

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VOICES FOR INDEPENDENCE (VFI), : Civil Action No.: 06-78 Erie
MICHAEL L. EAKIN; JAY SHUFFSTALL; :
CAROLYN A CREHAN; KATHY A. HERTZOG; :
PAUL PECUNAS; SANDRA FULLER; MARY : HON: SEAN J. MCLAUGHLIN
ANN PARSNIK; PAT WEAVER; FELICIA :
BONGIORNO; MELVIN BORREO; STEPHEN :
CLARK; JILL HRINDA-PATTEN; MARY D. :
KRUG; and B. LYNNE VESTAL; on behalf of :
themselves and all others similarly situated, :
Plaintiffs :

vs. :

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF TRANSPORTATION; :
ALLEN D. BIEHLER, P.E., in his official capacity :
as Secretary of Transportation of the :
Commonwealth of Pennsylvania, CITY OF ERIE, :
PENNSYLVANIA and CITY OF MEADVILLE, :
PENNSYLVANIA, :
Defendants :

SETTLEMENT AGREEMENT

Background

An affiliated plaintiff, Barrier Busters, filed an action against the City of Erie, Pennsylvania in this Honorable Court on June 27, 2002 at number 02-203 Erie, the "Erie Case." The Erie Case was partially resolved by four consent decrees. Plaintiffs filed an action against the City of Meadville, Pennsylvania in this Honorable Court on November 10, 2004 at number 04-328 Erie, the "Meadville Case." The Meadville Case was partially resolved by two consent decrees. Neither the Erie Case nor the Meadville Case resolved the responsibility of the Commonwealth, of Erie and of Meadville for creating and maintaining curb ramps across or along state highways which pass through the Cities of Erie and Meadville.

Plaintiffs filed an action against the Commonwealth of Pennsylvania (PennDOT) at number 06-78 Erie, the “PennDOT Case,” seeking to impose responsibility upon PennDOT for creating and maintaining curb ramps along state highways that pass through the cities of Erie and Meadville. Plaintiffs joined the Cities of Erie and Meadville as defendants in the PennDOT suit by a pleading filed on September 7, 2006.

PennDOT is not able to enter into any consent decree in any legal matter without express prior authority of the legislature of the Commonwealth of Pennsylvania. However, PennDOT may be made subject to settlement agreements without express authority of the legislature of the Commonwealth of Pennsylvania. The parties desire to resolve the issues arising in the PennDOT case in an expeditious and economical manner that addresses the interests of the Plaintiffs and the concerns of all other parties. The parties do not desire to permit the legal limitations upon the ability of PennDOT to participate in a consent decree to delay their resolution of the pending dispute. Therefore, this Court, by Settlement Agreement, resolves certain issues in the PennDOT lawsuit as follows.

1. ***Partial Summary Judgment Motions.*** It is acknowledged that the parties reserve the right to file Motions for Partial Summary Judgment on the legal question of whether claims involving streets, curb ramps and sidewalks altered, installed, replaced or repaired more than two years prior to the commencement of this action that fail to comply with the standards set forth in ADAAG are barred by any statute of limitations..
2. ***Future Resurfacing and Alteration of City Streets and State Highways.*** The City of Meadville shall ensure in year 2007 and thereafter [during the effective term of this Settlement Agreement] that whenever Meadville alters or resurfaces any City of Meadville streets or portions of city streets that intersect with state highways and that are adjacent to sidewalks, Meadville agrees to install curb ramps that cross city streets at crosswalks on such altered or resurfaced city streets. PennDOT shall ensure in year 2007 and thereafter [during the effective term of this Settlement Agreement] that whenever PennDOT alters any PennDOT

state highways or portions of state highways that are adjacent to sidewalks located within the City of Meadville, PennDOT agrees to install curb ramps that cross state highways at crosswalks on such altered or resurfaced state highways. Each such project shall comply with all Americans with Disability Act requirements, including 28 C.F.R. § 35.151(b),(c),(e)(1) and (e)(2), and 28 C.F.R. Part 36, App. A, the ADAAG. If future changes to applicable law are formally adopted by the appropriate regulating agency, the new standards are to be incorporated in this Settlement Agreement.

a. Cross Triggering between Defendants.

