

Docket Number: 1076

ASSESSMENT SYSTEMS, INC.

Aaron Jay Beyer, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA

~~DICK THORNBURGH, Governor and ROBERT A. GLEASON, JR., Secretary of  
State and RICHARD E. ANDERSON, Commissioner, Dept. of State, Bureau  
of Professional and Occupational Affairs and PENNSYLVANIA DEPARTMENT  
OF STATE, BUREAU OF PROFESSIONAL AFFAIRS~~

John P. Krill, Executive Deputy General Counsel

**May 20, 1986**

ON ORDER: the Respondent's preliminary objection raising the question of jurisdiction is sustained and this action is dismissed without prejudice to Petitioner's right to pursue its claim before the Board of Claims. Exit. OPINION NOT REPORTED

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**May 21, 1986**

ON ORDER: the order entered May 20, 1986 is hereby amended to read as follows: The Respondent's preliminary objection raising the question of jurisdiction is sustained and it is ordered that this case be transferred to the Board of Claims pursuant to the provisions of 42 Pa. C.S. §5103(a). (Judge MacPhail) Order exit.

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THE FOLLOWING FILED IN COMMONWEALTH COURT:

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**May 2, 1986**

Petition filed.

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**May 2, 1986**

Petition for a special or preliminary injunction and writ of mandamus filed.

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**May 8, 1986**

On Order, upon consideration of petitioner's petition for a special or preliminary injunction, hearing thereon is hereby fixed for May 19, 1986, at 11:00 a.m. in Courtroom Number One, Fifth Floor, South Office Building, Harrisburg, Pennsylvania. (Senior Judge Lehman) Order exit.

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**May 9, 1986**

Petitioner's Motion for Expedited Discovery and Proof of Service filed.

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**May 9, 1986**

On Praecipe, the appearances of Joyce McKeever, Esquire and Steven Wennberg, Esquire are hereby entered on behalf of the Bureau of Professional and Occupational Affairs.

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**May 12, 1986**

Respondent's Preliminary Objections to the Petition for Review and Motion to Strike Dick Thornburgh as a Party and Certificate of Service filed.

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**May 12, 1986**

Respondents' Motion in Opposition to Petitioner's Request for Expedited Discovery and Certificate of Service filed.

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**May 12, 1986**

Respondents' Motion for a Protective Order to Prohibit or Limit Discovery and Certificate of Service filed.

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**May 12, 1986**

Respondents' Motion to Stay Discovery Proceedings and Certificate of Service filed.

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**May 13, 1986**

On Order: It is ordered that Petitioner's motion for expedited discovery be and the same is hereby denied. It is further ordered that argument on Respondents' preliminary objections be heard on Monday, May 19, 1986, at 11 o'clock a.m. in Courtroom Number One and that argument on Respondents' motions to stay discovery and for a protective order to prohibit or limit discovery be heard at the same time and place. (Judge MacPhail) Order exit.

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**May 16, 1986**

Notice of Deposition of Third Party Witness Sidney Eckman, to be taken on May 16, 1986, at 4:00 p.m. for use at hearing and Certificate of Service filed.

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**May 19, 1986**

Respondent's Response in Opposition to Petition for Special or Preliminary Injunction and Writ of Mandamus and Proof of Service filed.

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**May 19, 1986**

Respondent's Memorandum of Law in Support of Preliminary Objections to Petition for Review and Proof of Service filed.

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**May 19, 1986**

Respondent's Memorandum of Law in Opposition to Petition for a Special or Preliminary Injunction and Writ of Mandamus and Proof of Service filed.

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**May 19, 1986**

Respondent's Memorandum of Respondents in Support of Motion for Protective Order to Prohibit or Limit Discovery and Proof of Service filed.

