

Docket Number: 3949

**JOSEPH B. FAY CO./NORWIN CONSTRUCTION  
COMPANY, A JOINT VENTURE**

Joseph E. Linehan, Esquire  
Chad I. Michaelson, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA TURNPIKE COMMISSION**

~~Doreen McCall, Chief Counsel~~  
~~John Cromer, Esquire~~  
~~Stephie Anna Ramaley, Esquire~~  
~~Chad A. Wissinger, Esquire\*~~  
~~Donald M. Lewinski, Esquire~~  
Douglas C. LaSota, Esquire

**\*December 24, 2008**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$7,188,843.92

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**December 29, 2008**

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

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**January 5, 2009**

Attorney General filed Acknowledgement of Claim dated December 29, 2008. Receipt of same acknowledged on December 31, 2008.

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**January 22, 2009**

Defendant filed Preliminary Objections to Claimants Statement of Claim, Brief in Support and Proposed Order. [09A022309D]

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**January 22, 2009**

Board forwarded letter to Plaintiff requesting response to Defendant's Preliminary Objections.

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**February 23, 2009**

Plaintiff filed Response to Preliminary Objections and Brief in Opposition.

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**March 24, 2009**

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 24<sup>th</sup> day of March, 2009, it is hereby **ORDERED** and **DECREED** that the Pennsylvania Turnpike Commission's preliminary objections in the nature of demurrer are **DENIED** without prejudice. The Commission's preliminary objections for insufficient specificity pursuant to Pa.R.C.P. 1028(a)(3) are **SUSTAINED**. Claimant is **GRANTED** 30 days from the exit date of this Order to file an amended claim that will address its breach of contract claim(s) and damages with more specificity." Copy forwarded to Plaintiff and Defendant.

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**March 30, 2009**

Defendant filed Acceptance of Service of Opinion and Order dated March 24, 2009. Receipt of same acknowledged on March 26, 2009.

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**March 30, 2009**

Plaintiff filed Acceptance of Service of Opinion and Order dated March 24, 2009. Receipt of same acknowledged on March 26, 2009.

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**\*April 23, 2009**

Plaintiff filed Amended Claim and Proof of Mailing. Amount of Claim: Unchanged.

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**April 27, 2009**

Board issued acknowledgment letter and forwarded copy of Amended Claim to Attorney General.

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**May 6, 2009**

Attorney General filed Acknowledgement of Amended Claim dated April 27, 2009. Receipt of same acknowledged on May 4, 2009.

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**May 26, 2009**

Defendant filed Answer and New Matter to Claimant's Amended Statement of Claim.

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**May 27, 2009**

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

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**June 4, 2009**

Plaintiff filed Reply to New Matter.

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**June 4, 2009**

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

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**January 21, 2010**

Plaintiff filed Motion to Compel Discovery.

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**January 21, 2010**

Board forwarded letter to Defendant requesting response to Plaintiff's Motion to Compel.

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**February 12, 2010**

Defendant filed a letter advising the Board that it does not intend to contest Plaintiff's Motion to Compel and consents to the entry of an Order in form attached to Plaintiff's Motion.

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**February 18, 2010**

Board rendered Order. Order as follows: **"AND NOW**, this 18<sup>th</sup> day of February, 2010, upon consideration of Claimant's Motion to Compel Discovery, it is hereby **ORDERED, ADJUDGED and DECREED** that the same be, and hereby is, **GRANTED**. Respondent shall respond in full to Claimant's First Set of Interrogatories and Requests for Production of Documents and produce any documents responsive thereto within fourteen (14) days of the date of this Order." Copy forwarded to Plaintiff and Defendant.

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**February 24, 2010**

Plaintiff filed Acceptance of Service of Order dated February 18, 2010. Receipt of same acknowledged on February 22, 2010.

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**March 8, 2010**

Defendant filed Acceptance of Service of Order dated February 18, 2010. Receipt of same acknowledged on March 4, 2010.

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**July 2, 2010**

Plaintiff filed Second Motion to Compel Discovery and For Sanctions and Proposed Order.