- i. Except as otherwise contained within this Settlement Agreement, it is agreed between the parties that at intersecting or adjacent roadways, alterations or resurfacing by one entity shall not trigger an obligation in the other entity.
- ii. When either PennDOT or Meadville is altering or resurfacing a street, curb ramp or sidewalk and substantially encroaches on the intersecting street of the other entity and triggers duties under the ADA, the obligation to ensure affected ramps are ADA compliant falls on the encroaching entity. The other entity would reimburse half the cost of required ramp construction but the duty to pay would be deferred to the next budget year.

3. **Diagonal ramps.** Within the City of Meadville, at some intersections of city streets and state highways, diagonal ramps serving both the city street and the state highway exist.

- a. Non-compliant diagonal ramps, triggered by PennDOT after March 28, 2004 or by Meadville after November 10, 2002, may be replaced by 2 ramps with both PennDOT and Meadville each paying and doing work on their part as part of current projects for 2007, 2008 or 2009 season.

- b. If non-compliant diagonal ramps, triggered by PennDOT after March 28, 2004 or by Meadville after November 10, 2002, can not be replaced with 2 ramps due to space or other engineering concerns, then the triggering entity will install the required ramp as part of current projects for 2007, 2008 or 2009 season but may seek reimbursement for half the cost of the required ramp from the other entity.
- c. Any diagonal ramps that are triggered as noted above will be added to either Schedule "A" by PennDOT or Schedule "C" by the City of Meadville depending on which entity triggered the requirement.

4. *Identification of Curb Ramps Adjacent to State Highways in the City of Meadville, Pennsylvania Triggered by PennDOT.*

- a. Within 60 days after the execution of this Settlement Agreement, PennDOT will provide a listing to be known as Schedule A, which will contain a listing of all intersections on which curb ramps crossing state highways that were altered or resurfaced in the City of Meadville by PennDOT and for all curb ramps and sidewalks actually constructed in the City of Meadville by PennDOT since March 28, 2004. Within 120 days after the execution of this Settlement Agreement, PennDOT will supplement Schedule A to include measurements¹ for the curb ramps listed therein along with a proposal on which curb ramps PennDOT plans to retrofit if determined to be non-compliant or defective under the ADA. Neither Plaintiffs nor Meadville waives any rights to challenge the accuracy or other content of these schedules except as noted below in paragraph 17.

¹ Measurements as used in this Settlement Agreement shall set forth with particularity the technical measurements of each curb ramp or sidewalk as set forth under the ADAAG regulations. At a minimum, these measurements will include the slope, cross-slope, side flares, level landings and any lips.

- b. Within 120 days after the execution of this Settlement Agreement, PennDOT will provide a listing to be known as Schedule B, which will contain a listing of all PennDOT resurfacing or other alterations performed in Meadville any time after January 26, 1992, including each street name and the limits of the resurfacing or alterations. Schedule B will also include a listing with measurements of all intersections on which curb ramps crossing state highways should have been installed but were not installed for state highways altered or resurfaced in the City of Meadville by PennDOT since January 26, 1992. Neither Plaintiffs nor Meadville waives any rights to challenge the accuracy or other content of this schedule except as noted below in paragraph 17.

5. *Identification of Curb Ramps Adjacent to State Highways in the City of Meadville, Pennsylvania Triggered by the City of Meadville.*

- a. Within 90 days after the execution of this Settlement Agreement, Meadville will provide a listing to be known as Schedule C, which will contain a listing with measurements of all intersections on which curb ramps crossing city streets that intersect with state highways were altered or resurfaced by the City of Meadville since November 10, 2002 along with a proposal on which curb ramps Meadville plans to retrofit if determined to be non-compliant or defective under the ADA. Neither Plaintiffs nor PennDOT waives any rights to challenge the accuracy or other contents of this attachment except as noted below in paragraph 17.
- b. Within 90 days after the execution of this Settlement Agreement, Meadville will provide a listing to be known as Schedule D, which will contain a listing with measurements of all intersections on which curb ramps crossing city streets that intersect with state highways should have been installed but were not installed for city streets altered or resurfaced by the City of Meadville since January 26, 1992. Neither Plaintiffs nor

PennDOT waives any rights to challenge the accuracy or other contents of this attachment except as noted below in paragraph 17.

