

Docket Number: 1010

CLARENCE W. MOORE

~~Bruce A. Feldman, Esquire~~  
Richard M. Jordan, Esquire  
David E. Edwards, Esquire

~~CLOSING STATEMENTS.~~  
~~COMMONWEALTH OF PENNSYLVANIA,~~  
~~DEPARTMENT OF ENVIRONMENTAL RESOURCES~~

~~\*DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES~~

~~Arthur M. Feld, Esquire~~  
~~William B. Calder, Jr., Esquire~~  
Terry R. Bossert, Chief Counsel  
Martha R. Smith, Esquire  
Virginia J. Davison, Assistant Counsel

**June 26, 1985**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$1,000,000.00.

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**June 28, 1985**

Letter forwarded to attorney for Plaintiff requesting Amended Complaint.

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**July 1, 1985**

Motion for Extension of Time to File Amended Complaint filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**July 16, 1985**

First Amended Complaint for Breach of Contract filed by attorney for Plaintiff.

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**July 15, 1985**

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

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**August 30, 1985**

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

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**September 27, 1985**

Letter and Proposed Order relative to request for Stay filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**October 2, 1985**

The Board rendered the following Order: "**AND NOW**, this 2nd day of October, 1985, it appearing that a related proceeding is now pending before the Board of Property of the Commonwealth at Docket No. BP-84-01, and that resolution of that matter will determine whether the above-captioned matter pending before this Board need proceed, and upon joint request of counsel for Plaintiff and Defendant: IT IS HEREBY ORDERED that all proceedings in the above-captioned matter shall be continued generally pending resolution of the proceeding before the Board of Property at Docket No. BP-84-01, at which time either party may, by Praecipe, request this matter to be placed in active status. The parties shall provide the Board with status reports every 90 day intervals." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

**January 5, 1986**

Courtesy copy of Commonwealth Court Opinion reversing the Order of the Board of Property filed by attorney for Defendant.

**November 10, 1992**

Letter-type Motion to Stay filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**November 25, 1992**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 25th day of November, 1992, the Letter-type Motion, as filed by Defendant, Commonwealth of Pennsylvania, Department of Environmental Resources, and joined into by the counsel for the Plaintiff, Clarence W. Moore, shall be and is hereby, **GRANTED**. Upon resolution of the pending case in Lycoming County, either party may activate this case by Praecipe. The parties are further **DIRECTED** to provide the Board of Claims with a status report every 90 days while the Stay is in effect." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

**December 8, 1992**

Acceptance of Service of Opinion and Order dated November 25, 1992 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December 1, 1992.

**December 23, 1992**

Acceptance of Service of Opinion and Order dated November 25, 1992 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff December 18, 1992.

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**November 30, 1994**

Status Report filed by attorney for Defendant advising that the case is presently on the docket in the Commonwealth Court [No. 0348 C.D. 1994]. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**December 29, 1995**

Status Report filed by attorney for Defendant advising that the case is presently on the docket of the Supreme Court [No. 0429 D.D. 1995]. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**April 9, 1996**

Notice of Appearance filed by Richard M. Jordan, Esquire and David E. Edwards, Esquire, attorneys for Plaintiff.

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**May 16, 1996**

Entry of Appearance filed by Virginia J. Davison, Assistant Counsel, attorney for Defendant.

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**June 4, 1996**

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 4th day of June, 1996 after consideration of Plaintiff's First Amended Complaint, Defendant's Preliminary Objections thereto, together with Plaintiff's request that the matter proceed to hearing and concurrence of the Defendant, it is hereby **ORDERED** that continued Defendant's Preliminary Objections are **DENIED**. The Board's Order of Stay is lifted and vacated. It is further **ORDERED** that Defendant, Commonwealth of Pennsylvania, Department of Environmental Resources or its successor shall file an Answer or other response to Plaintiff's First Amended Complaint within thirty (30) days of the exit date of this Order." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**June 12, 1996**

Acceptance of Service of Opinion and Order dated June 4, 1996 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 10, 1996.