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**July 7, 2010**

Board forwarded letter to Defendant requesting response to Plaintiff's Second Motion to Compel Discovery and For Sanctions.

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**August 2, 2010**

Defendant filed letter stating that they have made arrangements with Plaintiff's counsel to comply with Plaintiff's Second Motion to Compel Discovery within the prescribed time period.

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**August 4, 2010**

Board rendered Order. Order as follows: **"AND NOW**, this 4<sup>th</sup> day of August, 2010, upon consideration of Claimant's Second Motion to Compel Discovery and for Sanctions and Respondent's letter of July 30, 2010, indicating it has now made arrangements to comply with Claimant's Second Motion to Compel Discovery but would not contest entry of an appropriate order, it is hereby **ORDERED** that the said Motion to Compel is hereby **GRANTED** without the imposition of sanctions. Respondent shall respond in full to Claimant's First Set of Interrogatories and Requests for Production of Documents within 14 days of the date of this Order. See Pa. R.C.P. 4019(a) and (j). This Order is without prejudice to Claimant's ability to seek appropriate sanctions in the event that Respondent fails to fully comply with this Order." Copy forwarded to Plaintiff and Defendant.

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**August 9, 2010**

Plaintiff filed Acceptance of Service of Order dated August 4, 2010. Receipt of same acknowledged on August 5, 2010.

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**August 13, 2010**

Defendant filed Acceptance of Service of Order dated August 4, 2010. Receipt of same acknowledged on August 11, 2010.

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**September 17, 2010**

Defendant filed Motion for Protective Order and Brief in Support.

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**September 17, 2010**

Board forwarded letter to Plaintiff requesting response to Defendant's Motion.

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**September 27, 2010**

Plaintiff filed Third Motion to Compel Discovery and for Sanctions, Proposed Order. [06A101510]

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**September 27, 2010**

Plaintiff filed Brief in Opposition to Motion for Protective Order.

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**September 27, 2010**

Board forwarded letter to Defendant requesting response to Plaintiff's Third Motion to Compel Discovery and for Sanctions.

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**October 15, 2010**

Defendant filed Brief in Opposition to Claimant's Third Motion to Compel Discovery and for Sanctions.

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**October 20, 2010**

Plaintiff filed Reply Brief in Support of Third Motion to Compel Discovery and for Sanctions.

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**November 17, 2010**

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 17<sup>th</sup> day of November, 2010, after consideration of Fay/Norwin's Third Motion to Compel Discovery and for Sanctions and Respondent Commission's Motion for Protective Order, and the briefs in support thereof, it is hereby **ORDERED** and **DECREED** that Fay/Norwin's motion to compel answers to its Second Set of Interrogatories, Items 1, 2, 5 and 8 and a response to its Request for Production No. 5 is **GRANTED**. Complete responses to these items of discovery shall be made within 30 days of the exit date of this order. Fay/Norwin's motion to compel is also **GRANTED** with respect to Request No. 6 as set forth in this Opinion. Respondent's Motion for Protective Order is **DENIED**." Copy forwarded to Plaintiff and Defendant.

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**November 22, 2010**

Plaintiff filed Acceptance of Service of Opinion and Order dated November 17, 2010. Receipt of same acknowledged on November 19, 2010.

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**March 11, 2011**

Plaintiff requested (4009.21 - to produce documents) subpoena(s) dated March 14, 2011 to Plaintiff.

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**March 14, 2011**

Board forwarded (4009.21 - to produce documents) subpoenas(s) dated March 14, 2011 to Plaintiff.

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**April 29, 2011**

Plaintiff filed Fourth Motion to Compel Discovery and for Sanctions.

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**June 7, 2011**

Plaintiff requested via telephone (234.1 - to attend with duces tecum) subpoena(s).

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**June 7, 2011**

Board forwarded (234.1 - to attend with duces tecum) subpoena(s) dated June 7, 2011 to Plaintiff.

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**June 9, 2011**

Board forwarded letter to parties scheduling a status conference for 6/14/11.