6. ***Commitment of PennDOT.*** Unless due to factors beyond PennDOT's control, PennDOT shall cause all curb ramps crossing state highways or otherwise identified and proposed in Schedules "A" and "B" to be installed, repaired or retrofitted in accord with the standards set forth under the ADA during the 2007, 2008 or 2009 construction season.
7. ***Commitment of the City of Meadville.*** The City of Meadville shall cause all curb ramps crossing city streets at the intersections identified and proposed in Schedules "C" and "D" to be installed, repaired or retrofitted in accord with the standards set forth under the ADA during the 2007, 2008 or 2009 construction season.
8. ***Curb Ramps and Bidding Requirements.*** The City of Meadville and PennDOT shall ensure that all bids and contracts for such work as identified above shall include reference to the specific requirements of the Americans with Disability Act set out above. Unless due to factors beyond PennDOT or Meadville's control, the City of Meadville and PennDOT shall each ensure that all indicated curb ramps are installed during the same construction season as the alterations or resurfacing are completed, unless a specific alteration or resurfacing project is not completed until after August 1st of that construction season, in which case all indicated curb ramps for that project must be scheduled/contracted for installation at the beginning of the following construction season. The City of Meadville and PennDOT also shall ensure that curb ramps complying with these requirements shall be installed at all crosswalks with sidewalks whenever an intersection is altered or resurfaced by the City of Meadville or whenever an intersection is altered or resurfaced by PennDOT during year 2007 and thereafter [during the effective term of this Settlement Agreement].

9. **Annual Report.** On or before January 31 of each year during which this Settlement is in effect, Meadville and PennDOT shall each send a written report, including measurements, to Plaintiffs' Counsel, each other, and to the Court, listing each sidewalk portion, curb ramp, street section, and/or intersection altered or resurfaced by either Meadville or PennDOT, in Meadville, during the previous year, and listing each sidewalk altered, constructed or resurfaced during the previous year, and stating where new curb ramps have been installed as a part of these projects by each respective party.
10. **Detectable Warnings.** On all curb ramps installed in the year 2007 and thereafter, any otherwise applicable detectable warning requirements shall be modified to only require full width warning for two feet of running ramp length.
11. **Potential Exceptions Pursuant to 28 C.F.R. Part 36, App. A § 4.1.6(j).** The parties agree that the ADAAG at 28 C.F.R. Part 36, App. A § 4.1.6 and 4.1.1.5(a); 4.1.6(3); and 28 C.F.R. § 35.151(c), to the extent applicable, shall be the standard to judge the validity of any defendant assertions that construction or alterations can not or are not required to meet in full the construction and design standards set out in the paragraphs above.
12. **Notification by the City of Meadville and PennDOT.** Any time during the term of this Settlement Agreement that either Meadville or PennDOT believes that site conditions at any particular intersection scheduled for improvement prohibits or makes unnecessary construction or alteration in full compliance with each of the standards set out above (or in the event of any other matter requiring notice under this settlement agreement), that party, within fifteen (15) days of discovery of the matter, shall inform Plaintiffs' Counsel in writing. This writing shall list which engineer(s) have reviewed the intersection, the location of the intersection, and a statement of which standard(s) can not be met, why not, and how much of a deviation from the standard(s) is contemplated. Unless due to factors beyond PennDOT's control, this writing should also include a sketch of any proposed

deviant curb ramp, with the proposed final measurements for each direct slope, cross- slope, and lip. If plaintiffs do not object in writing to the notice within 15 days from the postmark of the written notification, Meadville or PennDOT may presume that the deviation is acceptable to the plaintiffs and may begin construction of that particular curb ramp. The goal is that any disputed corner or curb ramp is to be built during the current construction year unless due to factors beyond PennDOT or Meadville's control. Thus, it is important that plaintiffs be notified of a potential problem promptly and that plaintiffs respond promptly. In the event of an emergency situation where delay could result in unnecessary cost or expense or loss of resources, nothing in this paragraph shall prevent any party from immediately contacting the other and attempting to resolve the issue as soon as practicable under the circumstances. Unresolved disputes shall be resolved by the procedures set forth in paragraph 13.

