

Docket Number: 3745

DOUGLASS PILE COMPANY, INC.

C. Grainger Bowman, Esquire
Jason L. Richey, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Andrew S. Gordon, Chief Counsel
Christopher F. Wilson, Assistant Counsel

VS.

~~FIDELITY & DEPOSIT COMPANY OF MARYLAND~~

~~C. Grainger Bowman, Esquire
Joseph L. Luehana, III, Esquire
Jason L. Richey, Esquire~~

~~AND~~

UNITED STATES FIRE INSURANCE COMPANY

~~J. Michael McCague, Jr., Esquire
Thomas R. Hurst, Esquire (co-counsel)
Matthew A. Lipman, Esquire (co-counsel)~~

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Andrew S. Gordon, Chief Counsel
Christopher F. Wilson, Assistant Counsel

VS.

MARSOLINO CONTRUCTION CO., INC.

David R. Johnson, Esquire
Brad R. Korinski, Esquire

SEVERED TO 3901

***January 13, 2005**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$500,000.

January 14, 2005

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

January 21, 2005

Attorney General filed Acceptance of Service of Claim. Receipt of same acknowledged by Attorney General January 20, 2005.

February 2, 2005

Defendant filed Preliminary Objections and Brief in Support.

March 3, 2005

Plaintiff filed Brief in Opposition to Department's Preliminary Objections to Plaintiff's Complaint.

March 21, 2005

Defendant filed Reply Brief in Support of its Preliminary Objections to Plaintiff's Complaint.

April 1, 2005

Plaintiff filed Brief in Response to Department's Reply Brief in Support of the Department's Preliminary Objections to Plaintiff's Complaint.

April 22, 2005

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 22nd day of April, 2005, upon consideration of Defendant's Preliminary Objections, it is hereby **ORDERED, ADJUDGED** and **DECREED** that said Preliminary Objections are granted in part and denied in part consistent with this Opinion. Defendant's Preliminary Objections to Counts I, II, and IV are denied. Defendant's Preliminary Objection to Count III is granted and

that claim is hereby **DISMISSED**. Defendant's Motion for a More Specific Pleading is granted and Plaintiff shall be given (30) days to amend its Complaint to comply with this Order.

May 3, 2005

Defendant filed Acceptance of Service of Opinion and Order dated April 22, 2005. Receipt of same acknowledged April 28, 2005.

May 3, 2005

Plaintiff filed Acceptance of Service of Opinion and Order dated April 22, 2005. Receipt of same acknowledged April 28, 2005.

***May 20, 2005**

Plaintiff filed Amended Claim and proof of mailing. Amount of Claim: \$529,641.58.

May 20, 2005

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

June 20, 2005

Plaintiff filed Withdrawal of Notice of Default.

June 20, 2005

Defendant filed Answer and New Matter to Plaintiff's Amended Claim.

June 20, 2005

Defendant filed Complaint Against Additional Defendants Marsolino Construction Co., Inc. and Fidelity & Deposit Company of Maryland.

June 20, 2005

Board issued Acknowledgment letter and forwarded a copy of the Complaint Against Additional Defendants Marsolino Construction Co., Inc. and Fidelity & Deposit Company of Maryland to Attorney

General to Attorney General.

June 22, 2005

Board forwarded letter to Plaintiff requesting response to Defendant's New Matter.

July 11, 2005

Plaintiff filed Answer to New Matter.

July 15, 2005

Board forwarded letter directing Plaintiff and Defendant to commence with discovery.

July 21, 2005

Defendant filed Notice of Service of Response to Plaintiff's First Request for Production of Documents.

August 3, 2005

Defendant filed Notice of Service of Department's First Request for Production of Documents.

September 15, 2005

Defendant filed a Notice of Default Judgment forwarded to Additional Defendant, Marsolino Construction Co., Inc.

***September 21, 2005**

Plaintiff filed Amended Entry of Appearance.

September 21, 2005

Defendant filed Petition for Leave to Join Additional Defendant United States Fire Insurance Company to this Action and Brief in Support.

September 28, 2005

Defendant filed Praecipe for Entry of Judgment by Default and proposed Judgment Order against Marsolino. [03A10405D]

October 20, 2005

Additional Defendant United States Fire Insurance Company's Agreement to Extend Time to Plead filed by attorney for Additional Defendant United States Fire Insurance Company.

November 4, 2005

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 4th day of November, 2005, it is hereby **ORDERED** and **DECREED** that the request of the Defendant, Commonwealth of Pennsylvania, Department of Transportation, for a default judgment against the Additional Defendant, Marsolino Construction Company, Inc., for failure to respond to the Complaint of the Defendant is hereby denied and dismissed." Copy forwarded to Plaintiff, Defendant and Additional Defendants.

