

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

MICHIGAN DEPARTMENT OF TRANSPORTATION,

Plaintiff,

v.

Case Number 09-015581- CK  
Honorable Prentis Edwards

DETROIT INTERNATIONAL BRIDGE  
COMPANY and SAFECO INSURANCE  
COMPANY OF AMERICA,

Defendants,

\_\_\_\_\_ /

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CATHY M. GARRETT  
/s/ Roderick Byrd

**OPINION and ORDER**

**At a session of said Court held in the  
Coleman A. Young Municipal Center  
Detroit, Michigan on: March 8, 2012**

**PRESENT: The Honorable Prentis Edwards  
Wayne County Circuit Court Judge**

This matter is before the Court pursuant to the Decision and Opinion from the Michigan Court of Appeals issued on February 6, 2012. The Michigan Court of Appeals vacated the portion of the January 12, 2012 Order which continued incarceration until DIBC fully complied with the February 1, 2010 Order. The matter was remanded with the directions that the trial court shall craft an order that, states with particularity, what “act or duty” appellants (Dan Stamper and Manuel Moroun) are required to perform to ensure that DIBC will begin and continue compliance with the February 1, 2010 Order, as well as enabling appellants to purge themselves of the contempt finding against DIBC. The Michigan Court of Appeals opinion indicates that the appellants must have the immediate ability to actually complete “the act or duty” in order to avoid the sentence and purge the contempt. In other words the contemnor must have the ability to use the keys in his possession to gain his release from detention by being able to immediately complete the “act or duty”.

At a hearing held on February 9, 2012, the attorneys for DIBC and Matthew Moroun, placed on the record information concerning actions that DIBC was taking and planned to take to comply with the February 1, 2010 Court Order. DIBC represented to the Court that it had started to work on pier 19. A binder containing DIBC’s plans were submitted to the Court and to

MDOT. Information contained in the binder indicated that DIBC was presenting a proposal to protect its officers against sanctions for contempt of Court, purge contempt findings and avoid further contempt proceedings. The proposal discusses some of the areas of the portion of the Ambassador Bridge Gateway Project that DIBC is responsible for including the following:

1. Pier 19, Two-Lane Truck Road, Service Drive & Access to M85(Fort Street)
2. Piers 11,12, 13 and 4/3 Lane Road
3. Access Roads
4. Easements
5. 23<sup>rd</sup> Street
6. 21<sup>st</sup> Street

DIBC's proposal is similar to its Proposed Consent Order that the Court discussed with the parties in an in camera meeting prior to the January 12, 2012 hearing. DIBC's new proposal contains a new feature. DIBC now proposes creating a committee to manage the completion of its portion of the Ambassador Bridge Gateway Project and ensure compliance with the Court Order. On February 8, 2012, the Board of Directors of DIBC, Matthew Moroun, M. J. Moroun, and Dan Stamper, passed a resolution establishing the Gateway Expansion Project Committee. The Committee would have at least three members, Dan Stamper, President of DIBC, and two or more people appointed by DIBC. The members of the Committee would be appointed by DIBC and paid reasonable compensation by DIBC. The Committee would have exclusive control and responsibility for all decisions relating to the completion of DIBC's portion of the Project. Under the new organizational structure, Matthew Moroun and Manuel Moroun, two of the key decision makers at DIBC, would not serve on the committee. It appears that under the proposed arrangement, Matthew Moroun and Manuel Moroun would be relieved of any further responsibility for complying with the Court Order. In addition, Dan Stamper's responsibility for compliance with the Court Order would be greatly diminished in as much as he would have only one vote out of three regarding any Committee decisions. Under the new plan, total responsibility for compliance with the Court Decision would be transferred to a Committee that would not be under the control of the key decision makers at DIBC.

