

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOUTHEASTERN PENNSYLVANIA : CIVIL ACTION  
TRANSPORTATION AUTHORITY :  
Plaintiff :  
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 :  
 vs. :  
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 COMMONWEALTH OF PENNSYLVANIA, :  
PUBLIC UTILITY COMMISSION :  
Defendant : NO. 95-4500

MEMORANDUM AND ORDER

ORDER

AND NOW, to wit, this 23rd day of August, 1999, upon consideration of Plaintiff's Motion to Vacate the January 16, 1996<sup>1</sup> Consent Decree (Document No. 11, filed April 30, 1999), Response of the Southeastern Pennsylvania Transportation Authority to the Motion of the Pennsylvania Public Utility Commission to Vacate the January 16, 1996 Consent Decree (Document No. 13, filed June 17, 1999), and the Reply to Response of the Southeastern Pennsylvania Transportation Authority to the Motion of the Pennsylvania Public Utility Commission to Vacate the January 16, 1996 Consent Decree (Document No. 16, filed July 16, 1999), and following oral argument held July 30, 1999, **IT IS ORDERED**, for the reasons set forth in the following Memorandum, that the Motion to Vacate the January 16, 1996 Consent Decree is **GRANTED** with respect to the Court's January

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<sup>1</sup> The parties refer to the Order as dated January 16, 1999. The Order was dated January 19, 1999 and will be referred to as the Order of January 19, 1999 in this Memorandum and Order.

19, 1996 Order as it relates to the Woodland Avenue Bridge, and **DENIED** in all other respects.

MEMORANDUM

**1. Facts and Procedural History**

In 1991 and 1992, the Pennsylvania Utility Commission ("PUC") issued three separate orders requiring that SEPTA make payments toward the upkeep of eighteen highway-bridge structures passing over railway lines owned and operated by SEPTA. In each case, the PUC determined that SEPTA, as the operator of the railway line running under the bridge, benefitted from a separated railway-highway crossing and should therefore share bridge-maintenance costs with the localities that owned the roads and also benefitted from a separated crossing.<sup>2</sup> SEPTA argued unsuccessfully to the PUC that this assignment of costs to SEPTA violated a pair of federally-conferred tax exemptions: 45 U.S.C. § 581(c)(5) (1988) and 45 U.S.C. § 546(b) (1988).

In 1981, Congress required that the financially-troubled Consolidated Rail Corporation ("Conrail") -- established by federal law to provide national rail transportation -- transfer its commuter rail operations to local commuter authorities. To assist these local authorities with handling the provision of commuter

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<sup>2</sup> With respect to three of the four bridges, including the Woodland Avenue Bridge, the PUC found that SEPTA owned the bridge and cited this as an additional reason for requiring SEPTA to contribute to bridge maintenance.

service, Congress created the Amtrak Commuter Services Corporation ("Amtrak Commuter"), as a wholly-owned subsidiary of the National Railroad Passenger Corporation ("Amtrak"), and afforded the local authorities a choice between contracting with Amtrak Commuter for provision of commuter rail service formerly handled by Conrail or operating commuter rail service directly. SEPTA decided to operate its own local commuter rail service and, on January 1, 1983, assumed from Conrail the operation of thirteen commuter rail lines.

On September 10, 1982, 45 U.S.C. § 546(b) was enacted, exempting Amtrak -- which, like Conrail, was struggling financially -- and its newly-created subsidiary Amtrak Commuter "from any taxes or other fees imposed by any State, political subdivision of a State, or a local taxation authority which are levied . . . from and after October 1, 1981 . . . ." 96 Stat. 852 (1982), codified at 45 U.S.C. § 546(b). In exempting Amtrak from state taxation, Congress reasoned that local jurisdictions benefitting from Amtrak's rail service have an obligation to contribute to its continued existence through tax relief.

In 1988, Congress enacted 45 U.S.C. § 581(c)(5), which provides:

Notwithstanding any other provision of law, any commuter authority that could have contracted with Amtrak Commuter for the provision of commuter service but which elected to operate directly its own commuter service as of January 1, 1983, shall be exempt from the payment of any taxes or other fees to the same extent as [Amtrak] is exempt.

