

Docket Number: 4057

**JJID, INC.**

~~W. Scott Staruch, Esquire~~  
~~Gerard J. Pisarcik, Esquire~~  
James S. Green, Sr., Esquire  
Paul A. Logan, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION**

~~Andrew S. Gordon, Chief Counsel~~  
~~Gerald R. Schultz, Assistant Counsel~~  
Jason M. Wolgemuth, Assistant Counsel

**October 23, 2012**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: Amount of Initial Claim (\$1,366,026.65)

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**October 24, 2012**

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

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**November 14, 2012**

Defendant filed Preliminary Objections and Brief in Support.

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**November 15, 2012**

Board forwarded letter to Plaintiff requesting response to Defendant's Preliminary Objections and Brief in Support.

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**December 10, 2012**

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

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**December 31, 2012**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 31<sup>st</sup> day of December, 2012, upon consideration of the Department's Preliminary Objections and supporting brief and JJID's Response to Preliminary Objections and supporting brief, it is **ORDERED** and **DECREED** that the Department's preliminary objection to JJID's "Count VIII" based on a claim under the Contractor and Subcontractor Payment Act is **SUSTAINED**. Paragraphs 33 through 35 of the Statement of Claim are **STRICKEN**. The Department's preliminary objection based on JJID's failure to include a notice to defend is **OVERRULED**." Copy forwarded to Plaintiff and Defendant.

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**January 7, 2013**

Plaintiff filed Acceptance of Service of Opinion and Order dated December 31, 2012. Receipt of same acknowledged January 3, 2013.

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**January 15, 2013**

Plaintiff requested by telephone (Subpoena 4009.21-to produce documents).

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**January 16, 2013**

Board forwarded (Subpoena 4009.21-to produce documents) dated January 16, 2013 to Plaintiff.

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**January 17, 2013**

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

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**January 31, 2013**

Plaintiff filed First Request for Production of Documents.

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**February 15, 2013**

Defendant filed Answer and New Matter.

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**February 15, 2013**

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

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**March 8, 2013**

Plaintiff filed letter requesting an extension of time until April 7, 2013 in which to file Plaintiff's Response to Defendant's New Matter pending appointment of new counsel.

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**March 11, 2013**

Board forwarded letter granting Plaintiff's extension of time until April 7, 2013 in which to file Plaintiff's Response to Defendant's New Matter pending appointment of new counsel.

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**March 11, 2013**

Plaintiff filed Substitution of Counsel removing attorneys W. Scott Staruch and Gerard J. Pisarcik and entering the appearance of James S. Green, Sr., Esquire on behalf of Plaintiff.

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**April 9, 2013**

Plaintiff filed an Entry of Appearance of Paul A. Logan as co-counsel on behalf of Plaintiff.

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**April 9, 2013**

Plaintiff filed Reply to New Matter.

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**April 10, 2013**

Board forwarded letter directing parties to proceed with discovery.

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**May 23, 2013**

Defendant forwarded letter to the Board attaching its Response to First Request for Production of Documents to Plaintiff.

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**June 7, 2013**

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

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**August 12, 2013**

Defendant filed Notice of Service of Defendant's Requests for Admission Directed to Plaintiff (First Set).

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**August 14, 2013**

Defendant filed Notice of Service of Defendant's Interrogatories to Plaintiff (First Set).

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**October 31, 2013**

Defendant filed Notice of Service of Defendant's Requests for Admission (Second Set).

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**April 7, 2014**

Defendant filed a Motion to Compel Production of Documents pursuant to Pa. R.C.P. 4019 and brief in support.

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**April 8, 2014**

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

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**April 30, 2014**

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

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**April 30, 2014**

Board forwarded letter to parties requesting a date and time to schedule a status conference.

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**May 8, 2014**

Defendant filed letter advising that both parties are available to meet at 11:00 a.m. on May 28, 2014, for a status conference.

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**May 8, 2014**

Board scheduled a status conference for May 28, 2014 at 11:00 a.m.

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**May 27, 2014**

Defendant requested via telephone to cancel status conference scheduled for May 28, 2014.

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**May 27, 2014**

Board forwarded letter to parties (via facsimile and U.S. mail) advising that per Defendant's request, the status conference scheduled for May 28, 2014 has been canceled.