November 8, 2005

Plaintiff filed Acceptance of Service of Opinion and Order dated November 4, 2005. Receipt of same acknowledged November 7, 2005.

December 6, 2005

Additional Defendant's, United States Fire Insurance Company, Answer to petition for Leave to Join United States as an Additional Defendant and Brief in Support.

January 31, 2006

Plaintiff filed Motion to Compel Production of Documents and Proposed Order.

February 1, 2006

Board forwarded letter to Plaintiff, with copy to Defendant, requesting a brief in support of its Motion to Compel Production of Documents.

February 3, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 3rd day of February, 2006, the Petition of Defendant for Leave to Join Additional Defendant, United States Fire Insurance Company, into this action is hereby **DENIED** with leave to renew said motion within twenty (20) days of the exit date of this Order in accordance with this Opinion." Copy forwarded to all parties of record.

February 9, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated February 3, 2006. Receipt of same acknowledged February 8, 2006.

February 10, 2006

Defendant filed Acceptance of Service of Opinion and Order dated February 3, 2006. Receipt of same acknowledged February 8, 2006.

February 10, 2006

Plaintiff filed Brief in Support of Motion to Compel Production of Documents.

February 17, 2006

Defendant filed (via fax) letter advising the Board that Defendant believes its response to Plaintiff's Motion should be due 30 days after the filing of the brief since the brief perfected the filing of the motion.

February 21, 2006

United States Fire Insurance filed Acceptance of Service of Opinion and Order dated February 3, 2006. Receipt of same acknowledged February 14, 2006.

February 21, 2006

Marsolino Construction filed Acceptance of Service of Opinion and Order dated February 3, 2006. Receipt of same acknowledged February 15, 2006.

February 24, 2006

Defendant filed Second Petition for Leave to Join Additional Defendant United States Fire Insurance Company and Brief in Support. [04A052306D]

February 27, 2006

Defendant filed Response to Plaintiff's Motion to Compel and Brief in Support.

March 8, 2006

Plaintiff filed an Agreement to withdraw Motion to Compel and Corresponding Response and Request for Sanctions.

March 23, 2006

United States Fire Insurance Company filed Preliminary Objections and Brief to Defendant's Petition for Leave to Join Additional Defendant.

March 24, 2006

Defendant filed PennDOT's Filing in Order to Supplement the Second Petition for Leave to Join Additional Defendant United States Fire Insurance Company to this Action.

March 31, 2006

United States Fire Insurance Company filed letter advising that they have not received Defendant's Supplement to the Second Petition by Defendant.

April 3, 2006

Defendant filed letter forwarding a copy of the Defendant's

Supplement to the Second Petition by Defendant to United States Fire Insurance Company.

April 13, 2006

US Fire filed Reply to PennDOT's Supplement to Second Petition for Leave to Join Additional Defendant.

April 19, 2006

Defendant filed Preliminary Objections and Response to Preliminary Objections and Brief in Support.

May 16, 2006

Fidelity & Deposit Company filed Preliminary Objections to Defendant's Complaint, Brief in Support and Proposed Order. [04A053106D]

May 19, 2006

Fidelity & Deposit Company filed Entry of Appearance of C. Grainger Bowman, Esquire, Joseph L. Lucianna, III, Esquire and Jason L. Richey, Esquire, on behalf of Additional Defendant Fidelity & Deposit Company.

May 19, 2006

U.S. Fire filed (via fax) Response to Defendant's Preliminary Objections.

May 22, 2006

U.S. Fire filed (via U.S. mail) Response to Defendant's Preliminary Objections.

May 31, 2006

Defendant filed Response to the averments contained in U.S. Fire's recent filing.

May 31, 2006

Defendant filed Response to Preliminary Objections of Fidelity and Deposit Company of Maryland and Brief.

June 29, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 29th day of June, 2006, the Second Petition of Defendant, Commonwealth of Pennsylvania, Department of Transportation, for Leave to Join Additional Defendant, United States Fire Insurance Company is hereby **GRANTED.** The Board will grant PennDOT 20 days leave from the exit date of this Order to file its joinder complaint. U.S. Fire will then have 20 days from the date said joinder complaint is served upon it to file its objections, and PennDOT 20 days to respond thereto. Each party may incorporate by reference any of its briefs or memoranda previously filed with the Board on the joinder issues raised." Copy forwarded to all parties of record.

July 3, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated June 29, 2006. Receipt of same acknowledged June 30, 2006.