45 U.S.C. 581(c)(5) (1988). Relying on two Pennsylvania Commonwealth Court opinions, the PUC determined, in three separate orders, that Section 581(c)(5) did not exempt SEPTA from assessments for bridge maintenance because such assessments were not "taxes or other fees" within the meaning of the federal exemption. Subsequently, SEPTA appealed each PUC decision to the Pennsylvania Commonwealth Court.

In Southeastern Pennsylvania Transportation Authority v. Pennsylvania Public Utility Commission, 592 A.2d 797 (Pa.Cmmwth.Ct. 1991), the Commonwealth Court upheld the PUC decision with respect to the Woodland Avenue Bridge.<sup>3</sup> In deciding that SEPTA is not exempt from the PUC's allocation of maintenance costs for the bridge, the Commonwealth Court agreed with PUC's determination that Section 581(c)(5) did not encompass SEPTA.

SEPTA then filed suit in federal court. In the federal complaints, consolidated on August 19, 1992, SEPTA argued that the imposition upon SEPTA of bridge-maintenance costs violates the federal tax-exemption statutes; SEPTA sought a declaration to that effect and a permanent injunction against assessment of such costs by the PUC with respect to the four bridges. Judge Pollak of this

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<sup>3</sup> The only bridge at issue in the Commonwealth Court case, the Woodland Avenue Bridge, carries Woodland Avenue, a City street, over and above two sets of SEPTA's electrified railroad tracks which are part of its Media/West Chester commuter rail line.

Court granted summary judgment to SEPTA and enjoined the PUC from allocating any costs of maintenance or repair of the bridges to SEPTA. Southeastern Pennsylvania Transportation Authority v. Pennsylvania Public Utility Commission, 826 F.Supp. 1506 (E.D.Pa. 1993)(citing National R.R. Passenger Corp. v. Pennsylvania Public Utility Commission, 848 F.2d 436 (3d Cir. 1988)); aff'd mem., 27 F.3d 558 (3d Cir. 1994).

On July 20, 1995, SEPTA filed the Complaint against the PUC in the instant action, claiming that the PUC was improperly assessing maintenance costs against it for the bridges at issue in this case. On January 19, 1996 this Court approved a consent decree entered into by the PUC and SEPTA. The consent decree exempted SEPTA from maintenance responsibility for the Woodland Avenue bridge and seventeen other bridges to which reference is made in general in paragraphs 18 and 19 of the Complaint. Southeastern Pennsylvania Transportation Authority v Pennsylvania Public Utility Commission, No. 95-CV-4500 (E.D.Pa. January 19, 1996). It is this consent decree that the PUC now moves the Court to vacate.

The PUC agreed to the consent decree despite the 1991 Commonwealth Court decision holding that SEPTA was not exempt from responsibilities for maintenance costs with respect to the Woodland Avenue bridge. The PUC explained in its submissions that the agreement was based on Judge Pollak's decision, which was affirmed

without opinion, and a 1995 Commonwealth Court decision which stated that "[t]he PUC and [the Commonwealth Court] have duly recognized the federal preemption of the subject matter of state and local assessment of charges against [the railways] for repair or replacement of railroad crossings." Consolidated Rail Corp. v. Pennsylvania Public Utility Commission, 671 A.2d 248, 252 (Pa.Cmmwth.Ct. 1995). This language in the 1995 Commonwealth Court case led the PUC to conclude the Commonwealth Court would reverse its position regarding SEPTA's exemption status and rule that SEPTA was exempt from payment of maintenance costs.

As it turned out, the PUC was incorrect in its assumption, and in 1998 the Commonwealth Court affirmed its previously stated holding that SEPTA is not exempt from maintenance responsibilities. City of Philadelphia v. Pennsylvania Public Utility Commission, 720 A.2d 845, 852 (Pa.Cmmwth.Ct. 1998). As a result, the PUC filed the instant motion to vacate the consent decree. In explaining the delay in filing the motion to vacate -- over three years after the approval of the consent decree -- the PUC states that the 1998 Commonwealth Court decision presented it with conflicting interpretations of Section 581(c)(5): the Third Circuit ruling that SEPTA was exempt from maintenance responsibilities, the Commonwealth Court ruling that it was not. Compare National Railroad Passenger Corporation v. Commonwealth of Pennsylvania, Public Utility Commission, 848 F.2d 436 (3d Cir.

