

Docket Number: 3964

**MASCARO CONTRACTING, L.P.**

James W. Kutz, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION**

Andrew S. Gordon, Chief Counsel  
Robert T. Kuntz, Assistant Counsel

**May 20, 2009**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$4,484,179.29.

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**May 21, 2009**

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

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**May 29, 2009**

Defendant filed letter requesting an extension of time until July 20, 2009, in which to file its Answer.

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**June 1, 2009**

Board issued letter to Defendant with copy to Plaintiff granting extension of time for Defendant to file its Answer.

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**June 3, 2009**

Chief Deputy Attorney General filed Acknowledgement form. Receipt of same acknowledged June 1, 2009.

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**July 7, 2009**

Defendant filed letter advising that Plaintiff concurs to an extension of time until August 20, 2009, for Defendant to file its Answer in the above-captioned matter.

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**July 8, 2009**

Board issued letter to Defendant with copy to Plaintiff granting extension of time for Defendant to file its Answer.

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**August 20, 2009**

Defendant filed Answer With New Matter.

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**August 21, 2009**

Board forwarded letter to Plaintiff requesting response to New Matter.

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**August 26, 2009**

Plaintiff filed Notice of Service of Discovery of Plaintiff's Request for Production of Documents Directed to Defendant - First Set.

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**September 10, 2009**

Plaintiff filed letter requesting an extension of time until September 30, 2009, in which to file its Reply to Defendant's New Matter.

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**September 14, 2009**

Board issued letter to Plaintiff with copy to Defendant granting extension of time for Plaintiff to file its Reply to New Matter.

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**September 25, 2009**

Defendant filed letter requesting an extension of time until October 5, 2009, to file its Response to Plaintiff's Request for Production of documents.

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**September 28, 2009**

Board issued letter to Defendant, with copy to Plaintiff granting an extension of time for Defendant to file its Response to Plaintiff's Request for Production of Documents.

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**September 30, 2009**

Plaintiff filed Preliminary Objections to Defendant's New Matter and Brief in Support.[09A110209D]

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**October 1, 2009**

Board forwarded letter to Defendant advising of the Rules to file its response and a responsive brief.

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**October 30, 2009**

Defendant filed The Department's Response to Preliminary Objections and Brief in Support.

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**December 2, 2009**

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 2nd day of December, 2009, Mascaro's Motion for a More Specific Pleading pursuant to Pa.R.C.P. 1019(a) is **GRANTED**. PennDOT shall file an Amended Answer and New Matter within 30 days from the exit date of this order to address the specificity issues raised by Mascaro. Mascaro's remaining preliminary objections in the Nature of Demurrer/Motion to Strike PennDOT's statute of limitations defense filed on September 30, 2009 shall be considered moot upon the filing of PennDOT's Amended Answer and New Matter as **ORDERED** herein. Copy forwarded to Plaintiff and Defendant.

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**December 31, 2009**

Defendant filed Amended Answer and New Matter.

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**January 7, 2010**

Board forwarded letter to Plaintiff requesting response to New Matter.

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**January 25, 2010**

Plaintiff filed Preliminary Objections to Defendant's Amended Answer, New Matter and Brief in Support.[05A030210D]

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**January 26, 2010**

Board forwarded letter to Defendant, with copy to Plaintiff, requesting a response to Plaintiff's preliminary objections.

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**February 24, 2010**

Defendant filed Response to Plaintiff's Preliminary Objections to Amended Answer and New Matter, as well as Brief in Opposition.

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**March 23, 2010**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 23rd day of March, 2010, after review of Plaintiff's preliminary objections to Defendant's Amended Answer and New Matter and Defendant's response thereto, it is hereby **ORDERED** and **DECREED** that Plaintiff's preliminary objection in the nature of a demurrer to Defendant's new matter alleging a statute of limitations defense is **OVERRULED**. Plaintiff's preliminary objection alleging the inclusion of impertinent material in said new matter is **GRANTED**. Paragraph 256 of Defendant's Amended Answer and New Matter is hereby **STRICKEN**." Copy forwarded to Plaintiff and Defendant.

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**May 6, 2010**

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

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**May 7, 2010**

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

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**June 21, 2010**

Plaintiff requested four subpoenas(4009.21 - to produce documents).

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**June 23, 2010**

Board forwarded four subpoenas (4009.21 - to produce documents) to Plaintiff.

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**August 4, 2010**

Plaintiff filed letter requesting that a hearing be scheduled.