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**June 14, 2011**

Board Status conference held.

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**June 28, 2011**

Plaintiff filed Protocol for Sampling Electronically-Stored Information executed by Plaintiff and Defendant.

**June 28, 2011**

Board forwarded letter to Plaintiff advising the parties to proceed on the agreed upon protocol for search of the PTC electronic records and to advise the Board whether or not Plaintiff will withdraw its Fourth Motion to Compel.

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**July 8, 2011**

Plaintiff requested by telephone ten subpoenas 234.1 - to attend and testify.

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**July 8, 2011**

Board forwarded ten subpoenas 234.1 - to attend and testify to Plaintiff.

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**August 24, 2011**

Board rendered an Opinion and Order and rendered the following Order: "AND NOW, this 24<sup>th</sup> day of August, 2011, it is hereby **ORDERED** and **DECREED** that the fourth motion to compel discovery filed by the Plaintiff on April 29, 2011, is hereby **DENIED** as **MOOT**." Copy forwarded to Plaintiff and Defendant.

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**August 29, 2011**

Plaintiff filed Acceptance of Service of Opinion and Order dated August 24, 2011. Receipt of same acknowledged August 26, 2011.

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**September 1, 2011**

Defendant filed Acceptance of Service of Opinion and Order dated August 24, 2011. Receipt of same acknowledged August 30, 2011.

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**December 12, 2011**

Plaintiff requested by telephone (234.1 - to attend with duces tecum) subpoenas.

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**December 13, 2011**

Board forwarded (234.1 - to attend with duces tecum) subpoenas dated December 13, 2011 to Plaintiff.

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**March 26, 2012**

Plaintiff requested by telephone (234.1 - to attend with duces tecum) subpoenas.

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**March 27, 2012**

Board forwarded (234.1 - to attend with duces tecum) subpoenas dated December 13, 2011 to Plaintiff.

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**June 20, 2012**

Plaintiff requested by telephone (4009.21 - to produce documents) subpoena(s) dated June 21, 2012 to Defendant.

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**June 21, 2011**

Board forwarded (4009.21 - to produce documents) subpoenas(s) dated June 21, 2012 to Defendant.

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**September 26, 2012**

Plaintiff requested by telephone (4009.21 - to produce documents) and (234.1 - to attend with duces tecum) subpoenas dated September 26, 2012 to Plaintiff.

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**September 26, 2012**

Board forwarded (4009.21 - to produce documents) and 234.1 - to attend with duces tecum) subpoenas dated September 26, 2012 to Plaintiff.

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**October 3, 2012**

Plaintiff filed Joint Status Report and request for entry of scheduling order with proposed hearing dates.

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**October 10, 2012**

The Board rendered the following Scheduling Order: **"AND NOW**, this 10<sup>th</sup> day of October, 2012, it is hereby **ORDERED** and **DECREED** as follows: All discovery, including exchange of any expert reports<sup>1</sup>, shall be completed by November 30, 2012; <sup>2</sup>The last day for filing pre-trial motions is December 21, 2012, 2013; <sup>2</sup>Motions for Summary Judgment and supporting Briefs shall be filed on or before December 21, 2012. Responses and Briefs in Opposition shall be filed on or before January 11, 2013; Oral argument shall be held via telephone on January 29, 2013 at 1:00 p.m.; Pre-trial statements of all parties conforming with BOC R.P. 501(b) shall be filed with the Board and served upon one another no later than February 22, 2013; A pre-trial conference is scheduled for Tuesday, February 26, 2013 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7<sup>th</sup> Floor, Harrisburg, PA 17101; This matter is set for hearing beginning on Monday, April 8, 2013 and running through April 12, 2013, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6<sup>th</sup> 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."

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**October 17, 2012**

Defendant filed Acceptance of Service of Scheduling Order dated October 10, 2012. Receipt of same acknowledged by Defendant October 15, 2012.

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**October 19, 2012**

Plaintiff filed Acceptance of Service of Scheduling Order dated October 10, 2012. Receipt of same acknowledged by Plaintiff October 15, 2012.

