

Docket Number: 1038

**FRANCIS J. PALO, INC.**

~~G. Barrett Garbarino, Jr., Esquire~~  
James B. Alexander, Esquire  
Robert J. Shea, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF TRANSPORTATION**

~~Kenneth L. Sable, Chief Claims Attorney~~  
William J. Madden, Esquire

**December 18, 1985**

Claim and filing fee (check in correctly made payable to Pennsylvania State Treasury) filed. Amount of Claim: \$138,925.74.

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**December 19, 1985**

Letter forwarded to attorney for Plaintiff requesting a new check with corrected payee.

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**December 24, 1985**

Letter received from Mr. Garbarino enclosing check with corrected payee.

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**December 30, 1985**

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

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**January 29, 1986**

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

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**February 21, 1986**

Petition for Order to Implead filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**March 3, 1986**

Brief in Support of Preliminary Objections filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**March 13, 1986**

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

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**March 22, 1986**

Answer to Preliminary Objections and Brief in Opposition to Defendant's Preliminary Objections filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**\*\*July 24, 1986**

The Board rendered an Opinion and made the following Order: "AND NOW, this 24th day of July, 1986, the Preliminary Objections as filed by the Defendant in the Nature of: (1) Petition Raising the Question of Subject Matter Jurisdiction, (2) Petition Raising Question of Personal Jurisdiction over the Department, (3) Demurrer, and (4) Motion for More Specific Pleadings are DENIED. The Preliminary Objection as filed by the Defendant raising the question of a non-joinder of a necessary and indispensable party is GRANTED. This Board, sua sponte, finding that the presence of the County of Mercer is necessary for a complete determination of Plaintiff's Claim hereby ORDERS that the Court of Mercer is alleged to have acted as an agent for the Commonwealth, an undisclosed or partially disclosed principal, and the presence of the County of Mercer is necessary for a complete determination of the Plaintiff's Claim. It is hereby ORDERED that the County of Mercer be and is hereby impleaded as and Impleaded Defendant. Further, the caption will be amended and from this date forward, shall appear as follows: Francis J. Palo, Inc. vs. Commonwealth of Pennsylvania, Department of Transportation vs. County of Mercer, Impleaded Defendant, Before the Board of Claims, Docket No. 1038. In furtherance of this Order, the Plaintiff is directed to serve upon the County of Mercer a copy of the Complaint and copy of this Order."

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**July 25, 1986**

Copies of Opinion and Order dated July 24, 1986 forwarded to attorney for Plaintiff and attorney for Defendant.

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**July 28, 1986**

Acceptance of Service of Opinion and Order dated July 24, 1986 received from Defendant. Receipt of same acknowledged by Defendant July 25, 1986.

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**July 30, 1986**

Acceptance of Service of Opinion and Order dated July 24, 1986 received from Plaintiff. Receipt of same acknowledged by Plaintiff July 28, 1986.

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**July 30, 1986**

Copy of Complaint and Board's Order dated July 24, 1986 forwarded to Interpleaded Defendant by attorney for Plaintiff per Board's Order of July 24, 1986.

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**August 6, 1986**

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

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**August 8, 1986**

Answer filed by attorney for Impleaded Defendant. Copies forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Impleaded Defendant.

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**September 8, 1986**

The Board made the following Order: "The Defendant, Commonwealth of Pennsylvania, Department of Transportation, has requested a clarification of the Board's Order of July 24, 1986. In that Order, the Board directed that the County of Mercer be impleaded as the Defendant. The Department of Transportation has requested clarification as to why the U.S. Department of Transportation was not impleaded as a Defendant in the Board's Order. When formulating its Opinion and Order, the Board was of the opinion that although the U.S. Department of Transportation may be a funding Federal agency, it had no integral part to play in the contracts alleged and accordingly, was not an indispensable party. The Board ordered impleader as to Mercer County which the pleadings alleged was an agent for the Commonwealth. No other parties are necessary to litigate the matters raised in Plaintiff's Complaint." Copies forwarded to attorney for Plaintiff, attorney for Defendant and attorney for Impleaded Defendant.

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**September 11, 1986**

Acceptance of Clarification of Order received from Defendant. Receipt of same acknowledged by Defendant September 9, 1986.

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**September 15, 1986**

Acceptance of Service of Clarification of Order received from Plaintiff. Receipt of same acknowledged by Plaintiff September 12, 1986.

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**September 29, 1986**

Acceptance of Service of Clarification of Order received from Impleaded Defendant. Receipt of same acknowledged by Impleaded Defendant September 15, 1986.

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**June 13, 1990**

Praecipe to Withdraw filed by attorney for Plaintiff.

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**September 28, 1990**

The Board rendered an Opinion and made the following Order: "AND NOW, this 28th day of September, 1990, it is ORDERED and DECREED that the above-entitled case be marked "withdrawn and terminated" by agreement of the parties and that the record evidences that the Commonwealth of Pennsylvania, Department of Transportation, is stricken as a party Defendant in this matter. All parties to bear its own cost and the docket be stamped 'closed'." Copies forwarded to attorney for Plaintiff, attorney for Defendant, and attorney for Impleaded Defendant.

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**October 11, 1990**

Acceptance of Service of Opinion and Order dated September 28, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 8, 1990.

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**October 16, 1990**

Acceptance of Service of Opinion and Order dated September 28, 1990 received from attorney for Additional Defendant. Receipt of same acknowledged by attorney for Additional Defendant October 5, 1990.

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