This Court has two concerns regarding DIBC's proposal to shift its responsibility for compliance with the Court Order to a Committee. First, this scheme would appear to in effect relieve the key decision makers at DIBC from any responsibility for compliance with the Court Order. There does not appear to be any legal authority that would permit DIBC to protect its key decision makers against sanctions for contempt of Court. The Michigan Business Corporation Act permits the board of directors to create committees, however; there is no language contained in the Act that sanctions the arrangement proposed by DIBC. There are no provisions of the Michigan Business Corporation Act that allows DIBC's board of directors to insulate its officers from their responsibility to complete DIBC's portion of the Ambassador Bridge Gateway Project and compliance with the Court Order. Issues relating to contempt proceedings were discussed

in detail in Ex Parte Chambers, 898 SW 2<sup>nd</sup> 257 (1995). In reference to the arrangement that DIBC has now proposed the Court made the following statement:

There can be no doubt that a command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. *Wilson*, 221 U.S. at 376, 31 S.Ct. at 542–43. Were this not true, entities could delegate their disobedience to physical actors who, since they would be beyond judicial power, would have no reason to recognize or obey it.

Second, there does not appear to be a need for the proposed Committee. The key decision makers at DIBC have far superior knowledge regarding the Project than anyone who may be selected to serve on the Committee. Given the repeated statements and promises on the record in these proceedings regarding the status of DIBC's portion of the Project, particularly the status of the S01 Bridge, it appears unreasonable to expect that a Committee appointed by DIBC will comply with the February 1, 2010 Order.

In order to give MDOT an opportunity to review the proposed plans, the contempt proceedings were adjourned until March 8, 2012. The Court directed DIBC and MDOT to submit reports indicating construction activity on DIBC's portion of the Project that occurred between February 9, 2012 and March 5, 2012. The reports presented by the parties indicate that very little actual construction activity has occurred since February 9, 2012. DIBC has not demonstrated a genuine commitment to begin and continue compliance with the February 1, 2010 Order. In light of the representations made at the February 9, 2012 hearing it was anticipated that substantial progress was being made regarding pier 19. It now appears from the reports of the parties that only a minimal amount of work has been done to correct the problem at pier 19.

The past activities of DIBC are relevant in evaluating its proposal and whether DIBC is presently taking steps to begin compliance and ensure continued compliance with the February 1, 2010 Order. A review of the history of this case clearly illustrates the clever schemes and maneuvers utilized by DIBC to evade compliance with the Order. In April 2004, MDOT and DIBC entered into a multi-million dollar contract to improve interstate freeway connections to the Ambassador Bridge. MDOT filed this case on June 24, 2009, seeking specific performance of the contract and damages relating to the alleged breach of the contract by DIBC. In November 2009, DIBC filed a lawsuit relating to this contract against MDOT in the Michigan Court of Claims, case 09-00134-MK-C30. The Court of Claims entered an Order consolidating that case with this case. On December 15, 2009, the Michigan State Court Administrator assigned this Court to temporarily serve as Judge of the 30th Circuit Court of Claims to resolve the consolidated cases.

On February 1, 2010, this Court granted MDOT's summary disposition motion for specific performance of the contract. DIBC appealed the Order to the Michigan Court of Appeals and to the Michigan Supreme Court. Both Courts denied relief. On April 27, 2010, an

Order to Show Cause was issued which required DIBC to show cause why it should not be held in civil contempt for failure to comply with the Court's Order of February 1, 2010. DIBC obtained a stay from the Michigan Supreme Court on May 5, 2010, staying the February 1, 2010 Order. The stay was dissolved on May 28, 2010. DIBC removed the case to the United States District Court for the Eastern District of Michigan, on June 7, 2010, pursuant to 28 USC 1446. The United States District Court remanded the case to this Court on August 17, 2010. The District Court ruled that it was objectively unreasonable for DIBC to remove the case from the Michigan State Court. The contempt hearing was again scheduled for September 23, 2010. On September 20, 2010, Rush Trucking Company filed a motion to intervene in this case in this Court. On September 21, 2010, DIBC again removed the case to the United States District Court. The case was again remanded to this Court on November 5, 2010. Judge Patrick J. Duggan of the United States District Court, made the following comment in his Order of November 5, 2010:

Considering this Court's more than thirty-three years as a judicial officer, DIBC may be entitled to its recognition as the party who has devised the most creative schemes and maneuvers to delay compliance with a Court Order. DIBC's schemes fail, however, as they lack support in the law of this Circuit.