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**December 7, 2012**

Plaintiff filed Joint Motion to Amend Scheduling Order.

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**December 7, 2012**

Board rendered Order. Order as follows: **"AND NOW**, this 7<sup>th</sup> day of December, 2012, pursuant to a joint motion from the parties received by the Board on December 7, 2012, it is hereby **ORDERED** that: 1. The deadline for the exchange of expert reports set forth in the Board's Scheduling Order dated October 10, 2012 is hereby

modified as follows: a. Claimant's Expert Report shall be produced to Respondent on or before January 18, 2013; and b. Respondent's Expert Report shall be produced to Claimant on or before February 8, 2013 2. All other deadlines set forth in the Board's Scheduling Order dated October 10, 2012 remain in place. Copy forwarded to Plaintiff and Defendant.

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**December 13, 2012**

Defendant filed Acceptance of Service of Order dated December 7, 2012. Receipt of same acknowledged by December 11, 2012.

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**January 18, 2013**

Defendant filed Praecipe for Substitution of Appearance removing Chad A. Wissinger, Esquire and Burn White, Esquire from the law firm of Burns, White & Hickton, LLC and entering Donald M. Lewinski, Esquire and Chad A. Wissinger, Esquire from the law firm of Marshall, Dennehey, Warner, Coleman & Goggin.

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**January 24, 2013**

Board forwarded letter cancelling the oral argument scheduled for January 29, 2013 at 1:00 PM.

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**February 1, 2013**

Board forwarded Notice of Settlement Conference.

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**February 8, 2013**

Defendant filed Motion to Strike Expert Report of Gregory C. Seigworth, CPA, Brief in Support and Proposed Order.

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**February 8, 2013**

Board forwarded letter to Defendant advising that the time for filing pre-trial motions has passed and accordingly, the Board will not be entertaining or addressing Defendant's Motion to Strike Expert Report of Gregory C. Seigworth at this time. The parties are instructed to come to the pre-trial conference scheduled for January 26, 2013, prepared to discuss this motion as well as any other outstanding matters.

**February 11, 2013**

Board forwarded letter to parties requesting a complete copy of their experts report(s) by no later than Tuesday, February 19, 2013.

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**February 19, 2013**

Plaintiff filed Expert Report of Gregory C. Seigworth, CPE.

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**February 19, 2013**

Defendant filed Expert Report of Shad E. Hoover, Ph.D., P.E.

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**February 22, 2013**

Defendant filed Pre-Trial Statement.

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**February 22, 2013**

Plaintiff filed Pre-Trial Statement.

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**March 11, 2013**

Plaintiff requested (Subpoena 234.1 - to attend with duces tecum) subpoena(s) dated March 11, 2013 to Plaintiff.

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**March 12, 2013**

Board forwarded (234.1 - to attend with duces tecum) subpoenas(s) dated March 12, 2013 to Plaintiff.

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**March 29, 2013**

Defendant filed Subpoena directed to Errol S. Abdulla, P.E.

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**March 29, 2013**

Defendant filed Joint Stipulations and Exhibit List.

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**April 1, 2013**

Defendant filed Subpoena directed to Donald G. Bouscher.

**April 4, 2013**

Defendant filed Summaries of Witnesses Identified In Pre-hearing Statement of the Pennsylvania Turnpike Commission.

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**April 4, 2013**

Amended Joint Stipulations and Exhibit List.

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**April 5, 2013**

Plaintiff filed copy of subpoena directed Matthew P. McTish, P.E.

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**April 8, 2013**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

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**April 9, 2013**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

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**April 10, 2013**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

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**April 11, 2013**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

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**April 12, 2013**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

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**April 12, 2013**

Defendant requested in person one Subpoena 234.1. Board forwarded (in person) one Subpoena 234.1 to Defendant.

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**April 12, 2013**

Board forwarded letter (Via Fax) to parties requesting that bid documents for the "0-2 Project" be entered into evidence.

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**April 15, 2013**

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa. COMPLETED

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**April 30, 2013**

Testimony of hearing held April 8, 2013 filed. Copy forwarded to attorney for Defendant.

