

Docket Number: 3906

J.D. ECKMAN, INC.

Paul A. Logan, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA TURNPIKE COMMISSION**

~~Doreen A. McCall, Chief Counsel~~
Michael Lieberman, Esquire
~~Sozi P. Tulante, Esquire~~
V. Paige Pratter, Esquire

August 27, 2007

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$351,854.00+.

August 28, 2007

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

September 4, 2007

Plaintiff filed Affidavit of Service of Defendant.

September 4, 2007

Plaintiff filed Affidavit of Service of Attorney General.

September 6, 2007

Attorney General filed Acknowledgement of Claim dated August 28, 2007. Receipt of same acknowledged on August 30, 2007.

October 26, 2007

Defendant filed Answer & New Matter.

October 29, 2007

Board forwarded letter to Plaintiff requesting response to New Matter. Copy forwarded to Defendant.

November 9, 2007

Plaintiff filed Reply to New Matter.

November 13, 2007

Plaintiff filed Praecipe to Substitute Verification of David Maugle for the Verification of Paul A. Logan which is attached to the Reply to New Matter.

November 14, 2007

Board forwarded letter to parties directing parties to commence with discovery.

December 21, 2007

Defendant filed Motion for Judgment on the Pleadings and Memorandum of Law in Support. [06A011508D]

December 26, 2007

Defendant filed a letter requesting a status conference in accordance with Rule 501(a) of the BOC Rules of Procedure.

January 14, 2008

Plaintiff filed Answer to Motion for Judgment on the Pleadings and Brief in Opposition.

January 22, 2008

Plaintiff filed Praecipe to Substitute Verification of David Maugle for the verification of Paul A. Logan which is attached to the Answer to Motion for Judgment on the Pleadings.

February 1, 2008

The Board issued Order. Order as follows: **"AND NOW**, this 1st day of February, 2008, it is hereby **ORDERED** Defendant, Commonwealth of Pennsylvania, Pennsylvania Turnpike Commission's Motion for Judgment on the Pleadings is **DENIED**. The parties are directed to proceed with discovery." Copy forwarded to Plaintiff and Defendant.

February 6, 2008

Defendant filed Acceptance of Service of Opinion and Order dated February 1, 2008. Receipt of same acknowledged on February 5, 2008.

February 7, 2008

Plaintiff filed Acceptance of Service of Opinion and Order dated February 1, 2008. Receipt of same acknowledged on February 4, 2008.

April 29, 2008

Defendant filed Motion to Compel Discovery and Memorandum of Law. [05A052908D]

May 28, 2008

Plaintiff filed Answer to Motion to Compel Discovery of the Pennsylvania Turnpike Commission and Brief in Support.

May 30, 2008

Plaintiff filed a letter requesting that the Board convene a telephone conference regarding the Motion to Compel and other outstanding and related discovery issues.

June 27, 2008

Board rendered Opinion and Order. Order as follows: " **AND NOW**, this 27th day of June, 2008, after review of Defendant's motion to compel answers to interrogatories and request for production of documents and Plaintiff's response thereto, it is hereby **ORDERED** and **DECREED** that Defendant's motion to compel is **GRANTED** with respect to Interrogatories 5 and 8 and **DENIED** with regard to the remainder of the motion. Plaintiff shall provide its revised responses to Interrogatories 5 and 8 within 15 days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

July 3, 2008

Defendant filed Acceptance of Service of Opinion and Order dated June 27, 2008. Receipt of same acknowledged on July 1, 2008.

July 7, 2008

Plaintiff filed Acceptance of Service of Opinion and Order dated June 27, 2008. Receipt of same acknowledged on July 1, 2008.

December 23, 2008

Defendant filed Motion to Compel Discovery and Memorandum of Law in Support. [06A012009D]

January 20, 2009

Plaintiff filed Answer of J.D. Eckman, Inc. to the Motion of The Pennsylvania Turnpike Commission to Compel Discovery and Memorandum of Law in Opposition.

February 9, 2009

Defendant filed Reply Brief in Further Support of its Motion to Compel Discovery.

