to Amend Order to Include Statement Specified in 42 Pa.C.S.  702(b).

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**March 12, 2004**

Defendant filed Brief in Support of Application to Amend the Board=s Order granting Additional Defendant Penn Transportation Services, Inc.=s Motion for permission to join GeoMechanics, Inc. And P.J. Dick.

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**March 15, 2004**

Penn Transportation filed Complaint Against Additional Defendants P.J. Dick, Inc., and GeoMechanics, Inc.

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**March 17, 2004**

Board issued Acknowledgment letter and forwarded copy of Complaint Against Additional Defendants P.J. Dick, Inc. And Geomechanics to Attorney General.

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**March 24, 2004**

P.J. Dick filed Preliminary Objections and Brief in Support of Preliminary Objections to Penn Transportation=s Complaint Against P.J. Dick and GeoMechanics.

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**March 30, 2004**

Board issued Opinion and Amended Order. Amended Order as follows: **AAND NOW**, this 24th day of February, 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. However, it is the Opinion of the Board that this Order involves a

controlling question of law as to which there is 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 30th day of March, 2004.≡ Copy forwarded to all parties.

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**April 2, 2004**

Penn Transportation filed Response in Opposition to Original Defendant=s Application Pursuant to Pa.R.C.P. 1311 to Amend Order to Include Statements Specified in 42 Pa.C.S. 702(b), Supporting Brief and Proposed Order.

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**April 14, 2004**

GeoMechanics filed Preliminary Objections to Penn Transportation's Complaint against P.J. Dick and GeoMechanics and Brief in Support.

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**April 23, 2004**

Penn Transportation filed Answer to P.J. Dick=s Preliminary Objections as well as Brief in Support of Answer to P.J. Dick=s Preliminary Objections.

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**May 3, 2004**

P.J. Dick filed Reply to Penn Transportation=s Opposition to Preliminary Objections.

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**May 3, 2004**

Penn Transportation filed courtesy copy of Brief in Opposition to Commonwealth=s Petition for Permission to Appeal, as filed in Commonwealth Court.

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**May 13, 2004**

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

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**July 15, 2004**

Commonwealth Court rendered Order. Order as follows: ANow, July 13, 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.≡

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**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 theses 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.≡

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**July 16, 2004**

Board forwarded file to Commonwealth Court.

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**December 7, 2004**

Commonwealth Court rendered Opinion and Order. Order as follows: "AND NOW, this 6<sup>th</sup> 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."

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**January 3, 2005**

Penn Transportation filed letter advising that they are preparing a Petition for Allowance of Appeal to Supreme Court based upon Commonwealth Court's Order of December 6, 2004 and requests the Board continue the stay in this matter pending the decision of the request for allocatur.

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**January 5, 2005**

Board issued letter to parties advising that this matter will be stayed pending the resolution of the Petition for Allowance of Appeal to Supreme Court based on Commonwealth Court's Order of December 6, 2004.

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**January 6, 2005**

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

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**January 7, 2005**

Supreme Courts Notice of Petition for Allowance of Appeal filed January 4, 2005.

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**July 11, 2005**

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

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**July 15, 2005**

Board rendered an Order. Order as follows: "**AND NOW**, this 15<sup>th</sup> 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.

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**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.

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**July 28, 2005**

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

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**August 8, 2005**

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

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**August 18, 2005**

P.J. Dick filed a letter (via fax) in response to Board's letter of 8/3/05 regarding case management and scheduling.

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**August 19, 2005**

Penn Transportation filed a letter in response to Board's letter of 8/3/05 regarding case management and scheduling.

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**August 22, 2005**

P.J. Dick filed a letter (via U.S. mail) in response to Board's letter of August 3, 2005, regarding case management and scheduling.

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**October 7, 2005**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 7<sup>th</sup> 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. The Farfield Company and Penn Transportation Services, Inc. Docket No. 7 WAL 2005." Copy forwarded to all parties of record.

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**November 16, 2005**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 16<sup>th</sup> 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.

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**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 The Farfield 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 The Farfield Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc. will retain the docket no. 3630, and the case of Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc. will be assigned docket no. 3630A. It is further **ORDERED** that the stay with respect to the case of The Farfield Company vs. Commonwealth of Pennsylvania, Department of General Services vs. Penn Transportation Services, Inc., docket no. 3630, is hereby lifted and vacated. The stay with respect to Penn Transportation Services, Inc. vs. P.J. Dick, Inc. and GeoMechanics, Inc., docket no. 3630A, is maintained in full force and effect." Copy forwarded to all parties of record.

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**AS FILED IN DOCKET NO. 3568A (AFTER SEVERENCE)**

**March 31, 2006**

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

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**April 19, 2006**

Supreme Court returned file.

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**July 19, 2006**

Board rendered an Opinion and Order. Order as follows: " **AND NOW** this 19<sup>th</sup> 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. 3568A is hereby **LIFTED** and **VACATED**." Copy forwarded to all parties of record.

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**July 19, 2006**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 19<sup>th</sup> 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.

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**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.

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**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.

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**July 27, 2006**

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

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**August 7, 2006**

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

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**August 7, 2006**

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

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**August 8, 2006**

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

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**August 9, 2006**

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

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**August 11, 2006**

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

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**August 16, 2006**

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

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**September 6, 2006**

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

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**October 6, 2006**

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

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**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.

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**January 19, 2007**

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

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**January 31, 2007**

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 31<sup>st</sup> 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.

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**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.

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**February 21, 2007**

Penn Transportation filed Second Amended Complaint against Additional Defendant GeoMechanics.

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**February 28, 2007**

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

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**March 21, 2007**

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

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**April 20, 2007**

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

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**May 23, 2007**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 23<sup>rd</sup> 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 **DECREES** 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." Copy forwarded to Plaintiff and

Defendant.

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**June 8, 2007**

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

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**June 8, 2007**

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

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**June 8, 2007**

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

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**June 11, 2007**

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

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**June 14, 2007**

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

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**July 2, 2007**

Penn Transportation filed Reply to New Matter. Copy forwarded to GeoMechanics.

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**July 3, 2007**

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

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**December 1, 2008**

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

**December 2, 2008**

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

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**December 3, 2008**

Board rendered an Order. Order as follows: "**AND NOW**, this 3<sup>rd</sup> day of December, 2008, upon receipt of a Praecipe 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.

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**December 8, 2008**

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

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**December 10, 2008**

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

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