July 3, 2006

Defendant filed Acceptance of Service of Opinion and Order dated June 29, 2006. Receipt of same acknowledged June 30, 2006.

July 6, 2006

Fidelity & Deposit filed Reply to PennDOT's Response to Preliminary Objections filed by Fidelity & Deposit Company.

July 13, 2006

Defendant filed Complaint Against Proposed Additional Defendant United States Fire Insurance Company.

July 14, 2006

Board issued acknowledgment letter and forwarded copy of Complaint Against Proposed Additional Defendant United States Fire Insurance Company to Attorney General.

July 20, 2006

Attorney General filed Acknowledgment of Complaint Against Additional Defendant United States Fire Insurance Company form. Receipt of same acknowledged July 19, 2006.

August 2, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 2nd day of August 2006, the Preliminary Objection of Additional Defendant Fidelity in the nature of demurrer is hereby **GRANTED** with leave to PennDOT to file an amended complaint within twenty (20) days of the exit date of this Order." Copy forwarded to all parties of record.

August 11, 2006

Defendant filed Acceptance of Service of Opinion and Order dated August 2, 2006. Receipt of same acknowledged August 7, 2006.

August 14, 2006

U.S. Fire filed Preliminary Objections to Complaint of Department of Transportation, Brief in Support and Proposed Order. [03A090806D]

August 15, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated August 2, 2006. Receipt of same acknowledged August 14, 2006.

August 22, 2006

Defendant filed a letter advising that Defendant will be withdrawing its action against Fidelity & Deposit Company, and therefore, will not be filing an amended complaint.

August 23, 2006

Defendant filed Stipulation to Dismiss Additional Defendant Fidelity & Deposit Company of Maryland.

August 29, 2006

Board rendered an Order. Order as follows: "**AND NOW**, this 29th day of August, 2006, upon receipt of a stipulation filed by the defendant in this action, Commonwealth of Pennsylvania, Department of Transportation, requesting that its action against additional defendant Fidelity & Deposit Company of Maryland be dismissed with prejudice, it is hereby **ORDERED** and **DECREED** that the third-party complaint against Fidelity & Deposit Company of Maryland is hereby **DISMISSED** with prejudice." Copy forwarded to all parties of record.

August 31, 2006

Plaintiff filed Acceptance of Service of Order dated August 29, 2006. Receipt of same acknowledged August 30, 2006.

September 5, 2006

Fidelity filed Acceptance of Service of Order dated August 29, 2006. Receipt of same acknowledged August 31, 2006.

September 6, 2006

Defendant filed Response to the Preliminary Objections filed by US Fire as well as Brief in Support. Copy forwarded to all parties of record.

October 31, 2006

Board rendered Opinion and Order. Order as follows "**AND NOW**, this 31st day of October, 2006 based upon the briefs of the parties, it is hereby **ORDERED** and **DECREED** that the Preliminary Objections of Additional Defendant, United States Fire Insurance Company, to the Complaint of Commonwealth of Pennsylvania, Department of Transportation, are hereby **GRANTED** in part and **DENIED** in part. The preliminary objections as they relate to any cause of action based on the alleged "settlement agreement" proffered by PennDOT as a basis for joinder of U.S. Fire are **SUSTAINED** and this portion of PennDOT's claim against U.S. Fire is **DISMISSED**. U.S. Fire's preliminary objections as they relate to a claim brought by PennDOT in its own name and as obligee to enforce payment by U.S. Fire on the payment bond either to Pile

directly or to PennDOT should PennDOT be held liable to Pile are **DENIED**. In addition, the preliminary objection of U.S. Fire as it relates to PennDOT's claim that U.S. Fire is solely liable to Pile on the payment bond is **DENIED**. Additional Defendant United States Fire Insurance Company shall file an Answer within 30 days of the exit date of this Order." Copies forwarded to Plaintiff, Defendant and Additional Defendants.

November 2, 2006

Defendant filed Acceptance of Service of Opinion and Order dated October 31, 2006. Receipt of same acknowledged November 1, 2006.

November 3, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated October 31, 2006. Receipt of same acknowledged November 2, 2006.

November 28, 2006

U.S. Fire filed (via facsimile) Motion to Enlarge Time to Plead and Order in which to file Answer until December 15, 2006.

November 29, 2006

Board issued letter to U.S. Fire, with copy to Plaintiff, Defendant and Additional Defendant granting extension of time of proceedings for U.S. Fire to file Answer.

November 30, 2006

U.S. Fire filed (via U.S. Mail) Motion to Enlarge Time to Plead and Order in which to file Answer until December 15, 2006.

December 15, 2006

U.S. Fire filed (via facsimile) entry of appearance of Thomas R. Hurd, Esquire and Matthew A. Lipman, Esquire as co-counsel on behalf of U.S. Fire.