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**June 17, 1996**

Petition to Stay filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**June 25, 1996**

Plaintiff's Opposition to Defendant's Petition to Stay filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 7, 1996**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 7th day of August, 1996, it is **ORDERED** and **DECREED** that the Petition to Stay as filed by the Defendant, Commonwealth of Pennsylvania, Department of Environmental Resources, is **GRANTED**. It is further **ORDERED** and **DECREED** that counsel for the Plaintiff, Clarence Moore, advise the Board of Claims how the United States Supreme Court acted on the Petition for Certiorari within ten (10) days of the decision." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**August 14, 1996**

Acceptance of Service of Opinion and Order rendered August 7, 1996, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 12, 1996.

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**August 29, 1996**

Acceptance of Service of Opinion and Order rendered August 7, 1996, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 28, 1996.

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**\*October 15, 1996**

Notice of Denial of Certiorari and Request that Stay be Lifted filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**November 15, 1996**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 25th day of November, 1996, it is **ORDERED** and **DECREED** that the Stay presently enforced is hereby lifted. It is further **ORDERED** and **DECREED** that the Defendant, Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, is **DIRECTED** to now answer the first Amended Complaint within thirty (30) days of the exit date of this Order." Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**November 21, 1996**

Acceptance of Service of Opinion and Order dated November 15, 1996, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant November 18, 1996.

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**November 22, 1996**

Acceptance of Service of Opinion and Order dated November 15, 1996, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff November 20, 1996.

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**December 13, 1996**

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

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**January 2, 1997**

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

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**January 7, 1997**

Letter forwarded to parties directing them to proceed with discovery.

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**January 27, 1997**

Counter-reply of the Department to the New Matter of Clarence Moore and Motion to Strike the Document Entitled Exhibit A filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 6, 1997**

Hearing scheduled for May 19, 20, 21, 22, & 23, 1997, and May 27, 28, 29, & 30, 1997, if necessary, in Board's Courtroom No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**February 6, 1997**

Certificate of Service of First Set of Interrogatories forwarded to attorneys for Plaintiff by attorney for Defendant.

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**February 13, 1997**

Proposed Order as well as Motion in Limine of Plaintiff to Preclude Relitigation of Facts Determined in the Eminent Domain Action and Memorandum of Law in Opposition to Defendant's Motion to Strike and in Support of his Cross-Motion in Limine to Preclude Relitigation of Facts Determined in the Eminent Domain Action filed by attorneys for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**CLOSED**

February 14, 1997

The Board rendered an opinion and made the following Order: "And NOW, this 14th day of February, 1997, it is **ORDERED** and **DECREED** that the Defendants, Commonwealth of Pennsylvania, Department of Conservation and Natural Resources' Motion to Strike is dismissed as being premature. It is further **ORDERED** and **DECREED** that counsel for the Defendant may revive this issue, by objection, on the record during the course of the Board's hearing." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**February 19, 1997**

Acceptance of Service of Opinion and Order rendered February 19, 1997 received from attorneys for Plaintiff. Receipt of same acknowledged by attorneys for Plaintiff February 17, 1997.

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**March 4, 1997**

Plaintiff's Motion for Leave to Amend and Memorandum in Support thereof filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**Defendant's Response and Brief due 3/27/97.**

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**March 7, 1997**

Acceptance of Service of Opinion and Order dated February 14, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 6, 1997.

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**March 11, 1997**

The Department of Conservation and Natural Resources' Response to Moore's Motion in Limine filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**March 12, 1997**

Certificate of Service of Department's Response to the Plaintiff's Interrogatories, as served upon attorney for Plaintiff, filed by attorney for Defendant.