February 19, 2009

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 19th day of February, 2009, it is **ORDERED** and **DECREED** that Defendant's Motion to Compel Discovery is **GRANTED** with respect to all non-privileged documents responsive to the request regarding documents identified in Exhibits E through H to Defendant's motion. Plaintiff shall provide its revised responses to these discovery requests within 15 days of the exit date of this Order. Defendant's Motion to Compel Discovery is also **GRANTED** with regard to Defendant's request for documents relating to the bid proposal preparation for work under the contract at issue in this matter but only to the extent that they relate to Plaintiff's preparation of the bid components for "foreign borrow," "selected borrow" and/or excavation and hauling costs which generated the excess waste material damages it claims as additional work on the project. Plaintiff shall provide Defendant with a draft confidentiality agreement for these latter items within 15 days of the exit date of this Order and produce said documents promptly upon execution of said agreement. Privileged documents responsive to either request shall be identified in a privilege log provided with the materials to which they relate." Copy forwarded to Plaintiff and Defendant.

February 23, 2009

Defendant filed letter requesting a status conference by telephone in order to set deadlines for the completion of discovery.

February 24, 2009

Board forwarded letter to parties requesting (within 15 days) proposed dates and times for a status conference.

February 25, 2009

Defendant filed Acceptance of Service of Opinion and Order dated February 19, 2009. Receipt of same acknowledged on February 23, 2009.

March 11, 2009

Plaintiff filed Acceptance of Service of Opinion and Order dated February 19, 2009. Receipt of same acknowledged on March 9, 2009.

March 13, 2009

Defendant filed Motion for a Finding of Contempt and Other Relief, Brief in Support and Proposed Order. [06A032009]

March 13, 2009

Board forwarded a letter to Plaintiff requesting response.

March 18, 2009

Defendant transmitted a letter via facsimile stating that it would be available for a status conference on March 26, 2009.

March 19, 2009

Board forwarded letter to parties confirming the Status Conference to be held on March 26, 2009 at 1:00 PM at the Board's offices.

March 20, 2009

Defendant filed a letter stating that it would be available for a status conference on March 26, 2009.

March 20, 2009

Plaintiff filed Answer to Defendant's Motion for a Finding of Contempt and Other Relief, Memorandum of Law in Opposition and Proposed Order.

March 23, 2009

Plaintiff filed Confidentiality Agreement and Stipulated Protective Order.

March 23, 2009

Plaintiff transmitted letter via facsimile stating that there was a misunderstanding and he is not available for the status conference set for March 26, 2009. The parties have reached an agreement respecting a proposed scheduling order that will be sent to the Board in the next few days and will be requesting the rescheduling of the conference.

March 25, 2009

Plaintiff filed a letter stating that there was a misunderstanding and he is not available for the status conference set for March 26, 2009. The parties have reached an agreement respecting a proposed scheduling order that will be sent to the Board in the next few days and will be requesting the rescheduling of the conference.

March 30, 2009

Plaintiff filed a letter stating that April 30, 2009 seems to be a good date for both parties to attend a conference with the Board. He also requested that if there are specific questions respecting statute of limitations and jurisdiction that the Board advise them in advance so that they are prepared.

March 30, 2009

Board forwarded letter to the parties informing them that the status conference will be held on April 30, 2009.

April 30, 2009

A status conference was held at 1:00 PM in the Judge's office.

May 4, 2009

Defendant filed letter stating that they are withdrawing its Motion for a Finding of Contempt and Other Relief which they filed here at the Board on March 13, 2009.

May 7, 2009

Defendant filed letter with proposed dates for the Scheduling Order and also addresses the Judge's request that this matter be bifurcated to determine whether the Plaintiff timely filed its claim with Board.