On January 10, 2011, DIBC was found in civil contempt for failure to comply with the February 1, 2010 Order. The president of DIBC, Dan Stamper, was briefly imprisoned. He was released after assuring the Court that DIBC had begun to comply with the February 1, 2010 Court Order. Construction continued after the release of Dan Stamper, however; DIBC discontinued construction activity in compliance with the February 1, 2010 Order a short time after Dan Stamper's release. Major components of the Project assigned to DIBC for construction have not been constructed and construction in other areas has been performed that does not comply with the February 1, 2010 Order of this Court. The brief imprisonment of Dan Stamper in January 2011 did little to coerce DIBC to comply with the February 1, 2010 Order of this Court.

Notwithstanding recent work on pier 19 and DIBC's proposal, DIBC is not taking any significant steps to comply with the February 1, 2010 Order of this Court. DIBC has utilized various strategies to impede efforts to implement the Agreement and the Order of this Court. During the course of these proceedings, DIBC has offered a variety of explanations for its refusal to comply with the Court's Order including the following:

1. That agencies of the United States government would be unable to properly perform their functions at the Ambassador Bridge if the Court's Order was followed.
2. That the Michigan Department of Transportation's (MDOT) refusal to cooperate in determining what can be built prevents DIBC from following the Court Order.
3. That MDOT's refusal to open the ramps prevents DIBC from following the Court Order.

4. That MDOT continues to change its position regarding what DIBC is required to build.
5. That MDOT failed to timely object to non-complying construction, therefore MDOT must accept the changes in the design.
6. That DIBC has substantially completed its obligations under the February 1, 2010 Order of this Court and the Ambassador Bridge Gateway Project Agreements.

In addition, in order to avoid responsibility in this matter, Manuel Moroun, the reputed owner of the Ambassador Bridge, disavowed any involvement in the Ambassador Bridge Gateway Project or ownership in the Ambassador Bridge. Manuel Moroun and Dan Stamper offered to resign their positions with the controlling organization as a tactic to evade accountability. All of these issues have been argued by DIBC in connection with the various motions that have been brought before the Court. In spite of the fact that this Court has ruled that there is no credible evidence to support their claims, DIBC has chosen to ignore the February 1, 2010 Order of this Court.

DIBC has shown a complete disregard for the February 1, 2010 Order of this Court. DIBC is not presently complying and it does not appear that it intends to comply with the Order of this Court. DIBC continues to disobey the Order of this Court. Efforts taken by this Court to coerce compliance to this point have not been successful. Given the steadfast position of resistance to compliance with the February 1, 2010 Order exhibited by DIBC, it appears unrealistic to expect that DIBC's portion of the Project will be completed within a reasonable time if it maintains control over the construction process.

Since February 9, 2012 DIBC has performed only token work related to pier 19 that was constructed in the path of the truck road. The minimal work related to pier 19 coupled with DIBC proposal does not confirm present compliance nor does it ensure continued compliance with the February 1, 2010 Order. Considering the DIBC's previous performance after the contempt proceedings in January 2011 the present work relating to pier 19 and the shifting of responsibility to the Gateway Expansion Project Committee does not confirm that DIBC has been purged of contempt. The president of DIBC has stated on several occasions in the past that DIBC would comply with the Court Order. However, DIBC's president continues to claim that their engineer's bi-weekly progress reports confirm that it has completed its portion of the Project. For example earlier bi-weekly DIBC reports indicate that the S01 Bridge had been approved by MDOT. During his testimony on October 3, 2011 the president of DIBC was questioned regarding the status of S01. He erroneously represented to the Court that S01 had been approved by MDOT as built. He further indicated that DIBC had no plans to remediate piers 11, 12 and 13 under the S01 Bridge. The January 9, 2012 progress report by DIBC incorrectly lists the S01 Bridge as approved and "Done". S01 has not been approved by MDOT. The present alignment of piers 11, 12 and 13 will not allow the 4/3 road to pass under the S01

bridge as required by the Order. A substantial amount of work is required to be performed on piers 11, 12 and 13 to demonstrate that DIBC has begun to comply and will continue to comply with the February 1, 2010 Order. The tasks that DIBC has been assigned to complete as its portion of the Project will require some time to complete. Some of the tasks can be completed in several weeks others may require months to complete.