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**May 19, 1986**

Heard (before Judge MacPhail)

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**May 20, 1986**

Memorandum Opinion filed. (Judge MacPhail)

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**May 20, 1986**

ON ORDER: the Respondent's preliminary objection raising the question of jurisdiction is sustained and this action is dismissed without prejudice to Petitioner's right to pursue its claim before the Board of Claims. Exit OPINION NOT REPORTED

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**May 21, 1986**

ON ORDER: the order entered May 20, 1986 is hereby amended to read as follows: The Respondent's preliminary objection raising the question of jurisdiction is sustained and it is ordered that this case be transferred to the Board of Claims pursuant to the provisions of 42 Pa. C.S. §5103(a). (Judge MacPhail) ORDER EXIT.

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**June 3, 1986**

Transcript of Proceedings held May 19, 1986 filed.

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**May 19, 1986**

Petitioner's memorandum in support of petition for a special or preliminary injunction and writ of mandamus and In opposition to respondents' preliminary objections and Proof of service filed.

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**May 19, 1986**

Petitioner's opposition to motions for protective order and to prohibit, limit or stay discovery and Certificate of Service filed.

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**May 19, 1986**

Respondants' opposition to motion to strike Dick Thornburgh as a party and Certificate of Service filed.

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**June 20, 1986**

Record transferred from Commonwealth court.

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**June 24, 1986**

File received from Commonwealth Court.

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**June 27, 1986**

Letter forwarded to Plaintiff requesting additional copies of Complaint and filing fee.

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**July 23, 1986**

Additional copies of Complaint and filing fee received. Amount of Claim:

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**July 24, 1986**

Copies of Complaint forwarded to attorneys for defendants and Chief Deputy Attorney General.

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**August 1, 1986**

Acceptance of Service of Complaint received from defendant (Department of State). Receipt of same acknowledged by defendant (Department of State) July 25, 1986.

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**August 1, 1986**

Praecipe for Appearance filed by Joyce McKeever and Steven Wennberg, attorneys for defendants.

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**August 7, 1986**

Acceptance of Service of Complaint received from Office of Attorney General. Receipt of same acknowledged by Office of Attorney General August 4, 1986.

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**August 8, 1986**

Preliminary Objections to the Statement of Claim and Motion to Strike Dick Thornburgh as a Party and Proposed Order filed by attorneys for Defendants. Copy forwarded to attorney for Plaintiff by attorney for Defendants.

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**September 15, 1986**

Defendants' Memorandum of Law in Support of the Preliminary Objections to the Statement of Claim and of the Motion to Strike Dick Thornburgh as a Party and Proposed Order filed by attorneys for Defendants. Copy forwarded to attorney for Plaintiff by attorney for Defendants.

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**September 18, 1986**

Corrected copy of Defendants' Memorandum of Law in Support of the Preliminary Objections to the Statement of Claim and of the Motion to Strike Dick Thornburgh as a Party and Proposed Order filed by attorneys for Defendant.

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**November 26, 1986**

Plaintiff's Opposition to Defendants' Preliminary Objections and Motion to Strike filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**January 9, 1987**

Defendants' Motion for Protective Order to Prohibit or Limit Discovery, Proposed Order and Defendants' Memorandum of Law in Support of Motion for Protective Order to Prohibit or Limit Discovery filed by attorneys for Defendant. Copy forwarded to attorney for Plaintiff (Beyer) by attorney for Defendant (McKeever).

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**January 9, 1987**

Defendants' Motion to Stay Discovery Proceedings and Proposed Order filed by attorneys for Defendant. Copy forwarded to attorney for Plaintiff (Beyer) by attorney for Defendant (McKeever).

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**January 12, 1987**

Corrected copy of Defendants' Motion for Protective Order or Limit Discovery, Proposed Order and Defendants' Memorandum of Law in Support of Motion for Protective Order to Prohibit or Limit Discovery filed by attorneys for Defendant. Copy forwarded to attorney for Plaintiff (Beyer) by attorney for Defendant (McKeever).