May 20, 2009

Board issued Order. Scheduling Order as follows: **"AND NOW**, this 20th day of May, 2009, 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 June 8, 2009;¹ 2. The last day for defendant=s expert report, if any, to be provided to plaintiff is June 29, 2009;¹ 3. All discovery, including exchange of expert rebuttal reports, shall be completed by July 6, 2009;² 4. The last day for filing pre-trial motions is July 14, 2009;² 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than August 28, 2009 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, September 9, 2009 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Tuesday, October 20, 2009 and running through Friday, October 23, 2009, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101. Unless otherwise noted, the first day of all hearings begins at 9:30 a.m., and subsequent hearing days begin at 9:00 a.m." Copy forwarded to Plaintiff and Defendant.

May 28, 2009

Plaintiff filed Acceptance of Service of Scheduling Order dated May 20, 2009. Receipt of same acknowledged on May 22, 2009.

May 28, 2009

Defendant filed Acceptance of Service of Scheduling Order dated May 20, 2009. Receipt of same acknowledged on May 22, 2009.

July 14, 2009

Plaintiff filed Motion for Summary Judgment as to the Timeliness of Plaintiff's Submission of its Statement of Claims and Brief in Support. [04A081309D]

July 15, 2009

Plaintiff filed additional copies of the Motion for Summary Judgment as to the Timeliness of Plaintiff's Submission of its Statement of Claims.

July 15, 2009

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

August 13, 2009

Defendant filed Response to Claimant's Motion for Summary Judgment, Memorandum of Law in Opposition and Proposed Order.

August 27, 2009

Plaintiff filed Pre-Hearing Memorandum.

August 27, 2009

Plaintiff's attorney transmitted a letter via facsimile stating that he has a scheduling conflict with the pre-trial conference date and wishes to reschedule. Opposing counsel has consented to this as long as the hearing dates remain unchanged.

August 28, 2009

Defendant filed Pre-Hearing Statement.

August 31, 2009

Plaintiff's attorney filed a letter stating that he has a scheduling conflict with the pre-trial conference date and wishes to reschedule. Opposing counsel has consented to this as long as the hearing dates remain unchanged.

September 1, 2009

Board issued Order. Order as follows: **"AND NOW**, this 1st day of September, 2009, it is **ORDERED** that the pre-trial conference scheduled for Wednesday, September 9, 2009 at 1:00 p.m. by Order of this Board dated May 20, 2009, is hereby rescheduled for Wednesday, September 2, 2009 at 10:30 a.m. Said conference shall be held at 200 North 3rd Street, Fulton Building, 7th Floor, Harrisburg, PA 17101. Counsel for the parties may participate by telephone conference call as long as arrangements for any such conference call are made by the participant with the Board's staff sufficiently in advance so as not to delay the pre-trial conference." Copy forwarded and faxed to Plaintiff and Defendant.

September 1, 2009

Defendant transmitted via facsimile the Acceptance of Service of Order dated September 1, 2009. Receipt of same acknowledged on September 1, 2009.

September 1, 2009

Plaintiff transmitted via facsimile the Acceptance of Service of Order dated September 1, 2009. Receipt of same acknowledged on September 1, 2009.

September 3, 2009

Defendant filed Acceptance of Service of Order dated September 1, 2009. Receipt of same acknowledged on September 1, 2009.

September 3, 2009

Plaintiff filed Acceptance of Service of Order dated September 1, 2009. Receipt of same acknowledged on September 1, 2009.

September 17, 2009

Plaintiff filed Supplemental Brief in Support of Motion for Summary Judgment as to the Timeliness of J.D. Eckman's Submission of its Statement of Claims.

September 18, 2009

Defendant filed Supplemental Response of Pennsylvania Turnpike Commission to Claimant's Motion for Summary Judgment.

September 28, 2009

Board issued Opinion and Order. Order as follows: **"AND NOW**, this 28th day of September, 2009, it is **ORDERED** and **DECREED** that Plaintiff's Motion for Summary Judgment is **GRANTED** to the extent that we determine Plaintiff's claim with the Board has not been filed untimely with regard to the 15 day period of limitations set forth in 62 Pa.C.S. § 1712.1(e)." Copy forwarded to Plaintiff and Defendant.