1988)(holding that requiring sharing of maintenance costs at crossings was a "tax" or "fee") with City of Philadelphia v. Pennsylvania Public Utility Commission, 720 A.2d 845, 852 (Pa.Cmmwth.Ct. 1998)(expressly rejecting holding of National Railroad Passenger Corp.). Because this conflict did not develop until November 20, 1998, the date the Commonwealth Court opinion was issued, and the PUC filed the motion to vacate several months later, the PUC argues that the delay in filing the motion was reasonable.

PUC filed the motion to vacate the consent decree under Federal Rules of Civil Procedure 60(b)(4) and 60(b)(6), arguing the following: (1) the Court had no subject matter jurisdiction to approve the consent decree because the Full Faith and Credit Act, 28 U.S.C. § 1738, requires deference to the Commonwealth Court decision in favor of the PUC in Southeastern Pennsylvania Transportation Authority v. Pennsylvania Public Utility Commission, 592 A.2d 797 (Pa.Cmmwth.Ct. 1991); (2) under the Rooker-Feldman doctrine the Court had no subject matter jurisdiction to approve the consent decree; (3) the following municipal and other governmental entities, not included in the underlying action, are necessary parties to the consent decree: City of Philadelphia, PennDOT, Springfield Township, Bensalem Township, Middleton Township, West Goshen Township, Borough of Newtown, Borough of Kennett Square, Penn Township, Cheltenham Township, Abington

Township, Delaware County, Montgomery County, Chester County and Bucks County.

Defendants oppose the motion on several grounds: (1) the Full Faith and Credit Act is not jurisdictional in nature and thus may be waived as a defense; (2) the Rooker-Feldman doctrine is improperly invoked; and (3) the Court should not disturb its order approving the consent decree because the parties the PUC claims were necessary to the action have relied on the decree.

## **II. Analysis**

The relevant sections of Federal Rule of Civil Procedure 60(b) permit a Court to "relieve a party . . . from a final judgment" on the ground that "(4) the judgment is void"; or "(6) any other reason justifying relief from the operation of the judgment." Defendant has moved to vacate the consent decree under Rule 60(b)(4), arguing that the Court did not have subject matter jurisdiction to approve the consent decree because of the Full Faith and Credit Act and the Rooker-Feldman doctrine. In addition, defendant has moved under Rule 60(b)(6), arguing that the consent decree is invalid for failure to join necessary parties. The Court addresses each of defendant's arguments in turn.

### **A. Rule 60(b)(4) and Subject Matter Jurisdiction**

A judgment will be considered void where the issuing court lacked subject matter jurisdiction. However, absent a "clear usurpation of power," a judgment sustaining subject matter

jurisdiction has res judicata effect as to collateral challenges to such jurisdiction even if the jurisdictional issue was not actually presented in the earlier proceeding. Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 377-78 (1940); Nemaizer v. Baker, 793 F.2d 58, 64-65 (2d Cir. 1986); Lubben v. Selective Serv. Sys. Local Bd. No. 27, 453 F.2d 645, 649 (1st Cir. 1972); Vecchione v. Wohlgemuth, 426 F.Supp. 1297, 1307-09 (E.D.Pa. 1977).

PUC attacks the Court's subject matter jurisdiction on two grounds: (1) res judicata, as embodied in the Full Faith and Credit Act, and (2) the Rooker-Feldman doctrine.

**i. Res Judicata and the Full Faith and Credit Act**

Res judicata doctrine teaches that a valid judgment on the merits is a bar in another action between the same parties or privies not only in respect to matters that were actually adjudicated but also as to every other matter that might have been adjudicated. 1B Moore's Federal Practice ¶ 0.410(2) (2d ed. 1974). The earlier judgment, however, must be invoked as an affirmative defense in the second action, see Fed.R.Civ.P. 8(c), and is waivable by the defendant.

