

MARSHA STONG, personal representative	:	IN THE COURT OF COMMON PLEAS OF
of the Estate of Robert Stong, Deceased,	:	LYCOMING COUNTY, PENNSYLVANIA
on behalf of the Estate of ROBERT STONG:	:	
and on behalf of MARSHA STONG and	:	
JOHN STONG, the intestate heirs of	:	
ROBERT STONG,	:	NO. 98-01514
	:	
Plaintiffs	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
COMMONWEALTH OF	:	
PENNSYLVANIA DEPARTMENT	:	
OF TRANSPORTATION	:	
and SABRINA C. DAY	:	
	:	MOTION FOR ANSWERS TO
Defendants	:	INTERROGATORIES

*Date: May 4, 2001*

**OPINION AND ORDER**

The present action involves a wrongful death and survival claim made on behalf of the Estate of an 11-year old child, Robert Stong, who was fatally injured when struck by an automobile driven by Defendant Day while he was standing on a bridge under the jurisdiction of the Commonwealth of Pennsylvania Department of Transportation (“PennDOT”). Before the Court is the Motion of Plaintiffs filed January 30, 2001, to compel Defendant PennDOT to answer interrogatories. This matter had previously been set for argument on March 28, 2001 but counsel agreed argument should be deferred pending a decision on the PennDOT Motion for Summary Judgment. A decision denying that Motion for Summary Judgment has been filed this date.

In addition, counsel have agreed that the decision concerning interrogatories in this case should be controlled by this Court’s decision in the case of *Gleonard E. Byers, Jr.*

*and Susan M. Byers, Co-Administrators of the Estate of Kirk Anthony Byers, Deceased v. Commonwealth of Pennsylvania Department of Transportation* filed to No. 00-01,951, in relation to the Plaintiff's Motion to Compel Responses to Interrogatories and Request for Production of Documents that was filed in that case. (Counsel for Plaintiff Stong took part in the Byers' argument.) A decision in that action has also been filed this date.

In this action Plaintiffs seek to require PennDOT to respond to the following interrogatory, being question No. 7 of the Interrogatories dated December 27, 2000:

If you will do so without a Motion to Produce, kindly provide a copy of the complete bridge file for the bridge spanning East Mill Creek on State Route 2039 in the vicinity of segment 50, offset 45. By way of explanation, there are "two bridge files" pertaining to the bridge involved in the above captioned action, and this request pertains to both files, one being a "general bridge file" and the other being a "bridge structural capacity analysis file."

PennDOT filed an objection in response to that Interrogatory as follows:

Objection. This Interrogatory seeks information that is privileged and confidential pursuant to 23 U.S.C. §409 and 75 Pennsylvania Consolidated Statute §3754(b).

Under the analysis set forth in *Byers* it is clear that the cited statutory sections as now worded by the respective amendments to the statutes passed by Congress and the Pennsylvania Legislature shield from discovery not only in depth accident investigations but also any and all information, studies, reports or data gathered or compiled by PennDOT relating to such investigations or to safety studies or used for purposes of planning safety enhancements.

Indeed, such protection may shield every document and piece of information that PennDOT has in its "bridge files." As noted by Plaintiff's Motion, however, Plaintiffs do

not seek results of: in-depth accident investigations, surveys, schedules, lists or data compiled or collected for the purpose of identifying, evaluation or planning a safety enhancement of potential accident sites nor any investigative work completed as a result of the death of Robert Stong.

The Court is unable to ascertain the validity of the Commonwealth's objection without the Commonwealth identifying what information it does in fact have in its files.

Accordingly, as directed in *Byers*, PennDOT will be required to file a response identifying the documents it has and to the extent the interrogatory is a combination of an interrogatory and motion to produce, the Court will also require PennDOT to state with reasonable particularity any items to which it asserts the privilege applies with sufficient specificity to enable the Court, as well as Plaintiffs, to be able to conclude that such documents are in fact subject to the privilege. *See, Byers* Opinion of this date, as well as Pa. R.C.P. 4009.12(b)(2).

In addition, given the calling of this case for trial during the May trial term counsel are urged to respond quickly in compliance with this Order and cooperatively so as to not delay trial, inasmuch as a delay would not be beneficial for either party in this case.

**ORDER**

It is ORDERED and DIRECTED that PennDOT will file an amended answer to Interrogatory No. 7 of Plaintiffs identifying the documents held in their "bridge files" as to the bridge in question and shall produce all those they do not assert the privilege under 75 Pa.C.S. §3754(b) and/or U.S.C. §407 applies. To the extent that they assert a privilege applies a sufficient identification of the documents with reasonable particularity in order to determine

that the privilege most likely does apply shall also be filed in accordance with Pa. R.C.P. 4009.12. PennDOT shall serve the amended answer on counsel in such manner so that it is delivered to them not later than May 11, 2001.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator  
Daniel R. Goodemote, Esquire  
Gary T. Harris, Esquire  
Jeffrey J. Shipman, Esquire  
Judges  
Jeff Wallitsch, Esquire  
Gary Weber, Esquire (Lycoming Reporter)