December 15, 2006

U.S. Fire filed (via facsimile) Answer with New Matter and Crossclaim.

December 15, 2006

U.S. Fire filed (via U.S. Mail) entry of appearance of Thomas R. Hurd, Esquire and Matthew A. Lipman, Esquire as co-counsel on behalf of U.S. Fire.

December 15, 2006

U.S. Fire filed (via U.S. Mail) Answer with New Matter and Crossclaim.

December 15, 2006

Board forwarded letter to Defendant requesting response to New Matter and Crossclaim.

December 21, 2006

Plaintiff filed letter outlining status of case and requesting a status conference to be held via telephone.

December 26, 2006

Defendant filed letter (via facsimile) outlining status of case and advising that the matter should not be advanced to trial.

December 27, 2006

Defendant filed letter (via U.S. Mail) outlining status of case and advising that the matter should not be advanced to trial

December 27, 2006

Plaintiff filed letter (via facsimile) advising that he will contact counsel for a case status judicial conference.

December 28, 2006

Plaintiff filed letter (via U.S. Mail) advising that he will contact counsel for a case status judicial conference.

December 28, 2006

Defendant filed letter (via facsimile) responding to Board letter dated December 27, 2006 and advising that he is available during the requested timeframe.

December 29, 2006

Defendant filed letter (via facsimile) responding to Board letter dated December 27, 2006 and advising that he is available during the requested timeframe.

December 29, 2006

Defendant filed letter (via U.S. Mail) responding to Board letter dated December 27, 2006 and advising that he is available during the requested timeframe.

December 29, 2006

U.S. Fire filed letter responding to Board's letter dated December 27, 2006 and advising that they believe that listing this case for trial would be premature.

January 2, 2007

Defendant filed Petition for Leave to Join Additional Defendants and Brief. [07A012907D]

January 3, 2007

Defendant filed letter (via U.S. Mail) responding to Board letter dated December 27, 2006 and advising that he is available during the requested timeframe.

January 4, 2007

Defendant filed Reply to New Matter.

January 9, 2007

Co-counsel for Defendant filed letter requesting to be mailed any upcoming correspondence and to withdraw Mr. McCague, Esquire.

January 11, 2007

Board rendered an Order. Order as follows: "**AND NOW**, this 11th day of January, 2007, pursuant to the request of the Plaintiff, it is **ORDERED** that a status conference shall be held on January 17, 2007, at 200 North Third Street, Suite 700, Harrisburg, Pennsylvania 17101 commencing at 10:00 A.M. Any party may participate by teleconference provided that it contacts the Board for instructions at least two business days prior to the conference and places the teleconference call as the Board directs." Copy forwarded to all parties of record.

January 17, 2007

Plaintiff filed Answer/Objection to Petition for Leave to Join Additional Defendants and Brief in Opposition.

January 17, 2007

Defendant filed status letter outlining his opposition to scheduling this matter for trial.

January 17, 2007

Board status conference held at 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 10:00 A.M.

January 17, 2007

Board rendered Order. Order as follows: "**AND NOW**, this 17th day of January, 2007, pursuant to discussion at the status conference held with all parties on January 17, 2007, the Board orders all parties in this matter to engage in a settlement conference. Such conference shall be held in a timely fashion

so as to allow counsel for Plaintiff, C. Grainger Bowman, Esquire, to report the results of this settlement conference to the Board by no later than January 26, 2007. The information discussed during conference, including that relating to an alleged accord and satisfaction between Douglass Pile Company, Inc. ("Pile") and Marsolino Construction Co., Inc. ("Marsolino") and information respecting Pile's notification to PennDOT of payment problems shall be exchanged as directed at the status conference." Copy forwarded to all parties of record.

January 12, 2007

Plaintiff filed Acceptance of Service of Order dated January 11, 2007. Receipt of same acknowledged January 12, 2007.

January 18, 2007

Plaintiff filed Acceptance of Service of Order dated January 17, 2007. Receipt of same acknowledged January 17, 2007.

January 19, 2007

U.S. Fire filed Acceptance of Service of Order dated January 11, 2007. Receipt of same acknowledged January 16, 2007.

January 22, 2007

Marsolino filed Praecipe for Appearance entering appearance of David R. Johnson, Esquire, on behalf of Marsolino Construction Co. Copy forwarded to all parties of record.

January 22, 2007

Marsolino filed Acceptance of Service of Order dated January 17, 2007. Receipt of same acknowledged January 17, 2007.