The Full Faith and Credit Act, 28 U.S.C. § 1738, essentially codified this principle with respect to the effect of a state court decision in federal court. The statute provides in part

The records and judicial proceedings of any court of any such State, Territory or

Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738. The doctrine of full faith and credit supports and gives effect to the doctrine of res judicata, and accordingly "the local doctrines of res judicata, speaking generally, become a part of the national jurisprudence." Riley v. New York Trust Co., 315 U.S. 343, 349 (1942).

Res judicata can be applied to bar relitigation of claims previously decided on the merits. See Fed.R.Civ.P. 8(c). However, res judicata is not a doctrine which would defeat subject matter jurisdiction. Livera v. First Nat'l State Bank of New Jersey, 879 F.2d 1186, 1190 (3d Cir. 1989).

Moreover, under Federal Rule of Civil Procedure 8(c), all affirmative defenses including the defense of res judicata must be set forth in a responsive pleading. Failure to comply with this rule may preclude a party from asserting the defense. EEOC v. U.S. Steel, 921 F.2d 489, 491 n.2 (citing Prinz v. Greate Bay Casino Corp., 705 F.2d 692 (3d Cir. 1983) and Kern-Oil & Refining Co., v.

Tenneco Oil Co., 840 F.2d 730 (9th Cir. 1988)). Courts have, however, created exceptions to Rule 8(c) in limited circumstances, such as where the asserting party raised the res judicata defense in a motion under Federal Rule of Civil Procedure 12(b). Williams v. Murdoch, 330 F.2d 745, 749 (3d Cir. 1964).

The instant motion presents no circumstance under which the Court can excuse the requirements of pleading the defense of res judicata. Defendant brought this action in 1995. It is long past the time to raise an affirmative defense such as res judicata. See Evans v. Syracuse City School District, 704 F.2d 44 (2d Cir. 1983)(holding that where school district did not raise res judicata defense until two years and nine months after the defense could properly have been asserted, it was waived). Thus the Court concludes that the res judicata defense has been waived by the defendant, and rejects defendant's claim for relief on this ground.

**ii. The Rooker-Feldman doctrine**

A federal district court is one of original jurisdiction; as such, it lacks subject matter jurisdiction to entertain appeals from state courts. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). The Rooker-Feldman doctrine, which reflects these principles, is transgressed if the claim before the district court has already been determined by the state court or is

"inextricably intertwined" with a prior state court decision. Marks v. Stinson, 19 F.3d 873, 886 n. 11 (3d Cir. 1994). In either scenario, "federal relief can only be predicated upon a conviction that the state court was wrong, [and] it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state court judgement." Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989)(quoting Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring)).

At oral argument, the parties agreed that in Southeastern Pennsylvania Transportation Authority v. Pennsylvania Public Utility Commission, 592 A.2d 797 (Pa.Cmmwth.Ct. 1991), the Commonwealth Court addressed the issue of maintenance costs with respect to the Woodland Avenue bridge, holding that SEPTA was responsible for those costs. That opinion was issued before institution of the instant federal action in which the consent decree was approved. Thus, under Rooker-Feldman, the Court had no jurisdiction to approve the consent decree to the extent the decree affected SEPTA's maintenance responsibilities with respect to the Woodland Avenue bridge. Accordingly, the Court must vacate the consent decree insofar as it conflicts with the 1991 Commonwealth Court decision. However, because the Commonwealth Court decision concerned only the Woodland Avenue bridge and had no bearing on the seventeen other bridges covered by the consent decree, the consent

decree will be vacated only with respect to the Woodland Avenue bridge and will remain in effect in all other respects.

**B. Rule 60(b)(6) and the Failure to Join Necessary Parties**

Motions made under Rule 60(b)(6) must be made within a reasonable time. Moolenaar v. Gov't of the Virgin Islands, 822 F.2d 1342, 1346 (3d Cir. 1987). "[W]hat is a reasonable time must depend to a large extent upon the particular circumstances alleged." 7 J. Moore & J. Lucas, supra, at ¶ 60.27[3], p. 60-301. See also Delzona Corporation v. Sacks, 265 F.2d 157, 159 (3d Cir. 1959)(same). PUC filed the instant motion over three years after the entry of the order approving the consent decree. However, as explained above, the conflict with which the PUC is faced did not arise until November 20, 1998, and the PUC filed the instant motion shortly thereafter. In light of these circumstances, the Court concludes that the motion is timely.