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**March 19, 1997**

Motion to Compel Answers to Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**March 24, 1997**

Motion for Summary Judgment and Brief in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**April 1, 1997**

Letter received from attorney for Plaintiff requesting the Board to withdraw its Motion for Leave to Amend and advising that Plaintiff will be filing a Second Amended Complaint. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**April 3, 1997**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 3rd day of April, 1997, it is **ORDERED** and **DECREED** that the Claimant's, Clarence W. Moore, Motion in Limine in hereby **DENIED** and **DISMISSED**. It is further **ORDERED** and **DECREED** that after the Board of Claims has heard all the relevant evidence, the Claimant may raise the Motion in Limine." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**April 8, 1997**

Acceptance of Service of Opinion and Order dated April 3, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 7, 1997.

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**April 8, 1997**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 8th day of April, 1997, the Motion of the Defendant, Commonwealth of Pennsylvania, Department of Conversation and Natural Resources, in the nature of a motion for summary judgment must be **DENIED**. Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**April 9, 1997**

Acceptance of Service of Opinion and Order dated April 3, 1997 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 7, 1997.

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**April 10, 1997**

Plaintiff's Opposition to Defendant's Motion to Compel Answers to Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**April 11, 1997**

Acceptance of Service of Opinion and Order dated April 8, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 9, 1997.

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**April 14, 1997**

Second Amended Complaint and the Commonwealth's consent to the filing of same, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**April 14, 1997**

Acceptance of Service of Opinion and Order dated April 8, 1997 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 10, 1997.

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**April 14, 1997**

Motion for Reconsideration and Memorandum in Support of its Motion for Reconsideration filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**April 18, 1997**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 18th day of April, 1997, upon review of the filing of Plaintiff's Second Amended Complaint and the consent of the Defendant thereto, the Second Amended Complaint is now part of the record. The Defendant is given twenty (20) days from the exit date of this Order in which to file its responsive pleading. The Defendant's Motion for Reconsideration of the Board of Claims' Opinion and Order of April 8, 1997 is hereby **MOOT**." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**April 18, 1997**

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 18th day of April, 1997, the Motion of the Defendant, in the nature of a request for answers to Interrogatories, is hereby **GRANTED**. The Plaintiff herein is **DIRECTED** to file answers to these Interrogatories forthwith." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**April 21, 1997**

Copy of Second Amended Complaint forwarded to Chief Deputy Attorney General.

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**CLOSED**

April 23, 1997  
Plaintiff's Opposition to Defendant's Motion for reconsideration filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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Plaintiff's Response to Defendant's Motion for Summary Judgment filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**April 23, 1997**

Acceptance of Service of two (2) Opinions and Order dated April 18, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 22, 1997.

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**April 25, 1997**

Acceptance of Service of (2) Opinions and Orders dated April 18, 1997 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 25, 1997.

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**April 29, 1997**

The Department of Conservation and Natural Resources' Motion for Continuance and Memorandum in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**May 2, 1997**

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 2nd day of May, 1997, the Motion of the Defendant, Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, requesting a continuance of this matter is hereby **GRANTED**.

The parties are directed to advise the Board immediately upon the closing of the pleadings and any new discovery so that a hearing date will be established with dispatch." Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**May 2, 1997**

Hearing scheduled for May 19, 20, 21, 22 & 23, 1997; and May 27, 28, 29 & 30, 1997, **cancelled**.

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**May 2, 1997**

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

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**May 9, 1997**

Acceptance of Service of Opinion and Order dated May 2, 1997 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 6, 1997.

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**May 12, 1997**

Letter forwarded to attorney for Plaintiff requesting a response to New Matter.

**Response to New Matter due from Plaintiff 6/11/97.**

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**May 16, 1997**

Panel Hearing scheduled for October 14, 15 & 16, 1997, in Board's Courtroom No. 2, Fulton Building, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**June 11, 1997**

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

**June 24, 1997**

Motion to Strike Portions of Plaintiff's Response to New Matter and Brief in Support of Motion to Strike filed by attorney for Defendant.  
Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**July 17, 1997**

Plaintiff's Response to DCNR's Motion to Strike filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**July 17, 1997**

Motion for Summary Judgment and Brief in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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Plaintiff's Response and Brief filed 8/8/97.

