

Docket Number: 3901

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

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

VS.

MARSOLINO CONSTRUCTION COMPANY, INC.

David R. Johnson, Esquire  
Brad R. Korlowski, Esquire

SEVERED FROM 3745

**AS FILED IN DOCKET NO. 3745 (PRIOR TO SEVERENCE)**

**\*January 13, 2005**

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

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**January 14, 2005**

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

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**January 21, 2005**

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

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**February 2, 2005**

Defendant filed Preliminary Objections and Brief in Support.

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**March 3, 2005**

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

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**March 21, 2005**

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

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**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.

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**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

**April 22, 2005 (continued)**

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.

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**May 3, 2005**

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

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**May 3, 2005**

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

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**\*May 20, 2005**

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

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**May 20, 2005**

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

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**June 20, 2005**

Plaintiff filed Withdrawal of Notice of Default.

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**June 20, 2005**

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

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**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.

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**June 22, 2005**

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

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**July 11, 2005**

Plaintiff filed Answer to New Matter.

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**July 15, 2005**

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

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**July 21, 2005**

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

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**August 3, 2005**

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

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**September 15, 2005**

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

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**\*September 21, 2005**

Plaintiff filed Amended Entry of Appearance

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**September 21, 2005**

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

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**September 28, 2005**

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

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**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.

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**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.

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**November 8, 2005**

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

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**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.

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**January 31, 2006**

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

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**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.

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**February 3, 2006**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 3<sup>rd</sup> 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 entry date of this Order in accordance with this Opinion." Copy forwarded to all parties of record.

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**February 9, 2006**

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

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**February 10, 2006**

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

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**February 10, 2006**

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

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**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.

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**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.

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**February 21, 2006**

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

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**February 24, 2006**

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

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**February 27, 2006**

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

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**March 8, 2006**

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

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**March 23, 2006**

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

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**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.

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**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.

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**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.

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**April 13, 2006**

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

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**April 19, 2006**

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

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**May 16, 2006**

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

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**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.

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**May 19, 2006**

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

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**May 22, 2006**

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

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**May 31, 2006**

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

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**May 31, 2006**



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

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**June 29, 2006**

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 29<sup>th</sup> 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.

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**July 3, 2006**

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

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**July 3, 2006**

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

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**July 6, 2006**

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

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**July 13, 2006**

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

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**July 14, 2006**

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

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**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.

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**August 2, 2006**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 2<sup>nd</sup> 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.

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**August 11, 2006**

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

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**August 14, 2006**

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

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**August 15, 2006**

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

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**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.

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**August 23, 2006**

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

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**August 29, 2006**

Board rendered an Order. Order as follows: "**AND NOW**, this 29<sup>th</sup> 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.

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**August 31, 2006**

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

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**September 5, 2006**

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

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**September 6, 2006**

Defendant filed Response to the Preliminary Objections filed by US Fire as well as Brief in Support.

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**October 31, 2006**

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

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**November 2, 2006**

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

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**November 3, 2006**

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

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**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.

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**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.

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**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.

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**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.

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**December 15, 2006**

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

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**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.

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**December 15, 2006**

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

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**December 15, 2006**

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

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**December 21, 2006**

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

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**December 26, 2006**

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

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**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

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**December 27, 2006**

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

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**December 28, 2006**

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

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**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.

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**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.

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**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.

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**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.

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**January 2, 2007**

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

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**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.

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**January 4, 2007**

Defendant filed Reply to New Matter.

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**January 9, 2007**

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

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**January 11, 2007**

Board rendered an Order. Order as follows: "**AND NOW**, this 11<sup>th</sup> 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.

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**January 17, 2007**

Plaintiff filed Answer/Objection to Petition for Leave to Join Additional Defendants and Brief in Opposition. Copy forwarded to all parties of record.

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**January 17, 2007**

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

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**January 17, 2007**

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

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**January 17, 2007**

Board rendered Order. Order as follows: "**AND NOW**, this 17<sup>th</sup> 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.