January 22, 2007

Marsolino filed Notice of Service of deposition transcript of Robert Douglass and Louis Marsolino was served onto Defendant and U.S. Fire.

January 22, 2007

U.S. Fire filed letter (via fax) advising that U.S. Fire does

not object to PennDOT's request to join the Marsolino individuals as long as U.S. Fire may assert crossclaims against those individuals. Copy forwarded to all parties of record.

January 24, 2007

U.S. Fire filed letter (via U.S. mail) advising that U.S. Fire does not object to PennDOT's request to join the Marsolino individuals as long as U.S. Fire may assert crossclaims against those individuals. Copy forwarded to all parties of record.

January 26, 2007

Plaintiff filed Report of Settlement Conference of January 23, 2007 advising that the parties could not reach a settlement.

January 26, 2007

Plaintiff filed letter requesting the Board schedule this case for trial as soon as possible.

January 29, 2007

Marsolino filed letter requesting the Board deny Defendant's petition to join individual defendants.

January 29, 2007

Board rendered a scheduling order. Order as follows: "Pursuant to discussion at the recent status conference held by the Board on January 17, 2007, and advice from counsel for Plaintiff, Douglass Pile Company, Inc., that a subsequent settlement conference among the parties ordered by this Board was unsuccessful, the Board issues the following: **AND NOW**, this 29th day of January, 2007, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant is March 31, 2007; 2. The last day for defendant's expert report, if any, to be provided to plaintiff and all additional defendants is April 30, 2007; 3. All discovery, including

exchange of any additional expert rebuttal reports, shall be completed by May 31, 2007." Copy forwarded to all parties of record.

January 31, 2007

Defendant filed letter (attaching copy of Plaintiff's expert report) advising that Plaintiff previously provided consent to Defendant's petition to join, and that even though Plaintiff filed and objection, they would consider withdrawing their opposition if it does not delay any potential trial.

February 1, 2007

U.S. Fire filed Acceptance of Service of Order dated January 17, 2007. Receipt of same acknowledged January 17, 2007.

February 2, 2007

Marsolino filed Acceptance of Service of Order dated January 29, 2007. Receipt of same acknowledged January 31, 2007.

February 5, 2007

U.S. Fire filed Acceptance of Service of Order dated January 29, 2007. Receipt of same acknowledged February 2, 2007.

February 8, 2007

Marsolino filed letter responding to Defendant's letter of January 31, 2007, letter regarding joining individual owners of Marsolino.

February 9, 2007

Plaintiff filed letter responding to Defendant's letter of January 31, 2007, letter and requesting the Board to schedule a hearing at the Board's earliest possible date.

February 12, 2007

Marsolino filed Preliminary Objections to Joinder Complaint filed by Defendant and Brief in Support. [05A030707D]

February 15, 2007

Defendant filed letter in response to Plaintiff's letter of February 9, 2007 advising that Defendant does not believe this case is ready for trial.

February 16, 2007

Board rendered Order. Order as follows: "AND NOW, this 16th day of February 2007, the Petition of Defendant, Department of Transportation, for Leave to Join Additional Defendants, Louis P. Marsolino, James L. Marsolino, Rose Marsolino, and Patricia Marsolino to this action is hereby **DENIED**." Copy forwarded to all parties of record.

February 21, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated February 16, 2007. Receipt of same acknowledged February 20, 2007.

February 23, 2007

Marsolinio filed Acceptance of Service of Opinion and Order dated February 16, 2007. Receipt of same acknowledged February 20, 2007.

February 26, 2007

Defendant filed Acceptance of Service of Opinion and Order dated February 16, 2007. Receipt of same acknowledged February 22, 2007.

March 6, 2007

Defendant filed (via fax) Response to the Preliminary Objections filed by Additional Defendant Marsolino and Brief in Opposition.

March 7, 2007

Defendant filed (via U.S. mail) Response to the Preliminary Objections filed by Additional Defendant Marsolino and Brief in Opposition.

March 12, 2007

Marsolino filed Reply to Commonwealth's Brief in Opposition to the Preliminary Objections filed by Marsolino.

March 13, 2007

Defendant filed Response to Unauthorized Reply Brief filed by Marsolino.

March 16, 2007

Plaintiff filed Motion for Summary Judgment and Memorandum of Law in Support. [03A041607D]

April 10, 2007

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 10th day of April, 2007, after reviewing Additional Defendant Marsolino's preliminary objections and Defendant PennDOT's response thereto, it is hereby **ORDERED** and **DECREED** that Additional Defendant Marsolino's preliminary objection with regard to the Board of Claims' jurisdiction is hereby **GRANTED**. Defendant PennDOT is granted leave to file an amended joinder complaint within 20 days of the exit date of this Order." Copy forwarded to all parties of record.