Defendant argues that several municipal entities which eventually had to bear the burden of the maintenance costs were necessary parties, and that the Court should vacate the consent decree under Rule 60(b)(6) because they were not joined in the action. The Court disagrees.

Federal Rule of Civil Procedure 19 provides in pertinent part:

[Parties] shall be joined . . . in the action if (1) in the person's absence complete relief cannot be accorded among those already

parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may as a practical matter impair or impede the person's ability to protect that interest . . . .

Fed.R.Civ.P. 19. The Supreme Court has defined necessary parties as "[p]ersons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it." Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977)(quoting Shields v. Barrow, 17 How. 130, 139 (1855) and citing Notes of Advisory Committee on 1966 Amendment to Rule 19). Thus, a necessary party is one whose rights or interests are directly affected by the subject matter of the litigation.

In the present context, if the rights or interests of an entity are directly affected by a consent decree, then a fortiori that entity is a necessary party. Consequently, "[a] consent decree [cannot] be used as a device by which A and B, the parties to the decree, can (just because a judge is willing to give the parties' deal a judicial imprimatur) take away the legal rights of C, a nonparty." People Who Care v. Rockford Board of Education, 961 F.2d at 1337. However, like any other order granting prospective relief, a consent decree can have adverse consequences on non-parties without thereby being rendered invalid. See People Who Care v. Rockford Board of Education, 961 F.2d 1335, 1337 (7th

Cir. 1992); Dunn v. Carey, 808 F.2d 555, 560 (7th Cir. 1986). Moreover, a consent decree that does not bind non-parties to do or not to do anything imposes no legal duties or obligations on them at all; such non parties are not necessary parties. Local No. 93 v. City of Cleveland, 478 U.S. 501, 529-30 (1986)(upholding consent decree despite interest of non-party where decree created no obligations for non-party and rights of non-party to bring substantive claims unaffected).

The third parties to which PUC refers, the various township and county governments in which the bridges at issue in this case lie, did not lose any legal rights under the consent decree. Rather, the Court, by approving the consent decree, declared that SEPTA was not responsible for the maintenance of the bridges. The adverse consequences of that order may have resulted in action by PUC which in turn affected the third parties, such as the shifting of maintenance costs to the third parties which might have been assumed by SEPTA absent the consent decree. However, the order itself had no such adverse effect. Thus, the Court concludes that the non party governmental entities were not necessary parties and denies the PUC motion on that ground.<sup>4</sup>

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<sup>4</sup> At Oral Argument and in its briefs, SEPTA maintained that the time has long since passed for non party governmental entities identified by the PUC to contest the reallocation of maintenance costs after entry of the consent decree with respect to fifteen of the eighteen bridges at issue. Of the remaining three bridges, one is not subject to the  
(continued...)

**III. Conclusion**

For the foregoing reasons, the Court grants PUC's motion to vacate the Order of January 19, 1999 approving the consent decree with respect to the Woodland Avenue Bridge on the ground that it lacks jurisdiction to adjudicate the rights affecting that bridge under the Rooker-Feldman doctrine, and the order of January 19, 1996 as it concerns the Woodland Avenue Bridge is vacated. In all other respects, the motion is denied.

**BY THE COURT:**

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**JAN E. DUBOIS, J.**

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<sup>4</sup>(...continued)  
jurisdiction of the PUC - the Echis Road bridge - and with respect to the two remaining bridges, both involved in litigation - the Woodland Avenue bridge and the Indian Lane Bridge in Middletown Township - the Commonwealth Court has ruled in favor of the PUC and the interested nonparty governmental entities. Assuming SEPTA's position is correct, that is another ground on which the Court might consider denying defendant's motion under Rule 60(b)(6). However, in light of the disposition of this case, and the incomplete record as to this aspect of the case, it is not necessary to reach this issue.