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**January 12, 2007**

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

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**January 18, 2007**

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

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**January 19, 2007**

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

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**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.

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**January 22, 2007**

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

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**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.

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**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.

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**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.

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**January 26, 2007**

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

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**January 26, 2007**

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

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**January 29, 2007**

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

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**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 29<sup>th</sup> 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.

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**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.

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**February 1, 2007**

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

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**February 2, 2007**

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

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**February 5, 2007**

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

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**February 8, 2007**

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

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**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.

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**February 12, 2007**

Marsolino filed Preliminary Objections to Joinder Complaint

filed by Defendant and Brief in Support. [05A030707D]

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**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.

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**February 16, 2007**

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

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**February 21, 2007**

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

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**February 23, 2007**

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

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**February 26, 2007**

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

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**March 6, 2007**

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

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**March 7, 2007**

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

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**March 12, 2007**

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

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**March 13, 2007**

Defendant filed Response to Unauthorized Reply Brief filed by Marsolino.

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**March 16, 2007**

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

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**April 10, 2007**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 10<sup>th</sup> 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.

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**April 12, 2007**

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

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**April 13, 2007**

Defendant filed Response to Summary Judgment Motion and Brief in

Opposition.

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**April 16, 2007**

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

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**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.

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**April 19, 2007**

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

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**April 19, 2007**

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

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**April 27, 2007**

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

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**April 30, 2007**

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

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**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. Copy forwarded to Defendants.

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**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.

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**May 8, 2007**

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

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**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.

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**May 11, 2007**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 11<sup>th</sup> 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.

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**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. Copy forwarded to all parties of record.

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**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.

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**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.

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**May 15, 2007**

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

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**May 16, 2007**

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

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**May 16, 2007**

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

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**May 21, 2007**

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

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**May 21, 2007**

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

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**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.

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**May 29, 2007**

Marsolino filed Preliminary Objections to Amended Joinder Complaint and Brief in Support. [04A070207]

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**June 4, 2007**

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

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**June 4, 2007**

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

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**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.

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**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.

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**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.

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**June 27, 2007**

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

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**August 8, 2007**

Board rendered an Opinion and Order. Order as follows: **"AND NOW, this 8<sup>th</sup> 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.

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**AS FILED IN DOCKET NO. 3901 (AFTER SEVERENCE)**

**August 22, 2007**

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

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**August 23, 2007**

PennDOT filed proposed scheduling order.

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**August 23, 2007**

PennDOT filed letter advising that PennDOT 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.

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**August 28, 2007**

Marsolino filed Answer and New Matter to Amended Complaint.

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**August 29, 2007**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 29<sup>th</sup> 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.

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**August 30, 2007**

PennDOT filed Reply to New Matter of Marsolino Construction Co., Inc.

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**September 4, 2007**

Marsolino filed Corrected Answer and New Matter to Amended Complaint.

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**September 4, 2007**

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

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**September 12, 2007**

PennDOT filed letter addressed to Marsolino advising that the pleadings are closed and that PennDOT would like to obtain a discovery and trial dates on this in the next couple of weeks.

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**March 26, 2008**

PennDOT 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.

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**April 25, 2008**

PennDOT filed Praecipe to Discontinue its claims against Marsolino with prejudice.

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**May 2, 2008**

Board rendered an Order. Order as follows: "**AND NOW**, this 2<sup>nd</sup> day of May, 2008, upon receipt of a praecipe to discontinue filed by the Commonwealth of Pennsylvania, Department of Transportation, requesting that the Board mark the claims asserted against Marsolino Construction Co., Inc. settled, discontinued and dismissed with prejudice, docketed with this Board under date of April 25, 2008, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to PennDOT and Marsolino.

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**May 8, 2008**

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

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**May 8, 2008**

Marsolino filed Acceptance of Service of Order dated May 2, 2008. Receipt of same acknowledged May 6, 2008.

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