13. ***Unresolved Disputes.*** In the event that the plaintiffs object to any actions or proposed actions of Meadville or PennDOT, the parties will attempt to resolve the dispute informally. If the dispute can not be resolved during a 15 day period from the communication of any objection to the defendant(s), the parties may approach the Court to resolve the dispute according to the terms of this agreement.
14. ***Use of Third Party.*** Nothing in this Agreement shall preclude any party from making a timely request for resolution of a dispute by a mutually agreed upon third party.
 - a. If such a resolution is sought, the requesting party must notify the other parties within the 15 day period from the communication of any objection.
 - b. The parties will then have 15 days to agree upon the third party; if an agreement cannot be reached, then the underlying dispute shall be resolved by the procedures set forth in paragraph 13 without any further delay.

- c. If resolution of a dispute is sought under this paragraph, the parties agree to be bound by the decision made by the mutually agreed upon third party.

15. Listing of Projects Pursuant to Paragraphs 4 and 5. The listings required by Paragraphs 4 and 5 will be attached to this Settlement Agreement and submitted to the Court, the other defendants and Plaintiffs' Counsel within the time periods required in paragraphs 4 and 5.

16. Legal Determination of Statute of Limitations. If the Court ultimately holds that there is no meritorious statute of limitations defense or that non-compliant ramps constitute a continuing violation, PennDOT agrees to provide a new schedule for proposed work, Schedule "E," which would extend the scope of Schedule "A" back to January 26, 1992, with the condition that the listing in Schedule "E" and PennDOT's retrofit obligation will include only curb ramps crossing state highways, within 180 days of the date the Court's ruling on the referenced matter is no longer subject to a valid and on-going appeal. Meadville also agrees to provide a new schedule, Schedule "F," which would extend the scope of Schedule "C" back to January 26, 1992, with the condition that the listing in Schedule "F" and Meadville's retrofit obligation will include only curb ramps crossing city streets that intersect with state highways, within 90 days of the date the Court's ruling on the referenced matter is no longer subject to a valid and on-going appeal. Both Meadville and PennDOT would add to their respective schedules diagonal ramps pursuant to paragraph 3. The schedules required by this Paragraph will be attached to this Settlement Agreement and submitted to the Court, the other defendants and Plaintiffs' Counsel.

17. Procedure for Objections to Proposed Work:

- a. If the Plaintiffs object to the proposed work in Schedules "A", "B", "C", and "D", the Plaintiffs must notify the defendants, in writing, within 90 days of the filing of Schedules "A", "B", "C" and "D" and must include

the specific objection. Either Meadville or PennDOT will then have 30 days to amend its schedules. If Plaintiffs object to the amended schedules or if no resolution is obtained, the unresolved disputes shall be resolved by the procedures set forth in paragraph 13. If Plaintiffs do not object within 30 days, the proposed work is deemed accepted. Plaintiffs shall have no further right to challenge the proposed work in conformity with the schedules. Plaintiffs do not waive the right to assert future claims to the extent it shall be determined that any information in these schedules is materially incorrect or incomplete.

- b. Once Defendants file Schedules “E” and “F”, if required, the parties will attempt to negotiate which, if any, of the curb ramps will be repaired by Defendants and the time table for doing so. If the parties are unable to agree after reasonable efforts, the parties agree to approach the court for resolution of the dispute.

18. ***Nonwaiver of Defenses.*** Except as provided herein, neither Plaintiffs, Meadville nor PennDOT waive any defenses or rights they may have to any presently stated or future claims as the result of negotiating and executing this Settlement Agreement or as the result of any actions taken pursuant hereto. The participation of Plaintiffs, Meadville or PennDOT in this agreement in general and the provision of the listings required in this Settlement Agreement shall not be a waiver of any claims or defenses as to any claims of the parties or any other entity concerning any listed intersections, curb ramps and sidewalks. Plaintiffs do not waive the right to assert future claims to the extent it shall be determined that any specifications in this listing are materially incorrect or incomplete.

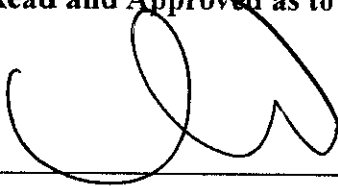
19. ***Commitments of Meadville and PennDOT Several and Limited.*** The commitments of the City of Meadville and PennDOT in this Settlement Agreement are and shall at all times be construed to be several and not joint or joint and several. Neither Meadville nor PennDOT shall have any liability or

responsibility of any nature for any failure of the other to comply with the terms of this Settlement Agreement or any law, rule, regulation, policy or other matter. This Settlement Agreement shall only affect the intersections identified herein and the commitments and understandings of the Plaintiffs and the City of Meadville concerning all other matters shall continue to be governed solely by the terms of the consent decrees entered in the Meadville Case.