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**June 22, 1987**

Plaintiff's First Set of Interrogatories to Defendant Robert A. Gleason, Jr., Former Secretary of State, Commonwealth of Pennsylvania filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**June 24, 1987**

The Board rendered an Opinion and made the following Order: "AND NOW, this 24th day of June, 1987, the Preliminary Objection of the Defendant in the nature of a Motion to Strike Dick Thornburgh as a Party is GRANTED. The Board, sua sponte, will dismiss Robert Al Gleason, Jr., Secretary of State, Commonwealth of Pennsylvania and Richard E. Anderson, Commissioner, Pennsylvania Department of State, Bureau of Professional and Occupational Affairs as named Defendants.

The Preliminary Objections of the Defendant to the Prayer of the Plaintiff in the Nature of a Special or Preliminary Injunction and a Writ of Mandamus is hereby GRANTED. The Preliminary Objection of the Defendant where it states that a Contract does not exist between the Plaintiff and Defendant is DENIED. The caption of the Complaint will from this day forward appear as follows: ASSESSMENT SYSTEMS INC. VS. COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF STATE, BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS, DOCKET NO. 1076. The relief that the Plaintiff can now pursue will be those damages allegedly sustained by the Plaintiff resulting from a breach of Contract. The burden of proving the existence of a contract and a breach thereto remains with the Plaintiff. The Defendant is given thirty (30) days from the date of this Order in which to file Responsive Pleadings in accordance with the Order."

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June 25, 1987

Copies of Opinion and Order dated June 24, 1987 forwarded to attorneys for Plaintiff and attorneys for Defendant.

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June 26, 1987

Copy of Duplicate Opinion and Order dated June 24, 1987 forwarded to attorney for Plaintiff (Mr. Beyer).

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June 26, 1987

Acceptance of Service of Opinion and Order dated June 24, 1987 received from Defendant (Ms. McKeever). Receipt of same acknowledged by Defendant June 26, 1987.

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June 29, 1987

Acceptance of Service of Opinion and Order dated June 24, 1987 received from Defendant (Mr. Wennberg). Receipt of same acknowledged by Defendant June 26, 1987.

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July 7, 1987

Acceptance of Service of Opinion and Order dated June 24, 1987

received from Plaintiff (Mr. Kennedy). Receipt of same acknowledged by Plaintiff July 2, 1987.

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July 7, 1987

Acceptance of Service of Duplicate Opinion and Order dated June 24, 1987 received from Plaintiff (Mr. Beyer). Receipt of same acknowledged by Plaintiff June 29, 1987.

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July 10, 1987

Copy of Subpoena to Robert A. Gleason, Jr. and Notice of Deposition of Robert A. Gleason, Jr. filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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July 13, 1987

Plaintiff's First Request for Production of Documents to Defendant and also Plaintiff's First Set of Interrogatories to Defendant filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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July 24, 1987

Answer of the Commonwealth of Pennsylvania to Complaint Captioned "Verified Petition for Review in the Nature of a Complaint and for Writ of Mandamus" and New Matter filed by Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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July 28, 1987

Answers to Plaintiff's First Set of Interrogatories to Defendant Robert A. Gleason, Jr., Former Secretary of State, Commonwealth of Pennsylvania filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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August 12, 1987

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

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September 8, 1987

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

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October 13, 1987

Plaintiff's Second Set of Interrogatories and Request for Production



of documents (Combined) and Plaintiff's First Request for Admissions Addressed to Defendant filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**November 16, 1987**

Answer to Plaintiff's Second Set of Interrogatories and Request for Production of Documents (Combined) and Commonwealth's Answers to Plaintiff's First Request for Admissions Addressed to Defendant filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**December 18, 1987**

Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Request for Production of Documents to Plaintiff filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**January 13, 1988**

The Board rendered an Opinion and made the following Order: "AND NOW, this 13th day of January, 1988, counsel for Defendant is directed to show cause why the above-stated Motions and Amended Motions, as filed on January 9, 1987 and January 12, 1987, should not be dismissed.

Rule returnable in thirty (30) days. If this rule is not answers within thirty (30) days, the above-stated Motions will be dismissed without further Order of this Board.

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**January 15, 1988**

Copies of Opinion and Order dated January 13, 1988 forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**January 21, 1988**

Acceptance of Service of Opinion and Order dated January 13, 1988 received from Defendant (Ms. McKeever). Receipt of same acknowledged by Defendant January 19, 1988.

