

Docket Number: 957

IA CONSTRUCTION CORPORATION, Individually and
for the use and benefit of H. MINISCALCO & SONS, INC.,
and H. MINISCALCO & SONS, INC.

Paul A. Logan, Esquire

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

James W. Kutz, Assistant Counsel

September 5, 1984

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$

September 7, 1984

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General.

January 21, 1985

Preliminary Objections filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 15, 1985

Letter received from attorney for Defendant withdrawing his Preliminary Objections based on an understanding reached between counsel. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 12, 1985

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 12th day of April, 1985, the request of the Commonwealth of Pennsylvania to withdraw its Preliminary Objections is **GRANTED** and the Commonwealth is directed therefore to file its Answer with New Matter as deemed necessary and the Preliminary Objections are deemed Moot." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

April 12, 1985

Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 25, 1985

Answers to Plaintiff's Interrogatories Addressed to Defendant - First Set - filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 1, 1985

Defendant's Interrogatories to Plaintiffs IA Construction Corporation and H. Miniscalco & Sons, Inc. - First Set filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 4, 1987

Interrogatories Addressed to Defendant - Second Set filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 11, 1987

Response to New Matter filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 21, 1987

Answers to Defendant's Interrogatories to Plaintiffs, IA Construction Corporation and H. Miniscalco & Sons, Inc. - First Set filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 1, 1987

Answers to Interrogatories Addressed to Defendant - Second Set filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 28, 1988

Request for Production of Documents filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 28, 1988

Notice of Taking Deposition of Joseph Meehan filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 2, 1988

Response to Plaintiff's Request for Production of Documents filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 9, 1988

Plaintiff's Second Set of Continuing Interrogatories to Defendant filed by attorney for Plaintiff.

February 28, 1989

Answers to Plaintiffs' Second Set of Continuing Interrogatories to Defendant filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 1, 1989

Defendant's Second Request for Production of Documents filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 22, 1989

Discovery Stipulation filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 28, 1989

Hearing scheduled for May 30 and 31, 1989, June 1 and 2, 1989, and June 6, 7, 8 and 9, 1989 if necessary in Board's Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, PA commencing at 10:00 a.m.

March 29, 1989

Answers to Requests for Admission filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

March 29, 1989

Plaintiff's Response to Defendant's Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 13, 1989

Proposed Response to Defendant's Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 13, 1989

Amended Complaint filed by attorney for Plaintiff. Amount of Claim: \$178,006.06+.

April 19, 1989

Supplemental Answers to PennDOT's Second Set of Continuing Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 19, 1989

Supplemental Answers to Requests for Admission filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 21, 1989

Letter/Response to Plaintiff's Motion to Amend its Complaint filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 10, 1989

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 10th day of May, 1989, upon due consideration of the Plaintiff's Motion to Amend Complaint and noting that Defendant raises no objection to the said Motion, the same is **GRANTED**. It is further **ORDERED** that the Defendant shall file its Answer to the Amended Complaint on or before May 16, 1989, so as to allow for timely review of the Answer prior to May 20, 1989. It is so ordered." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

May 11, 1989

Copies of Amended Complaint forwarded to attorney for Defendant and Chief Deputy Attorney General.

May 12, 1989

Acceptance of Service of Opinion and Order dated May 10, 1989 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 11, 1989.

May 16, 1989

Acceptance of Service of Amended Complaint received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 15, 1989.

May 25, 1989

Answer to Amended Complaint and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 25, 1989

Supplemental Answers to Plaintiff's Second Set of Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 26, 1989

Plaintiff's Supplemental Answers to Defendant's Second Set of Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 30, 1989

Plaintiffs' Answer to New Matter filed by attorney for Plaintiff at time of hearing.

May 30, 1989

Hearing held in Board's Courtroom No. 1 beginning at 10:00 a.m.

May 31, 1989

Hearing held in Board's Courtroom No. 1 beginning at 10:00 a.m.

June 1, 1989

Hearing held in Board's Courtroom No. 1 beginning at 10:00 a.m.

June 2, 1989

Hearing held in Board's Courtroom No. 1 beginning at 10:00 a.m.