MDOT has established a reliable record for managing large highway construction projects. MDOT has the network in place to arrange for the completion of this Project. In addition, MDOT has done an excellent job of completing its portion of the Project. MDOT has basically completed all of its work except for the construction of the S32 Bridge, which has been delayed because of the refusal by DIBC to convey the required easements. On August 11, 2011, this Court entered an Order requiring DIBC to immediately convey the property necessary for MDOT to construct S32. On December 1, 2011, this Court again entered an Order for DIBC to convey to MDOT the customary easement for highway purposes to enable MDOT to construct S32. The December 1, 2011 Order also ordered DIBC to convey other parcels that were required by the agreements. Those Orders were ignored by DIBC. Some of the easements were recently conveyed by DIBC to enable MDOT to begin the process of constructing S32. According to MDOT's March 7, 2012 report it is anticipated that S32 will be completed by mid May 2012.

In response to the Court's earlier request for construction costs estimations, MDOT arranged for the preparation of the estimated costs to complete DIBC's portion of the Project. The report dated January 6, 2012, was prepared by Victor Judnic P.E., Construction Section Manager for HNTB. The report was distributed to all parties to this litigation on January 9, 2012, by MDOT. In the Court's Order of January 18, 2012, the parties were instructed that they may submit briefs regarding the accuracy of the January 6, 2012 report by February 6, 2012. DIBC requested a two day extension to submit its response. DIBC's report was due February 8, 2012. Neither party submitted information regarding the costs estimations. DIBC had the opportunity to submit costs estimations based on the items listed in the January 6, 2012 report prepared by Victor Judnic. DIBC did not submit costs estimations. The costs provided by HNTB are only an approximation of the actual costs of remediation and construction of DIBC's portion of the Project. The actual costs will not be known until the work has been completed. Given the history of this case, it would not be prudent to have someone undertake a project of this scale without some assurance that sufficient funds are available for payment for services provided. The costs estimated to complete DIBC's portion of the Project are not related to damages that might have been incurred by the conduct of DIBC. Damages will be decided at a hearing that will be scheduled at a later date.

A summary of the costs estimations as shown in the January 6, 2012, report are as follows:

<b><u>ITEM</u></b>	<b><u>COST</u></b>
Completion of DIBC Plaza roadway	\$4,124,500.00
Relocation of toll collection booths	1,000,000.00
Completion of DIBC Structure S03	4,181,000.00
Remediation of DIBC Piers 11, 12 & 13 and the Removal of Pier 19 and span 19	1,083,000.00
Maintenance of Traffic (8% of construction items)	832,000.00
Project Cleanup (0.25% of construction items)	26,000.00
Contingency (20% of construction items)	<u>2,250,000.00</u>
Subtotal	\$13,496,500.00
Contractor Staking (2% of Subtotal)	270,000.00
Mobilization (5% of Subtotal)	<u>675,000.00</u>
Construction Subtotal	\$14,441,500.00
Design Cost (11% of Construction Subtotal)	1,589,000.00
Construction Eng Cost (15% of Construction Subtotal)	<u>2,167,000.00</u>
Total Estimated Costs to Complete	\$18,197,500.00

It appears at this time that if funds were made available, MDOT would offer the best prospect for moving forward with the completion of DIBC's portion of the Project within a reasonable time. On February 6, 2012, MDOT provided all parties a document setting forth the estimated time that MDOT would require to complete DIBC's portion of the Project. Two alternative estimates were provided. The first alternative estimates 16 months for completion and the second alternative estimates a 12 month completion schedule.