April 12, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated April 10, 2007. Receipt of same acknowledged April 11, 2007.

April 13, 2007

Defendant filed Response to Summary Judgment Motion and Brief in Opposition.

April 16, 2007

U.S. Fire filed Response in Opposition to Motion for Summary Judgment, Memorandum of Law in Support and Proposed Order.

April 16, 2007

U.S. Fire filed Acceptance of Service of Opinion and Order dated April 10, 2007. Receipt of same acknowledged April 12, 2007.

April 19, 2007

Defendant filed Acceptance of Service of Opinion and Order dated April 10, 2007. Receipt of same acknowledged April 12, 2007.

April 19, 2007

Marsolino filed Acceptance of Service of Opinion and Order dated April 10, 2007. Receipt of same acknowledged April 12, 2007.

April 27, 2007

Defendant filed Amended Complaint Against Additional Defendant Marsolino Construction Co., Inc. and Proof of Mailing.

April 30, 2007

Board issued acknowledgment letter and forwarded copy of Complaint to Join Additional Defendant Marsolino to Attorney General.

May 1, 2007

Plaintiff filed Reply to Memorandum of Law in Support of Additional Defendant U.S. Fire Insurance Co.'s Opposition to Plaintiff's Motion for Summary Judgment and Brief in Opposition to the Summary Judgment Motion filed by Douglass Pile Company.

May 7, 2007

Defendant filed letter advising that Plaintiff has submitted an

unauthorized reply brief to the Board in support of its summary judgment motion.

May 8, 2007

Attorney General filed Acknowledgment of Complaint to Join Additional Defendant form. Receipt of same acknowledged May 3, 2007.

May 10, 2007

U.S. Fire filed (via fax) a letter requesting that the Board hear oral arguments on Plaintiff's Motion for Summary Judgment.

May 11, 2007

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 11th day of May, 2007, it is hereby **ORDERED** and **DECREED** that the Plaintiff's motions for summary judgment filed against the Defendant, Commonwealth of Pennsylvania, Department of Transportation, and the Additional Defendant, United States Fire Insurance Company, are hereby **DENIED**." Copy forwarded to all parties of record.

May 11, 2007

Plaintiff filed Motion Nunc Pro Tunc for Leave to File Reply to Defendant's Brief in Opposition to the Summary Judgment Motion filed by Plaintiff and Reply to Memorandum of Law of Additional Defendant U.S. Fire in Opposition to Plaintiff's Motion for Summary Judgment, Memorandum of Law and Proposed Order.

May 11, 2007

U.S. Fire filed (via U.S. mail) requesting that the Board hear oral arguments on Plaintiff's Motion for Summary Judgment.

May 14, 2007

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 14th day of May, 2007, it is **ORDERED** and **DECREED** that Plaintiff's motion nunc pro tunc for leave to file reply to Defendant's brief in opposition to the summary judgment motion

filed by Plaintiff and to reply to the memorandum of law of Additional Defendant United States Fire Insurance Company in opposition to Plaintiff's motion for summary judgment is hereby **DENIED as MOOT.**" Copy forwarded to all parties of record.

May 15, 2007

Plaintiff filed acceptance of service of Opinion and Order dated May 11, 2007. Receipt of same acknowledged May 18, 2007.

May 16, 2007

Defendant filed acceptance of service of Opinion and Order dated May 11, 2007. Receipt of same acknowledged May 14, 2007.

May 16, 2007

Plaintiff filed acceptance of service of Opinion and Order dated May 14, 2007. Receipt of same acknowledged May 15, 2007.

May 21, 2007

Marsolino filed acceptance of service of opinion and order dated May 11, 2007. Receipt of same acknowledged May 14, 2007.

May 21, 2007

Marsolino filed acceptance of service of opinion and order dated May 14, 2007. Receipt of same acknowledged undated.

May 23, 2007

U.S. Fire filed acceptance of service of opinion and order dated May 14, 2007. Receipt of same acknowledged May 21, 2007.

May 29, 2007

Marsolino filed Preliminary Objections to Amended Joinder Complaint and Brief in Support. Copy forwarded to all parties of record. [04A070207D]

June 4, 2007

Plaintiff filed letter requesting that the Board set this case for a hearing at the Board's earliest available date.

June 4, 2007

Defendant filed letter requesting that the pleadings be closed prior to this matter being scheduled for trial.

June 7, 2007

U.S. Fire filed letter (via fax) advising that they believe the scheduling of a hearing is premature and request that the discovery end date be extended at least 60 days after the close of the initial pleadings.