June 3, 1989

Hearing held in Board's Courtroom No. 1 beginning at 10:00 a.m.

June 7, 1989

Hearing held in Board's Courtroom No. 1 beginning at 10:00 a.m.

June 8, 1989

Hearing held in Board's Courtroom No. 1 beginning at 10:00 a.m. Case completed.

August 10, 1989

Testimony of hearing held May 30 and 31, 1989 filed.

August 11, 1989

Testimony of hearing held June 1 and 2, 1989 filed.

August 14, 1989

Copy of testimony of hearing held May 30 and 31, 1989 and June 1 and 2, 1989 forwarded to attorney for Defendant.

August 15, 1989

Acceptance of Service of testimony for hearings held June 1 and 2, 1989 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 14, 1989.

August 15, 1989

Testimony of hearing held June 6 and 7, 1989 filed.

August 16, 1989

Testimony of hearing held June 8, 1989 filed.

August 17, 1989

Copy of testimony of hearing held June 6, 7 and 8, 1989 forwarded to attorney for Defendant.

August 17, 1989

Acceptance of Service of testimony of hearing held May 30 and 31, 1989 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 16, 1989.

August 18, 1989

Acceptance of Service of testimony of hearing held June 6, 7 and 8, 1989 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 17, 1989.

October 2, 1989

Plaintiff's Proposed Findings of Fact and Conclusions of Law and Plaintiffs' Memorandum of Law in Support of Proposed Findings of Fact and Conclusions of Law filed by attorney for Plaintiff. Copies forwarded to attorney for Defendant by attorney for Plaintiff.

October 10, 1989

Entry of Appearance filed by Mark F. Brancato, Esquire, attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 4, 1989

Defendant's Proposed Findings of Fact and Conclusions of Law and Defendant's Memorandum of Law in Support of Proposed Findings of Fact and Conclusions of Law filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 27, 1989

Reply to Defendant's Memorandum of Law in Support of its Proposed Findings of Fact and Conclusions of Law filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 13, 1990

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 13th day of April, 1990, after hearing, the Board makes the following award in favor of the Plaintiffs. Plaintiff, H. Miniscalco & Sons, Inc., is awarded Sixty-One Thousand Nine Hundred Forty-Five Dollars (\$61,945.00) with interest per annum thereon at a rate of six percent (6%) per annum from May 14, 1984. Plaintiff, IA Construction Corporation, is awarded Eighteen Thousand One Hundred Forty-Four Dollars and Fifty Cents (\$18,144.50) with interest per annum thereon at a rate of six percent (6%) per annum from May 14, 1984. Each party to pay its own costs." Copies forwarded to attorneys for Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

April 16, 1990

Acceptance of Service of Opinion and Order dated April 13, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 13, 1990.

April 19, 1990

Acceptance of Service of Opinion and Order dated April 13, 1990 received from attorney for Plaintiff (Mark F. Brancato, Esquire). Receipt of same acknowledged by attorney for Defendant April 13, 1990.

April 19, 1990

Acceptance of Service of Opinion and Order dated April 13, 1990 received from attorney for Plaintiff (Paul A. Logan, Esquire). Receipt of same acknowledged by attorney for Plaintiff (Paul A. Logan, Esquire) April 17, 1990.

April 20, 1990

Acceptance of Service of Opinion and Order dated April 13, 1990 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General April 17, 1990.

April 26, 1990

Motion for Modification of Findings of Fact, Conclusions of Law, Opinion and Order of this Board and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 27, 1990

Response to Motion for Modification of Findings of Fact, Conclusions of Law, Opinion and Order of this Board filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 8, 1990