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**May 1, 2013**

Testimony of hearing held April 9, 2013 filed.

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**May 2, 2013**

Testimony of hearing held April 10, 2013 filed.

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**May 6, 2013**

Testimony of hearing held April 11 & 12, 2013 filed.

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**May 7, 2013**

Testimony of hearing held April 15, 2013 filed. Last Day

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**May 7, 2013**

Board forwarded copy of testimony of hearing held April 9, 10, 11, 12 & 15, 2013 to attorney for Defendant.

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**May 17, 2013**

Defendant filed Acceptance of Service of testimony of hearing held April 8, 2013. Receipt of same acknowledged May 15, 2013.

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**May 17, 2013**

Defendant filed Acceptance of Service of testimony of hearing held April 9-12 & 15, 2013. Receipt of same acknowledged May 15, 2013.

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**May 20, 2013**

Plaintiff transmitted via facsimile a letter requesting an extension of time until May 31, 2013 in which to file its Findings of Facts, Conclusions of Law and Brief.

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**May 20, 2013**

Board forwarded letter to Plaintiff granting extension of time request.

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**May 22, 2013**

Plaintiff filed via U.S. Mail a letter requesting an extension of time until May 31, 2013 in which to file its Findings of Facts, Conclusions of Law and Brief.

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**May 31, 2013**

Plaintiff filed Findings of Fact, Conclusions of Law and Brief.

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**June 17, 2013**

Defendant filed letter requesting an extension of time until June 28, 2013 in which to file its Findings of Fact, Conclusions of Law and Brief as well as proposed order.

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**June 18, 2013**

Board forwarded letter to Defendant granting extension of time request.

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**June 28, 2013**

Defendant filed Findings of Fact, Conclusions of Law and Post-Hearing Brief.

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**July 8, 2013**

Plaintiff transmitted via facsimile a letter requesting an extension of time until July 19, 2013 in which to file its response to Defendant's post-hearing brief.

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**July 9, 2013**

Board forwarded letter to Plaintiff granting extension of time request.

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**July 10, 2013**

Plaintiff filed via U.S. Mail a letter requesting an extension of time until July 19, 2013 in which to file its response to Defendant's post-hearing brief.

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**July 19, 2013**

Plaintiff filed Reply to Defendant's Post-Hearing Brief.

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**April 7, 2014**

Defendant filed a Praecipe for Substitution of Appearance withdrawing the appearance of Chad A. Wissinger, Esquire and Donald M. Lewinski, Esquire and entering the appearance of Douglas C. LaSota, Esquire and the law firm of Marshall, Dennehey, Warner, Coleman & Goggin on behalf of Defendant.

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**July 21, 2014**

Board rendered Opinion and Order. Order as follows: **"AND NOW,** this 21<sup>st</sup> day of July, 2014, it is **ORDERED** and **DECREED** that judgment is entered against the Commonwealth of Pennsylvania, Pennsylvania Turnpike Commission and in favor of Joseph B. Fay Co./Norwin Construction Company, a Joint Venture, in the amount of \$5,966,683, comprised of the principal amount of \$4,300,446 plus prejudgment interest of \$1,666,237. Joseph B. Fay Co./Norwin Construction Company, a Joint Venture, is further awarded post-judgment interest at the legal rate of 6% per annum on the outstanding amount of this judgment until paid." Copy forwarded to Plaintiff and Defendant.

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**July 28, 2014**

Plaintiff filed Acceptance of Service of Opinion and Order dated July 21, 2014. Receipt of same acknowledged by July 24, 2014.

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**July 31, 2014**

Attorney General filed Acceptance of Service of Opinion and Order dated July 21, 2014. Receipt of same acknowledged by July 29, 2014.

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**July 31, 2014**

Defendant filed a request for transcription and proposed order.

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**July 31, 2014**

Defendant filed Motions for Post-Trial Relief including Motion for Judgment N.O.V., Motion for New Trial, Motion for A New Trial on Damages and Three proposed orders.