June 8, 2007

Board issued letter to parties advising that the Board will decline scheduling a hearing until the pleadings are closed and that the discovery deadlines are extended until the Board issued a revised scheduling order.

June 11, 2007

U.S. Fire filed letter (via U.S. mail) advising that they believe the scheduling of a hearing is premature and request that the discovery end date be extended at least 60 days after the close of the initial pleadings.

June 27, 2007

Defendant filed Response to the Preliminary Objections filed by Marsolino and Brief in Opposition.

August 8, 2007

Board rendered an Opinion and Order. Order as follows: **"AND NOW, this 8th day of August, 2007, it is ORDERED and DECREED that Additional Defendant Marsolino's preliminary objections to Defendant PennDOT's amended joinder complaint are hereby OVERRULED.** Additional Defendant Marsolino shall be given 20 days from the exit date of this Order to file a responsive pleading

to Defendant PennDOT's amended joinder complaint. Additionally, it is hereby **ORDERED** and **DECREED** that PennDOT's claim against Marsolino initiated by the aforementioned amended joinder complaint be severed for all purposes from the extant case before the Board at Docket No. 3745. The severed claim of PennDOT against Marsolino shall henceforth be assigned B.O.C. Docket No. 3901." Copy forwarded to all parties of record.

August 10, 2007

Defendant filed Acceptance of Service of Opinion and Order dated August 8, 2007. Receipt of same acknowledged August 10, 2007.

August 13, 2007

Board forwarded letter to parties requesting scheduling information.

August 13, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated August 8, 2007. Receipt of same acknowledged August 10, 2007.

August 13, 2007

Marsolino filed Acceptance of Service of Opinion and Order dated August 8, 2007. Receipt of same acknowledged August 14, 2007.

August 22, 2007

Defendant filed Motion for Reconsideration of Severance and Brief in Support.

August 23, 2007

Plaintiff filed proposed scheduling order.

August 23, 2007

Defendant filed proposed scheduling order.

August 23, 2007

Defendant filed letter advising that Defendant objects to the severance of the action and requests that if the Board must

sever the actions, that the action involving U.S. Fire should be tried with the Marsolino action, not the Douglass Pile action.

August 28, 2007

U.S. Fire transmitted proposed scheduling order.

August 29, 2007

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 29th day of August, 2007, it is **ORDERED** that Defendant, Commonwealth of Pennsylvania, Department of Transportation's motion for reconsideration of severance is **DENIED**." Copy forwarded to all parties of record.

August 30, 2007

U.S. Fire filed proposed scheduling order.

August 31, 2007

Board rendered a scheduling order. Order as follows: "**AND NOW**, this 31st day of August, 2007, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for expert reports, if any, to be exchanged by the parties and filed with the Board shall be October 5, 2007¹; 2. The last day for any expert rebuttal reports to be exchanged and filed with the Board shall be October 26, 2007¹; 3. All discovery shall be completed by November 16, 2007²; 4. The last day for filing pre-trial motions is December 3, 2007. Parties will have 15 days to file responses to any pre-trial motions; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than December 21, 2007 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, January 3, 2008 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; and 7. This matter is set for hearing beginning on Monday, February 11, 2008 through Friday, February 15, 2008, and resuming Tuesday, February 19, 2008 and running through February 20, 2008, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m. ¹If expert testimony is to be offered without production of a report, a

summary of such testimony, as described in Pa. R.C.P. 4003.5(a)(1), shall be provided in lieu of such report. ²All discovery motions shall be filed at least 30 days in advance of the close of discovery to allow for a 15 day response period and decision by the Board prior to the close of the discovery.

August 31, 2007

Plaintiff filed letter responding to Defendant's Motion for Reconsideration advising that Plaintiff has no position on whether or not Marsolino should be included, except that if granting the motion will result in Plaintiff not having a hearing before the end of the year, then Plaintiff opposes it.

August 31, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated August 29, 2007. Receipt of same acknowledged August 30, 2007.

September 4, 2007

Plaintiff filed Acceptance of Service of Scheduling Order dated August 31, 2007. Receipt of same acknowledged September 4, 2007.

September 6, 2007

Marsolino filed Acceptance of Service of Opinion and Order dated August 29, 2007. Receipt of same acknowledged September 1, 2007.

September 7, 2007

U.S. Fire filed Acceptance of Service of Opinion and Order dated August 31, 2007. Receipt of same acknowledged September 4, 2007.

November 2, 2007

U.S. Fire filed Motion to Compel Depositions, Brief in Support and Proposed Order.

November 2, 2007

Board forwarded letter to parties requesting response to U.S.

Fire's Motion to Compel Depositions.