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**August 5, 2010**

Board forwarded letter to parties requesting proposed scheduling orders.

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**July 6, 2011**

Plaintiff filed Motion to Compel Discovery.

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**July 7, 2011**

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

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**August 1, 2011**

Plaintiff filed letter advising of Plaintiff's proposed schedule for hearing.

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**August 1, 2011**

Board letter to Defendant requesting proposed hearing dates.

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**August 5, 2011**

Defendant filed letter outlining their outstanding discovery and providing the Board with their proposed hearing dates.

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**August 8, 2011**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 8<sup>th</sup> day of August, 2011, it is **ORDERED** and **DECREED** that Defendant's Motion to Compel is **GRANTED**. Plaintiff is directed to respond to Defendant's First Set of Interrogatories by no later than September 15, 2011." Copy forwarded to all parties of record.

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**August 10, 2011**

**AND NOW**, this 10<sup>th</sup> day of August, 2011, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's and defendant's expert reports, if any, to be provided to opponent is March 1, 2012; 2. Any further expert rebuttal reports shall be provided to opponent by May 1, 2012; 3. All discovery shall be complete by June 4, 2012; 4. The last day for filing pre-trial motions is June 11, 2012; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than July 13, 2012 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, July 18, 2012 at 1:00 p.m. Said conference shall held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Monday, September 10, 2012 and running through Friday, September 21, 2012, 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.

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**August 16, 2011**

Defendant filed Acceptance of Service of Scheduling Order dated August 10, 2011. Receipt of same acknowledged August 15, 2011.

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**August 16, 2011**

Plaintiff filed Acceptance of Service of Opinion and Order dated August 8, 2011. Receipt of same acknowledged August 15, 2011.

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**August 17, 2011**

Plaintiff filed Acceptance of Service of Scheduling Order dated August 10, 2011. Receipt of same acknowledged August 15, 2011.

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**August 18, 2011**

Defendant filed Acceptance of Service of Opinion and Order dated August 8, 2011. Receipt of same acknowledged August 11, 2011.

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**May 16, 2012**

Plaintiff and Defendant filed letter requesting postponement of the hearing scheduled for September 10-14, 17-21, 2012 and requesting that a new scheduling order be issued which extends the discovery deadlines, with the other dates to be adjusted accordingly.

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**May 21, 2012**

**AND NOW**, this 21st day of May, 2012, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's and defendant's expert reports, if any, to be provided to opponent is December 15, 2012; 2. Any further expert rebuttal reports shall be provided to opponent by March 11, 2013; 3. All discovery shall be complete by March 1, 2013; 4. The last day for filing pre-trial motions is March 13, 2013; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than April 15, 2013 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, April 18, 2013 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 Monday, May 13, 2013 and running through Friday, May 24, 2013, 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.

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**November 29, 2012**

Plaintiff filed letter requesting the hearing scheduled for May 13-24, 2013 be postponed and requesting a conference call be scheduled.

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**November 29, 2012**

Board forwarded letter to Plaintiff and Defendant cancelling hearing scheduled for May 13-24, 2013.

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**December 3, 2012**

Board forwarded letter scheduling teleconference for Thursday, January 10, 2013 at 1:00 PM.

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**January 10, 2012**

Board held teleconference on Thursday, January 10, 2013 at 1:00 PM.

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**January 11, 2013**

The Board rendered the following Revised Scheduling Order: **"AND NOW**, this 11th day of January, 2013, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's and defendant's expert reports, if any, to be provided to opponent is August 30, 2013;<sup>1</sup> 2. Any further expert rebuttal reports shall be provided to opponent by December 2, 2013;<sup>1</sup> 3. All discovery shall be complete by December 16, 2013;<sup>2</sup> 4. The last day for filing pre-trial motions is December 30, 2013;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than February 4, 2014 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Tuesday, February 11, 2014 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 Monday, March 10, 2014 and running through Friday, March 28, 2014, 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."

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**August 6, 2013**

Plaintiff transmitted via facsimile a letter advising that the parties have agreed to schedule a conference call for Thursday, August 8, 2013 at 1:00 p.m. to discuss adjusting several dates to the Board's scheduling order.

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**August 6, 2013**

Board forwarded letter scheduling teleconference for Thursday, August 8, 2013 at 1:00 PM.

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**August 6, 2013**

Plaintiff filed via U.S. Mail a letter advising that the parties have agreed to schedule a conference call for Thursday, August 8, 2013 at 1:00 p.m. to discuss adjusting several dates to the Board's scheduling order.