20. ***Retention of Jurisdiction.*** The Court shall retain jurisdiction concerning the interpretation of and compliance with this Settlement Agreement.

21. ***Procedure Required for City Action.*** The parties acknowledge that the City of Meadville can only be bound by legislative acts of the City Council taken at a properly called public meeting. The parties further acknowledge that the negotiation of this agreement by any elected or appointed officials of the City of Meadville has been done solely for the convenience of all parties in developing a document for review and possible action by City Council. The City of Meadville shall not be bound or in any way prejudiced by the action of any elected or appointed official in the negotiation, review, commenting upon or preparation of a draft of this Agreement for review and possible action by its City Council.

Read and Approved as to Form on this 20th day of December, 2006, by:



David L. Hotchkiss, Esq.
Diane Putney Adsit, Esq.
Culbertson, Weiss, Schetroma & Schug, P.C.
201 Chestnut St., Suite 200
Meadville, PA 16335
(814) 336-6400
Attorneys for City of Meadville

By Council Member: Soff

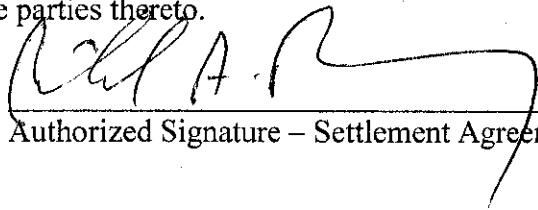
COUNCIL CHAMBER

Meadville, PA, December 20, 2006

RESOLVED, by the Council of the City of Meadville,

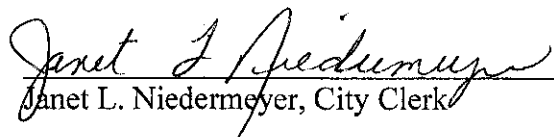
That:

1. The attached proposed Settlement Agreement settling certain claims in an action filed by Voices for Independence, et al, against the Commonwealth of Pennsylvania Department of Transportation, et al, which was filed in the United States District Court for the Western District of Pennsylvania at Civil Action 06-78 Erie, is hereby approved substantially in the form attached; and
2. The Mayor, Controller, and the City Clerk are hereby authorized and directed to execute and to attest such copies of the attached Settlement Agreement in the manner required by law as may be reasonably required for the purposes of the parties thereto.

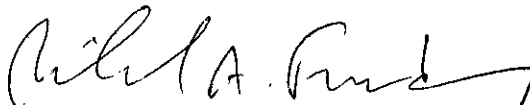

Authorized Signature – Settlement Agreement

CERTIFICATION

I, Janet L. Niedermeyer, hereby certify that I am the duly appointed City Clerk of the City of Meadville, and I hereby certify that the above resolution was adopted at a regular meeting of the City Council of the City of Meadville held December 20, 2006, and that a minimum number of Councilmembers were present to represent a quorum.


Janet L. Niedermeyer, City Clerk

CITY OF MEADVILLE

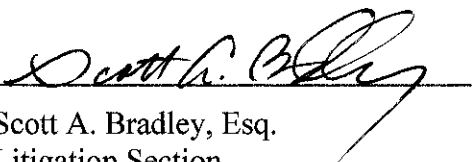
BY: 
Mayor

ATTEST:


City Clerk

BY: 
Controller

Read and Approved as to Form on this 18th day of December, 2006, by:

A handwritten signature in cursive script, appearing to read "Scott A. Bradley", is written over a horizontal line.

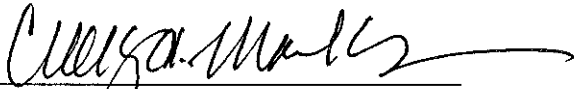
Scott A. Bradley, Esq.
Litigation Section
Office of Attorney General
6th Fl Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
(412) 565-3586
Attorneys for PennDOT

Read and Approved as to Form on this 19th day of December, 2006, by:

J. Mark Finnegan / *esm*

J. Mark Finnegan (40261)
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(734) 302-3233
(734) 302-3234 fax
Attorneys for All Plaintiffs

Read and Approved as to Form on this 19TH day of December, 2006, by:



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JUDGE MCLAUGHLIN
UNITED STATES DISTRICT COURT