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**August 4, 2014**

Defendant filed Acceptance of Service of Opinion and Order dated July 21, 2014. Receipt of same acknowledged by July 25, 2014.

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**August 4, 2014**

Board forwarded letter to Defendant with copy to Plaintiff regarding Defendant's request for copies of transcriptions.

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**August 6, 2014**

Board rendered Opinion and Order. Order as follows: **"AND NOW, this 6<sup>th</sup> day of August, 2014, it is ORDERED and DECREED that the Pennsylvania Turnpike Commission's motions for judgment n.o.v., new trial and new trial on damages are DENIED."** Copy forwarded to Plaintiff and Defendant.

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**August 13, 2014**

Plaintiff filed Acceptance of Service of Opinion and Order dated August 6, 2014. Receipt of same acknowledged by August 11, 2014.

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**August 15, 2014**

Defendant filed Acceptance of Service of Opinion and Order dated August 6, 2014. Receipt of same acknowledged by August 11, 2014.

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**August 22, 2014**

Defendant filed a copy of its Petition for Review as filed in Commonwealth Court.

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**August 22, 2014**

Commonwealth Court filed Notice of Filing Petition for Review. 1432 CD 2014

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**August 27, 2014**

Board forwarded certified list comprising of the record to Commonwealth Court.

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**September 2, 2014**

Defendant filed a copy of praecipe for appearance as filed in Commonwealth Court.

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**September 2, 2014**

Defendant filed a copy of Docketing Statement/Petition for Review and Amended Certificate of Service as filed in Commonwealth Court.

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**September 5, 2014**

Plaintiff filed a copy of Plaintiff's Cross-Petition for Review as filed in Commonwealth Court.

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**September 10, 2014**

Commonwealth Court filed Notice of Filing Petition for Review. 1535 CD 2014

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**September 18, 2014**

Defendant filed a copy of Pennsylvania Turnpike Commission's letter requesting a 30 day extension of time as filed in Commonwealth Court.

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**September 22, 2014**

Plaintiff filed a copy of Docketing Statement and Statement of Issues as filed in Commonwealth Court.

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**September 24, 2014**

Commonwealth Court Order filed. Order as follows: "NOW, September 22, 2014, the above-captioned cross-petitions for review are hereby consolidated. The Commonwealth of Pennsylvania, Turnpike Commission is designated petitioner under Pa. R.A.P. 2136. Consistent with the September 17, 2014, order at No. 1432 C.D. 2014, designated petitioner's brief (4 copies) and reproduced record (4 copies) shall be filed by November 6, 2014."

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**October 14, 2014**

Defendant filed a copy of its Statement of Contents of reproduced record and issues raised on appeal as filed in Commonwealth Court.

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**October 24, 2014**

Defendant filed a copy of its Motion for Second Request for Extension of Briefing Schedule as filed on Commonwealth Court.

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**October 27, 2014**

Plaintiff filed a copy of its Supplemental Designation of Contents of the Reproduced Record as filed in Commonwealth Court.

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**October 29, 2014**

Defendant filed a copy of its letter attaching payment for its motion for second request for extension of briefing schedule as filed in Commonwealth Court.

**December 1, 2014**

Commonwealth Court filed Memorandum and Order. Order as follows: "NOW, this 24<sup>th</sup> day of November, 2014, after referral to mediation, the parties having reported on their efforts and progress toward finalizing an agreement to resolve the matters herein, it is hereby ORDERED that this case is stayed and the briefing schedule is suspended pending discontinuance or further Order. The parties shall file a joint status report with the Court no later than December 31, 2014, if the appeals have not been discontinued by that date."

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**December 22, 2014**

Defendant filed a copy of Praecipe to Discontinue Appeal as filed in Commonwealth Court.

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**December 24, 2014**

Plaintiff filed a copy of Praecipe to Discontinue Cross-Appeal as filed in Commonwealth Court.

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**December 26, 2014**

Commonwealth Court filed copy of Notice of Discontinuance of Action advising that matter has been marked "Discontinued."

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