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**May 30, 2014**

Defendant transmitted via facsimile a letter withdrawing Motion to Compel Production of Documents.

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**June 2, 2014**

Defendant filed via U.S. Mail a letter withdrawing Motion to Compel Production of Documents.

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**April 18, 2016**

Plaintiff filed motion to overrule objections and to compel production of documents pursuant to Pa. R.C.P. 4019 and brief in support.

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**April 18, 2016**

Plaintiff transmitted via facsimile a letter requesting the Board schedule a time to discuss Plaintiff's motion to compel.

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**April 19, 2016**

Board forwarded letter to Defendant, with copy to Plaintiff, directing Defendant to file response to motion.

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**April 20, 2016**

Board forwarded letter (via facsimile & U.S. mail) to parties scheduling teleconference for April 25, 2016 at 1:00 p.m.

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**April 21, 2016**

Plaintiff filed via U.S. mail a letter requesting the Board schedule a time to discuss Plaintiff's motion to compel.

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**April 21, 2016**

Defendant filed response to second document request.

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**April 25, 2016**

Board held teleconference on April 25, 2016.

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**May 13, 2016**

Defendant filed response to motion to overrule objections and to compel production of documents as well as brief in support.

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**June 2, 2016**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 2<sup>nd</sup> day of June, 2016, after review of JJID's motion to overrule objections and compel production of documents, and the Department's opposition to the motion, it is hereby **ORDERED** that JJID's motion is **GRANTED**. The Department shall produce for inspection all documents responsive to the First Set and the Second Set, along with a detailed privilege log for all documents withheld, within thirty (30) days from the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

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**June 10, 2016**

Plaintiff filed Acceptance of Service of Opinion and Order dated June 2, 2016. Receipt of same acknowledged June 7, 2016.

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**June 20, 2016**

Defendant filed a copy of a letter addressed to Plaintiff regarding gathering all documents relating to the Project.

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**July 25, 2016**

Plaintiff filed motion for sanctions in the nature of the entry of judgment and proposed order.

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**July 25, 2016**

Board forwarded letter directing Plaintiff to file brief to motion within 10 days and Defendant to file reply 30 days after receipt of Plaintiff's brief.

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**July 25, 2016**

Defendant filed a letter addressed to Plaintiff enclosing Defendant's entire file on the Project.

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**August 2, 2016**

Plaintiff transmitted via facsimile a letter requesting an additional 14 days to file its brief to its motion for sanctions.

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**August 3, 2016**

Board forwarded (via Facsimile & U.S. Mail) a letter to Plaintiff, with copy to Defendant, granting extension of time.

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**August 4, 2016**

Plaintiff filed via U.S. Mail a letter requesting an additional 14 days to file its brief to its motion for sanctions.

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**August 18, 2016**

Plaintiff filed brief in support of its motion for sanctions.

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**September 15, 2016**

Defendant filed response to motion for sanctions and brief in support.

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**September 20, 2016**

Board forwarded letter to parties directing Plaintiff to file a reply to Defendant's response to Plaintiff's motion for sanctions.

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**October 20, 2016**

Plaintiff filed reply to Defendant's response to motion for sanctions, appendix to reply and five disks in reference to the matter.

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**November 4, 2016**

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 4<sup>th</sup> day of November, 2016, the Board **ORDERS** as follows:

(1) PennDOT is hereby **DIRECTED** to provide to Plaintiff and the Board a Supplemental Response to the Board's Order dated June 2, 2016 ("Supplemental Response"), in which we ordered PennDOT to produce all non-privileged documents in both JJID's First and Second Sets of Requests for Production of Documents.

(A) In the Supplemental Response, PennDOT is to respond separately to each of the numbered paragraphs (1 through 26) in the Plaintiff's Reply (beginning on p.6 of same), on a numbered paragraph-by-paragraph basis corresponding to the numbered paragraphs in Plaintiff's Reply (and to respond in similar fashion to each lettered subparagraph).