DIBC's efforts to grind to a halt an ordinary contract matter has forced this Court to come to no other conclusion but that DIBC is not committed to complying with the February 1, 2010 Order. This Court has exhausted every reasonable avenue available to it to expedite

DIBC's compliance. While DIBC has deluged this Court with paperwork, its work on the Project has been comparatively barren. Therefore, after considering all options, this Court has no choice but to order MDOT to complete DIBC's portion of the Project in compliance with the February 1, 2010 Order. DIBC shall relinquish control of the construction of its portion of the Project to MDOT. DIBC shall convey all easements and other access required for MDOT to complete the Project. DIBC is responsible for the costs of the completion of its portion of the Project. The estimated cost for the completion of DIBC's portion is roughly 18 million dollars. The estimation is based on the remediation and construction of those components of the Project required by the Court Order. The costs estimation includes all of the work that DIBC is responsible for to complete its portion of the Project. However, the record of this case suggests that DIBC may be relieved of some construction costs if it is able to secure certain approvals from the City of Detroit and other agencies. For example, if DIBC obtains the appropriate agency approvals, further reconfiguration of 21<sup>st</sup> Street may not be required. Because of these contingencies, the estimations shall be adjusted downward to \$16,000,000.00.

DIBC shall be required to place \$16 million dollars into a special account established by MDOT for the completion of DIBC's portion of the Project. In addition, DIBC will be responsible for any costs for completion of its portion of the Project that exceeds \$16 million dollars. In the event that the costs to complete DIBC's portion of the Project is less than \$16 million dollars, the excess amount will be returned to DIBC.

Upon payment by DIBC to MDOT for placement in the special account, MDOT shall arrange for the completion of DIBC's portion of the Project. MDOT shall arrange through various contracting sources that it selects, for the construction and remediation required to complete DIBC's portion of the Project. After consultation with the selected contractors, MDOT shall provide the Court and the parties to this litigation a timetable indicating the order in which the work is to be performed and an estimation of the time required to complete each task. In scheduling tasks, the highest priority shall be given to those tasks that will remove truck traffic from the local streets. DIBC shall convey all required easements to MDOT and fully cooperate with MDOT and its contractors. DIBC shall not undertake any act or actions that impede MDOT'S efforts or ability to complete the Project.

MDOT shall maintain control over the finances. On a monthly basis, MDOT shall through an independent accounting service, provide financial statements to the Court, DIBC, and Safeco showing the financial activities relating in the fund for the previous month and the status of account. All costs associated with the accounting services, maintenance of the special account, consultant costs, and clerical costs shall be paid for by the funds in the special account controlled by MDOT.

Given the changed circumstances it does not appear that the services of a Monitor will be required. The Monitor's appointment is therefore terminated.



In order to ensure that DIBC begin and continue compliance with the February 1, 2010 Order, it is Ordered that the January 12, 2012 Order of this Court is amended to provide as follows:

IT IS ORDERED THAT THE JANUARY 12, 2012 ORDER imprisoning Manuel “Matty” Moroun and Dan Stamper is vacated.

IT IS ORDERED THAT DIBC shall relinquish control over construction of its portion of the Ambassador Bridge Gateway Project to MDOT.

IT IS ORDERED THAT MDOT shall assume the responsibility for completing DIBC’s portion of the Ambassador Bridge Gateway Project.

IT IS ORDERED THAT DIBC shall pay to MDOT \$16,000,000.00 by March 20, 2012, to establish a special fund to be used for the completion of DIBC’s portion of the Ambassador Bridge Gateway Project.

IT IS ORDERED THAT MDOT establish an account for receipt of the funds for the completion of DIBC’s portion of the Ambassador Bridge Gateway Project by March 15, 2012.

IT IS ORDERED THAT MDOT maintain control over the finances and ensure the production of proper documentation to apprise the Court, DIBC, and Safeco Insurance Company of the status of the special funds account on a monthly basis.

IT IS ORDERED THAT MDOT complete DIBC’s portion of the Ambassador Bridge Gateway Project using the second alternative estimated schedule submitted on February 6, 2012.

IT IS ORDERED THAT Manuel Moroun, Mathew Moroun, and Dan Stamper shall appear in Court at 9:00 a.m. on March 22, 2012.

IT IS FURTHER ORDERED THAT this matter is adjourned to March 22, 2012 at 9:00 a.m.

Date: March 8, 2012

/s/ Prentis Edwards  

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JUDGE PRENTIS EDWARDS