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**August 6, 2013**

Board held teleconference on Thursday, August 6, 2013 at 1:00 PM.

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**August 9, 2013**

Board rendered a revised scheduling order. Order as follows: "**AND NOW**, this 9<sup>th</sup> day of August, 2013, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's and defendant's expert reports, if any, to be provided to opponent is June 30, 2014; 2. Any further expert rebuttal reports shall be provided to opponent by October 10, 2014; 3. All discovery shall be complete by October 24, 2014; 4. The last day for filing pre-trial motions is November 5, 2014; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than December 12, 2014 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Tuesday, December 16, 2014 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, January 20, 2015 and running through Friday, January 30, 2015, 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.

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**February 19, 2014**

Defendant filed Motion to Compel Production of Electronic Documents, Brief in Support and Proposed Order.

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**February 20, 2014**

Board forwarded letter to Plaintiff, with copy to Defendant, advising of the rules for filing responses/briefs.

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**March 24, 2014**

Plaintiff filed Response to Defendant's Motion to Compel Production of Documents and Brief in Opposition.

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**April 4, 2014**

Board forwarded letter to parties scheduling status conference for Wednesday, April 23, 2014 at 1:00 PM in the Board's office.

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**April 8, 2014**

Board forwarded letter to parties regarding the status conference scheduled for April 23, 2014.

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**April 23, 2014**

Board held a status conference at 1:00 p.m.

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**April 25, 2014**

Board rendered an Order. Order as follows: **"AND NOW**, this 25<sup>th</sup> day of April, 2014, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's and defendant's expert reports, if any, to be provided to opponent is November 14, 2014; 2. Any further expert rebuttal reports shall be provided to opponent by February 13, 2015; 3. All discovery shall be complete by February 27, 2015; 4. The last day for filing pre-trial motions is March 13, 2015; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than April 24, 2015 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, April 29, 2015 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 Monday, June 1, 2015 and running through Friday, June 12, 2015, 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.

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**April 25, 2014**

Board rendered Opinion and Order. Order as follows: **"AND NOW** this 25<sup>th</sup> day of April, 2014, upon consideration of the Defendant's motion to compel production and the response of Plaintiff along with the discussion at the status conference held by the Board on April 23, 2014, it is **ORDERED** that: 1) Within 25 days, Mascaro will provide a separate list of vendors and/or lessors for each numbered documentation request and the job number, code or other nomenclature used on the invoices, leases, bills, purchase orders, etc. which was (or can be) used to identify that the particular invoice, lease, bill, purchase order or equivalent pertains to this project (e.g. a list of lessors and project identifying code for Item 8, a separate list of lessors and identifiers for Item 9,

another list of vendors and project identifiers for Item 7, another list of vendors and project identifiers for Item 15, etc.); 2) within 30 days Mascaro will make available to the Department at a reasonable time and place the files of vendor/lessor invoices, bills, purchase orders and/or equivalents for 2006, 2007 and 2008; and 3) the Department will be given the opportunity to inspect these files and to select and copy any invoices/documents it requires for the preparation of its case or defense." Copy forwarded to Plaintiff and Defendant.

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**June 27, 2014**

Defendant requested via telephone Subpoenas 4009.21 - to produce documents.

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**June 27, 2014**

Board forwarded Subpoenas 4009.21 - to produce documents dated June 27, 2014 to Defendant.

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**July 16, 2014**

Defendant filed letter type notice of service of fourteen subpoenas to produce documents and things that have been sent to various Mascaro subcontractors.

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**November 24, 2014**

Defendant requested via telephone Subpoenas 234.1 - to attend and testify.

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**November 24, 2014**

Board forwarded Subpoenas 234.1 - to attend and testify dated November 24, 2014 to Defendant.

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**February 13, 2015**

Parties filed a letter advising that the case has settled and requesting that the Board remove this case from the trial lists.

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**July 9, 2015**

Plaintiff filed praecipe to discontinue.

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**July 10, 2015**

Board rendered an Order. Order as follows: "**AND NOW**, this 10<sup>th</sup> day of July, 2015, upon receipt of a Praecipe executed by James W. Kutz, Esquire, on behalf of Plaintiff, Mascaro Contracting, L.P., requesting that the Board mark the above-captioned matter settled, ended and discontinued docketed with this Board under date of July 9, 2005, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

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**July 16, 2015**

Defendant filed Acceptance of Service of dated July 10, 2015. Receipt of same acknowledged July 13, 2015.

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