(B) For each response, PennDOT shall either:

- (a) Identify and produce all the documents alleged to be missing from its previous production; or
- (b) Provide a detailed explanation of why the particular documents requested are not being produced. This explanation shall include a statement as to whether or not any of the missing documents were or were not created; if created, were ever in PennDOT's possession; and if once in PennDOT's possession, when they went missing as well as why PennDOT can no

longer produce these documents. Additionally, if any documents are now being withheld based on privilege, a detailed privilege log with a description of the document and basis for the privilege shall be provided.

(C) This Supplemental Response shall be verified, in total, by a PennDOT representative authorized to do so, in the following form:<sup>1</sup>

I, \_\_\_\_\_ (print name) \_\_\_\_\_,  
(title) \_\_\_\_\_, Commonwealth  
of Pennsylvania, Department of Transportation,  
(office/division/bureau) \_\_\_\_\_, after  
reasonable investigation of all relevant PennDOT  
files and records, do hereby state that the document  
production and/or explanations required for this  
Supplemental Response pursuant to the Board's Order  
of November \_\_\_\_, 2016 are complete, true and  
correct to the best of my knowledge and belief. I  
understand that this Verification is made subject to  
the penalties of 18 Pa.C.S. § 4904 relating to  
unsworn falsification to authorities.

Dated: \_\_\_\_\_ (signature) \_\_\_\_\_

(D) All documents produced in the Supplemental Response shall be consecutively numbered corresponding to their order as produced and a numbered list of all responsive documents included in the response.

(2) In addition, PennDOT is **DIRECTED** to provide the Plaintiff and the Board with a copy of its record retention policy or policies in effect for the period January 1, 2006 to present.

(3) PennDOT is also **DIRECTED** to provide to Plaintiff and the Board an explanation for the timing of its "litigation hold" dated January 18, 2013 (see Exhibit B to JJID's Reply to PennDOT's Response) as this

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<sup>1</sup> As an alternative to a verification of the total Supplemental Response, PennDOT may verify each numbered response or group of numbered responses separately should it wish to utilize different/multiple personnel to conduct the requisite record search in a timely manner.

appears to have been issued well after commencement of the administrative appeal in this case and nearly three (3) months after this claim was filed at the Board.

It is further **ORDERED** and **DECREED** that PennDOT shall produce to JJID and the Board the Supplemental Response and additional materials in compliance with this Order within 90 days." Copy forwarded to Plaintiff and Defendant.

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**November 4, 2016**

Defendant forwarded Plaintiff (as well as a copy to the Board) documents relating to District 6-0 projects which were active at the time of Hurricane Irene and Tropical Storm Lee and in which time extensions related to the storms were request.

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**November 16, 2016**

Plaintiff filed Acceptance of Service of Opinion and Order dated November 4, 2016. Receipt of same acknowledged November 7, 2016.

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**January 23, 2017**

Defendant filed letter regarding documents in response to the Board's Order of November 4, 2016.

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**January 24, 2017**

Board forwarded letter to Defendant, with copy to Plaintiff, in response to Defendant's January 23, 2017 letter.

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**February 2, 2017**

Defendant filed Supplemental Response to Board's Order of November 4, 2016 regarding document production together with documents produced as well as discs for electronic reference.

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**August 9, 2017**

Plaintiff filed letter requesting status conference to establish scheduling order and to discuss other matters relevant to the case.

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**August 10, 2017**

Board forwarded letter to parties requesting proposed scheduling dates.

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**August 24, 2017**

Plaintiff transmitted via facsimile its Proposed Scheduling Order.

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**August 25, 2017**

Defendant filed Proposed Scheduling Order.

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**August 28, 2018**

Board rendered Scheduling Order. Order as follows: **"AND NOW**, this 28<sup>th</sup> day of August, 2017, 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 16, 2018;<sup>1</sup> 2. The last day for defendant's expert report, if any, to be provided to plaintiff is May 18, 2018;<sup>1</sup> 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by July 20, 2018;<sup>2</sup> 4. The last day for filing pre-trial motions is August 17, 2018;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than October 12, 2018 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, October 18, 2018 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, December 3, 2018 and running through Friday, December 14, 2018, or as otherwise 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.

**August 28, 2017**

Plaintiff filed via U.S. Mail its Proposed Scheduling Order.