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**August 13, 1997**

Plaintiff's Response to Defendant's Motion for Summary Judgment and Brief in Support thereof filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**October 6, 1997**

Motion for Protective Order filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**October 9, 1997**

Motion to Quash filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**October 14, 1997**

Panel Hearing held this date in Court Room No. 2, Fulton Building, 6th Floor, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**October 15, 1997**

Panel Hearing held this date in Court Room No. 2, Fulton Building, 6th Floor, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**October 16, 1997**

Panel Hearing held this date in Court Room No. 2, Fulton Building, 6th Floor, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m. Case completed.

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**November 17, 1997**

Testimony of hearing held October 14, 15 & 16, 1997, filed.

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**November 19, 1997**

Copy of testimony of hearing held October 14, 15 & 16, 1997, forwarded to attorney for Defendant.

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**November 24, 1997**

Acceptance of Service of testimony of hearing held October 14, 15 & 16, 1997, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant November 21, 1997.

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**December 1, 1997**

Plaintiffs' Proposed Findings of Fact, Conclusions of Law and Brief filed by attorney for Plaintiff, via Fax. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 22, 1997**

Plaintiffs' Proposed Findings of Fact, Conclusions of Law and Brief filed by attorney for Plaintiff, via mail. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**January 20, 1998**

Defendant's Suggested Findings of Fact, and Post-Hearing Brief filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 9, 1998**

Panel Report requested.

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**June 24, 1998**

Panel Report filed.

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**March 31, 1999**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 31st day of March, 1999, judgment is hereby entered in favor of the Plaintiffs. The Estate of Clarence Moore and Pennlyco, Ltd., a Maryland Corporation, and against the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources in the amount of Two Hundred Ninety-One Thousand Dollars (\$291,000.00) with interest at the statutory rate from November 17, 1989. It is further **ORDERED** and **DECREED** that Defendant's Motion for Summary Judgment, filed on July 17, 1997 is hereby dismissed as being moot. Upon receipt of said award, Plaintiff shall forthwith file a Praecipe with the Board requesting that the matter be marked closed, discontinued and ended with prejudice. Each party to bear its own costs and attorney fees. Copies forwarded attorneys, Chief Deputy Attorney General, and all parties involved.

**April 6, 1999**

Acceptance of Service of Opinion and Order dated March 31, 1999 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General April 6, 1999.

**April 13, 1999**

Acceptance of Service of Opinion and Order dated April 8, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 9, 1999.

**April 13, 1999**

Letter received from attorney for Defendant advising that as per conversation with our Senior Counsel, Robert McLaughlin, who suggested that the Defendant send Plaintiff's settlement check of \$454,597.80 which represents the Board's award to Plaintiff Moore and Pennlyco of \$291,000 plus statutory interest in the above-captioned case.

**April 30, 1999**

Praecipe filed by attorneys for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**June 3, 1999**

The Board rendered the following Order: "**AND NOW**, this 3rd day of June, 1999, upon receipt of a Praecipe, filed on April 30, 1999, by Richard M. Jordan, Esquire and David E. Edwards, Esquire, counsel for Plaintiff, The Estate of Clarence Moore and Pennlyco, LTD, a Maryland Corporation, requesting the Board to 'kindly mark the above matter closed, discontinued and ended with prejudice', it is **ORDERED** and **DIRECTED** that said case be marked 'discontinued and ended with prejudice'." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**June 8, 1999**

Acceptance of Service of Order dated June 3, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 7, 1999.

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**June 8, 1999**

Acceptance of Service of Order dated June 3, 1999 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 8, 1999.

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