The Board made the following Amended Order: **"AND NOW**, this 8th day of May, 1990, upon consideration of the Motion for Modification of Findings of Fact, Conclusions of Law, Opinion and Order, it is hereby **ORDERED** that the Motion is granted. Finding of Fact No. 62 is hereby amended as follows: 62. Miniscalco's damages are as follows: Right-of-way shut-down \$2,705.41, Oil shut-down \$8,469.10 - \$11,174.51. Damages for change of scope of the job: Labor \$26,238.00, Equipment \$9,628.00, Material \$12,208.00, Miscellaneous \$1,482.00 - \$49,556.00; plus \$11,174.51 - \$60,730.51; plus 25% overhead; \$15,182.63; TOTAL EQUALS (D-27) \$75,913.14. Conclusion of Law No. 14 is amended as follows: 14. H. Miniscalco & Sons, Inc., is entitled to an award of \$75,913.14. Pages 37 and 38 of this Board's Opinion are amended to the following extent: The Board rules that Miniscalco's damages are as follows: Right-of-way shut-down \$2,705.41, oil shut-down \$8,469.10 - \$11,174.51. Damages for change of scope of the job: Labor \$26,238.00, Equipment \$9,628.00, Material \$12,208.00, Miscellaneous \$1,482.00 - \$49,556.00; Plus \$11,174.51 - \$60,730.51; Plus 25% overhead: \$15,182.63 - TOTAL EQUALS (D-27) \$75,913.14. The Order of this Board with respect to Miniscalco is amended as follows: 'Plaintiff, H. Miniscalco & Sons, Inc., is awarded Seventy-Five Thousand Nine Hundred Thirteen Dollars and Fourteen Cents (\$75,913.14) with interest per annum thereon at a rate of six percent (6%) per annum from May 14, 1984.'" Copy forwarded to attorney for Plaintiff and attorney for Defendant.

May 10, 1990

Copy of Amended Order dated May 8, 1990 (inadvertently forwarded to Paul A. Logan, Esquire) forwarded to attorney for Plaintiff.

May 11, 1990

Acceptance of Service of Amended Order dated May 8, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 10, 1990.

May 16, 1990

Acceptance of Service of Amended Order dated May 8, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff (undated).

May 17, 1990

Acceptance of Service of Amended Order dated May 10, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 14, 1990.

May 16, 1990

Copy of Petition for Review as filed in Commonwealth Court filed by attorney for Plaintiff.

May 29, 1990

Petition for review received from Commonwealth Court. (No. 1140 C.D. 1990).

May 29, 1990

Copy of Cross-Petition for Review as filed in Commonwealth Court filed by attorney for Defendant (No. 1100 C.D. 1990).

May 29, 1990

Copy of Cross-Petition for Review received from Commonwealth Court. (No. 1100 C.D. 1990).

May 8, 1991

Copy of Opinion and Order received from Commonwealth Court. Order as follows: "NOW May 6, 1991, the orders of the Board of Claims dated April 13, 1990 and May 8, 1990, are affirmed insofar as they order that the Department of Transportation is liable for damages in this matter. Insofar as those orders set the amount of damages owed, the orders are vacated and the matter is remanded to the Board of Claims for proceedings deemed necessary to award damages pursuant to the force account provisions of the contract."

September 12, 1991

File returned from Commonwealth Court.

October 8, 1992

Agreement and Release, executed by parties, as well as letter advising the Defendant paid to Plaintiff the settlement amount, filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff

by attorney for Defendant.

December 24, 1992

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 24th day of December, 1992, upon due consideration of the Agreement and Release of the parties and other submissions, it is hereby **ORDERED** that Defendant, Commonwealth of Pennsylvania, Department of Transportation, shall pay to Plaintiff, IA Construction Corporation Individually and for the use and benefit of H. Miniscalco & Sons, Inc., and H. Miniscalco & Sons, Inc., the sum of One Hundred Seventy-Five Thousand Dollars (\$175,000.00), which amount shall include the Fifty-Dollar (\$50.00) filing fee paid by the Plaintiff to commence this action, in full satisfaction and settlement of the matter. Further, the Board of Claims will treat the letter from Defendant's counsel dated October 5, 1992 as a Precept to discontinue with prejudice the matter docketed as No. 95. It is **ORDERED** that this matter be marked 'discontinued, settled and ended with prejudice'. Each party to bear its own costs and attorneys' fees. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

January 4, 1993

Acceptance of Service of Opinion and Order dated December 24, 1992 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff December 29, 1992.