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**August 28, 2017**

Plaintiff transmitted via facsimile a letter requesting the Board's intervention and direction to Defendant to produce all "claim files."

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**August 28, 2017**

Board forwarded letter to Defendant, via Facsimile and U.S. Mail, directing Defendant to file a letter response to Plaintiff's letter dated August 28, 2017.

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**August 29, 2017**

Defendant transmitted via facsimile a letter advising that it has not received a copy of Plaintiff's letter and requests three business days from the date of receipt to respond.

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**August 30, 2017**

Plaintiff transmitted via facsimile a letter in response to Defendant's request for additional time to respond to Plaintiff's letter of August 28, 2017.

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**August 30, 2017**

Defendant filed via U.S. Mail a letter advising that it has not received a copy of Plaintiff's letter and requests three business days from the date of receipt to respond.

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**August 31, 2017**

Plaintiff transmitted via facsimile a letter requesting that the Defendant's proposed scheduling order be rejected.

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**August 31, 2017**

Defendant transmitted via facsimile a letter in response to Mr. Juenger's Claim files.

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**August 31, 2017**

Plaintiff filed via U.S. Mail a letter requesting the Board's intervention and direction to Defendant to produce all "claim files."

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**August 31, 2017**

Board forwarded letter via facsimile and U.S. Mail to Plaintiff, with copy to Defendant, regarding the Board's scheduling order of August 28, 2017.

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**August 31, 2017**

Board forwarded letter via facsimile and U.S. Mail to Plaintiff, with copy to Defendant, regarding Mr. Juenger's claim files.

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**September 1, 2017**

Defendant filed via U.S. mail a letter in response to Mr. Juenger's Claim files.

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**September 1, 2017**

Plaintiff filed via U.S. mail a letter in response to Defendant's request for additional time to respond to Plaintiff's letter of August 28, 2017.

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**September 11, 2017**

Plaintiff filed Acceptance of Service of Scheduling Order dated August 28, 2017. Receipt of same acknowledged September 7, 2017.

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**February 26, 2018**

Plaintiff filed Entry of Appearance of Paul A. Logan, Esquire (now at Post & Schell PC) on behalf of Plaintiff.

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**February 27, 2018**

Defendant filed Motion to Compel Answers to Interrogatories and Brief in Support.

**March 1, 2018**

Board forwarded letter to Plaintiff, with copy to Defendant, requesting response to motion to compel.

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**March 8, 2018**

Plaintiff transmitted via facsimile Motion for Amended Scheduling Order.

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**March 12, 2018**

Plaintiff filed Motion for Amended Scheduling Order.

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**March 13, 2018**

Board forwarded letter to Defendant via facsimile & U.S. Mail requesting response to motion.

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**March 16, 2018**

Defendant filed a letter advising that it does not oppose to Plaintiff's motion for amended scheduling order and advises that it suggested that Mr. Logan ask for a two month extension of the entire schedule due to Mr. Schultz retiring April 20, 2018.

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**March 19, 2018**

Plaintiff transmitted via facsimile a letter advising that it believes that altering the trial date is not warranted at this time.

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**March 19, 2018**

Board forwarded via facsimile and U.S. Mail letter to parties requesting dates for a teleconference.

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**March 22, 2018**

Plaintiff filed via U.S. Mail a letter advising that it believes that altering the trial date is not warranted at this time.

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**March 22, 2018**

Defendant filed letter advising that the parties have agreed to a teleconference on Friday, March 23, 2018 at 1:00 p.m.

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**March 22, 2018**

Board forwarded letter via Facsimile & U.S. Mail scheduling teleconference on Friday, March 23, 2018.

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**March 23, 2018**

Teleconference held March 23, 2018 at 1:00 p.m.

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**March 26, 2018**

Board rendered Revised Scheduling Order. Order as follows: "AND NOW, this 26<sup>th</sup> day of March, 2018, 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 15, 2018;<sup>1</sup> 2. The last day for defendant's expert report, if any, to be provided to plaintiff is August 3, 2018;<sup>1</sup> 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by September 7, 2018;<sup>2</sup> 4. The last day for filing pre-trial motions is September 17, 2018;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than November 1, 2018 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, November 7, 2018 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, December 3, 2018 and running through Friday, December 14, 2018, or as otherwise 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.