November 5, 2007

Defendant transmitted letter advising that Defendant was not served with a copy of U.S. Fire's Motion to Compel Depositions and Brief and request the Board to reconsider its directive.

November 5, 2007

Defendant filed letter advising that Defendant was not served with a copy of U.S. Fire's Motion to Compel Depositions and Brief and request the Board to reconsider its directive.

November 5, 2007

Defendant transmitted a letter explaining that Defendant's copy of U.S. Fire's Motion was served via US mail, whereas the Board's copy was served via Federal Express which explains why Defendant did not receive its copy of the motion, and also stating that Defendant plans to respond before Wednesday and that Defendant's concerns noted in its previous letter remain.

November 5, 2007

Defendant filed a letter explaining that Defendant's copy of U.S. Fire's Motion was served via US mail, whereas the Board's copy was served via Federal Express which explains why Defendant did not receive its copy of the motion, and also stating that Defendant plans to respond before Wednesday and that Defendant's concerns noted in its previous letter remain.

November 5, 2007

Board forwarded to parties granting PennDOT an extension of time to file a response to U.S. Fire's Motion to Compel Depositions.

November 9, 2007

Defendant filed letter advising that the parties have entered a tentative settlement agreement and therefore, U.S. Fire's Motion to Compel Depositions should be rendered moot.

November 26, 2007

Board forwarded letter to parties advising that U.S. Fire's Motion to Compel is moot and that the Board will retain the pre-trial date and hearing dates scheduled unless advised in writing by Plaintiff to the contrary.

November 30, 2007

U.S. Fire transmitted letter advising that the parties have not settled and requesting that the Board issue an order in connection with U.S. Fire's Motion to Compel previously filed.

December 3, 2007

Defendant filed letter advising that the parties in this case, as well as four additional existing matters, have been pursuing settlement discussions and that Defendant has prepared a response to U.S. Fire's motion to compel but has not filed same because he does not want to disrupt the prospect of reaching a global settlement.

December 3, 2007

U.S. Fire filed letter advising that the parties have not settled and requesting that the Board issue an order in connection with U.S. Fire's Motion to Compel previously filed.

December 6, 2007

Board forwarded letter to parties advising of status conference scheduled for December 12, 2007 at 10:00 a.m. at the Board of Claims' office.

December 11, 2007

Plaintiff filed letter advising that parties have reached a settlement and that the status conference scheduled for December 12, 2007, is not necessary.

December 12, 2007

Board forwarded letter to parties advising that the status conference scheduled for December 12, 2007, the pre-trial scheduled for January 3, 2008 and the hearing scheduled for February 11 - 15, 19 and 20, 2008, are canceled.

March 12, 2008

Board forwarded letter to parties requesting status of settlement.

March 26, 2008

Defendant transmitted by facsimile a status letter advising that Department is taking steps through the approval process concerning final settlement and is hopeful that counsel can provide a final update on this matter within the next month.

March 26, 2008

Plaintiff transmitted by facsimile a status letter advising that the parties reached a final agreement over two months ago and that the agreement is signed by everyone except the Defendant and that numerous attempts to get Defendant's signature have been unsuccessful.

March 28, 2008

Plaintiff filed a status letter advising that the parties reached a final agreement over two months ago and that the agreement is signed by everyone except the Defendant and that numerous attempts to get Defendant's signature have been unsuccessful.

April 15, 2008

Plaintiff filed Praecipe to Dismiss its claim against U.S. Fire with prejudice.

April 17, 2008

Board forwarded letter to parties requesting praecipes to dismiss from the appropriate parties.

April 25, 2008

Defendant filed Praeipe to Discontinue its claims against U.S. Fire with prejudice.

April 30, 2008

Plaintiff filed Praeipe to Dismiss its claims against Defendant.

May 2, 2008

Board rendered an Order. Order as follows: "**AND NOW**, this 2nd day of May, 2008, upon receipt of a praecipe to dismiss filed by the Plaintiff in this action, Douglass Pile Company, Inc., advising that Plaintiff has agreed to dismiss its claim against Defendant, Commonwealth of Pennsylvania, Department of General Services ("DGS") with prejudice, and a praecipe to discontinue filed by DGS requesting that the claims asserted by DGS against the Additional Defendant, United States Fire Insurance Company be marked settled, discontinued and ended with prejudice, it is hereby **ORDERED** and **DECREED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

May 6, 2008

Plaintiff filed Acceptance of Service of Order dated May 2, 2008. Receipt of same acknowledged May 5, 2008.

May 8, 2008

Defendant filed Acceptance of Service of Order dated May 2, 2008. Receipt of same acknowledged May 7, 2008.