October 2, 2009

Plaintiff filed Acceptance of Service of Opinion and Order dated September 28, 2009. Receipt of same acknowledged on September 30, 2009.

October 2, 2009

Defendant filed Acceptance of Service of Opinion and Order dated September 28, 2009. Receipt of same acknowledged on September 30, 2009.

October 9, 2009

Defendant filed three copies and a CD of Proposed Trial Exhibits for the hearing.

October 16, 2009

Defendant filed an additional three copies of Proposed Trial Exhibits as requested by the Board.

October 20, 2009

Board hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, Pa. commencing at 9:45 AM. Case completed.

October 28, 2009

Testimony of Board hearing held on October 20, 2009 filed.

October 29, 2009

Board forwarded copy of testimony of Board hearing held on October 20, 2009 to Defendant.

November 3, 2009

Board issued letter to parties scheduling a settlement conference for November 24, 2009, at the Board of Claims.

November 5, 2009

Defendant filed Acceptance of Service of Testimony dated October 29, 2009. Receipt of same acknowledged on November 2, 2009.

November 20, 2009

Board issued letter to parties scheduling a settlement conference for December 16, 2009, at the Board of Claims.

January 11, 2010

Plaintiff transmitted via facsimile a letter informing the Board that they are not available for a settlement conference until the last two weeks of February.

January 11, 2010

Board forwarded letter to parties requesting the Findings of Fact, Conclusions of Law and Brief in Support.

February 25, 2010

Plaintiff filed Proposed Findings of Fact, Conclusions of Law and Memorandum of Law in Support. [10A042210D]

March 31, 2010

Defendant filed Findings of Fact, Conclusions of Law and Brief in Support.

April 1, 2010

Plaintiff transmitted via facsimile a letter requesting an extension of time until April 16, 2010 to file a response to the Turnpike's brief.

April 5, 2010

Plaintiff filed a letter requesting an extension of time until April 16, 2010 to file a response to the Turnpike's brief.

April 5, 2010

Board forwarded letter to Plaintiff, with copy to Defendant, granting extension of time until April 16, 2010 for Plaintiff to file its response to Defendant's brief.

April 16, 2010

Plaintiff filed Reply in Support of its Proposed Findings of Fact and Conclusions of Law.

October 22, 2010

Defendant filed Withdraw of Appearance of Sozi P. Tulante, Esquire and Entry of Appearance of V. Paige Pratter, Esquire.

January 13, 2011

Board issued Opinion and Order. Order as follows: **"AND NOW,** this 13th day of January, 2011, it is hereby **ORDERED, ADJUDGED** and **DECREED** that judgment in this matter is entered in favor of the Commonwealth of Pennsylvania, Pennsylvania Turnpike Commission and against J.D. Eckman, Inc. No award is made to J.D. Eckman, Inc. Each party will bear its own costs and attorneys' fees. Copy forwarded to attorney and Plaintiff.

January 24, 2011

Defendant filed Acceptance of Service of Opinion and Order dated January 13, 2011. Receipt of same acknowledged January 19, 2011.

January 26, 2011

Chief Deputy Attorney General filed Acceptance of Service of Opinion and Order dated January 13, 2011. Receipt of same acknowledged January 20, 2011.

January 27, 2011

Plaintiff filed Acceptance of Service of Opinion and Order dated January 13, 2011. Receipt of same acknowledged January 21, 2011.

February 14, 2011

Plaintiff filed Petition for Review as filed in Commonwealth Court.

February 14, 2011

Plaintiff filed an Entry of Appearance.

February 18, 2011

Commonwealth Court filed Notice of Filing of Petition for Review.
200 CD 2011.

March 15, 2011

Board filed certified docket sheet from the Board of Claims to
Commonwealth Court.

March 16, 2011

Commonwealth Court acknowledged receipt of the certified docket
from the Board of Claims.

May 22, 2012

Commonwealth Court issued an Opinion and Order. Order as follows:
"AND NOW, this 21st day of May, 2012, the order of the Board of
Claims in the above-captioned matter is affirmed."