**March 26, 2018**

Plaintiff transmitted via facsimile a letter advising that it has responded to the discovery and advising that Defendant's Motion to Compel Answers to Interrogatories are moot.

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**March 27, 2018**

Board forwarded letter via facsimile & U.S. Mail to Defendant requesting a response to Plaintiff's letter.

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**April 4, 2018**

Defendant transmitted via Facsimile a letter advising that it is reviewing Plaintiff's responses to interrogatories for reasonableness and sufficiency.

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**April 5, 2018**

Defendant filed via U.S. Mail a letter advising that it is reviewing Plaintiff's responses to interrogatories for reasonableness and sufficiency.

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**April 6, 2018**

Plaintiff filed Acceptance of Service of Revised Scheduling Order dated March 26, 2018. Receipt of same UNDATED.

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**April 13, 2018**

Board rendered Opinion and Order. Order as follows: **"AND NOW, this 13th day of April, 2018, it is hereby ORDERED and DECREED that the motion to compel answers to interrogatories filed by the Defendant on February 27, 2018 is hereby DENIED as MOOT."** Copy forwarded to Plaintiff and Defendant.

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**April 19, 2018**

Defendant filed Praecipe for Withdrawal of Appearance of Gerald R. Schultz, Senior Counsel on behalf of Defendant.

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**April 19, 2018**

Defendant filed Praecipe for Entry of Appearance of Jason M. Wolgemuth, Assistant Counsel on behalf of Defendant.

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**April 23, 2018**

Plaintiff filed Acceptance of Service of Opinion and Order dated April 13, 2018. Receipt of same not identified.

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**September 17, 2018**

Plaintiff filed Motion in Limine to Exclude Defendant's Purported Expert Report of Thomas E. Mitchell, PE, Brief in Support and Proposed Order.

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**September 17, 2018**

Board forwarded letter to Defendant, with copy to Plaintiff, requesting response to motion.

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**October 5, 2018**

Defendant filed Response to Motion in Limine.

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**October 10, 2018**

Board forwarded Notice of Settlement Conference.

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**October 22, 2018**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 22<sup>nd</sup> day of October, 2018, upon consideration of the motion *in limine* of JJID, Inc. and the response thereto filed by the Commonwealth, Department of Transportation, it is hereby **ORDERED** and **DECREED** that the motion is **DENIED**." Copy forwarded to Plaintiff and Defendant.

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**October 25, 2018**

Defendant filed Acceptance of Service of Opinion and Order dated October 22, 2018. Receipt of same acknowledged October 24, 2018.

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**November 1, 2018**

Plaintiff filed Pre-trial Statement and expert report.

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**November 1, 2018**

Plaintiff filed Amended Pre-trial Statement.

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**November 1, 2018**

Defendant filed Pre-trial Statement and expert reports.

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**November 1, 2018**

Plaintiff filed Acceptance of Service of Opinion and Order dated October 22, 2018. Receipt of same acknowledged not provided.

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**November 7, 2018**

Board held pre-trial conference on November 7, 2018 at 1:00 p.m.

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**November 28, 2018**

Plaintiff filed a letter advising that the parties have reached a settlement and requests the Board cancel the hearing and will file a praecipe once settlement is completed.

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**December 4, 2019**

Board forwarded letter to Plaintiff, with copy to Defendant, requesting a praecipe to close the case.

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**December 11, 2019**

Plaintiff filed Praecipe to Settle, Discontinue and End.

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**December 13, 2019**

Board rendered Order. Order as follows: "**AND NOW**, this 13<sup>th</sup> day of December, 2019, upon receipt of a Praecipe executed by Paul A. Logan, Esquire, on behalf of Plaintiff, JJID, Inc., requesting that the Board kindly mark the above-captioned matter settled, discontinued and ended, docketed with this Board under date of December 11, 2019, 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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**December 18, 2019**

Defendant filed Acceptance of Service of Order dated December 13, 201. Receipt of same acknowledged December 17, 2019.

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**December 23, 2019**

Plaintiff filed Acceptance of Service of Order dated December 13, 201. Receipt of same acknowledged not provided.

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