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**January 26, 1988**

Acceptance of Service of Opinion and Order dated January 13, 1988 received from Plaintiff (Mr. Beyer). Receipt of same acknowledged by Plaintiff January 20, 1988.

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**March 18, 1988**

The Board rendered an Opinion and made the following Order: "AND NOW, this 18th day of March, 1988, the Motion filed by the Defendant

dated January 9, 1987 and the Amended Motion filed on January 12, 1987 is DECLARED moot." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**March 21, 1988**

Acceptance of Service of Opinion and Order dated March 18, 1988 received from Defendant (Ms. McKeever). Receipt of same acknowledged by Defendant March 21, 1988.

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**March 24, 1988**

Acceptance of Service of Opinion and Order dated March 18, 1988 received from Plaintiff (Mr. Beyer). Receipt of same acknowledged by Plaintiff March 22, 1988.

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**April 6, 1988**

Settlement Agreement filed by attorney for Defendant on behalf of both parties.

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**June 3, 1988**

The Board rendered an Opinion and made the following Order: "AND NOW, this 3rd day of June, 1988, upon consideration of the proposed Settlement Agreement entered into by the parties, it is hereby ORDERED and DECREED as follows: 1. Defendant, Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, shall pay to the Plaintiff, Assessment Systems, Inc. the sum of Thirty Thousand Dollars (\$30,000.00). 2. Defendant shall comply with all other terms and conditions set forth in the Settlement Agreement.

3. If all of the terms and conditions are not consummated then the Board of Claims shall be put on notice to reopen the record and permit the parties to proceed with the case on the merits otherwise the case shall be marked settled and closed with prejudice. Each party to bear its own costs." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**June 10, 1988**

Acceptance of Service of Opinion and Order dated June 3, 1988 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 6, 1988.

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**June 13, 1988**

Acceptance of Service of Opinion and Order dated June 3, 1988 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 9, 1988.

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**February 14, 1990**

The Board rendered an Opinion and made the following Order: "AND NOW, this 14th day of February, 1990, in that there exists a conflict as to the obligation of the terms of the Settlement Agreement and whether same were complied with, the Board shall order the matter for hearing concerning the obligations of the terms of the Settlement Agreement. The counsel for each party will be contacted to establish a time and place for said hearing." Copy forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**February 20, 1990**

Acceptance of Service of Opinion and Order dated February 14, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 16, 1990.

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**February 20, 1990**

Acceptance of Service of Opinion and Order dated February 14, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 16, 1990.

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**February 26, 1990**

Acceptance of Service of Opinion and Order dated February 14, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 20, 1990.

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**March 1, 1990**

Hearing scheduled for July 10, 11, 12 and 13, 1990 and July 17, 19 and 20, 1990, if necessary in Board's Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, PA 15 10:00 a.m.

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**March 2, 1990**

Letter Withdrawal of Appearance as originally filed with our office on July 7, 1987 filed by Patrick D. Kennedy, attorney for Plaintiff (New Jersey Counsel). Copy forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Plaintiff (New Jersey Counsel).

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**June 7, 1990**

Settlement Agreement filed by attorney for Defendant, executed by parties.

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**July 2, 1990**

The Board rendered an Opinion and made the following Order: "AND NOW, this 2nd day of July, 1990, premised on the record, the pleadings filed, and the need for an in-depth determination, it is hereby ORDERED and DECREED that the hearing scheduled for July 10, 12 and 13, 1990 is canceled and an exploratory hearing be held before the Board of Claims in Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania, commencing at 11:00 a.m. on Wednesday, July 11, 1990." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**July 10, 1990**

Acceptance of Service of Opinion and Order dated July 2, 1990 received from attorneys for Defendant. Receipt of same acknowledged by attorneys for Defendant July 10, 1990.

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**July 12, 1990**

Exploratory hearing held in Board's Courtroom No. 1, 707 Transportation and Safety Building commencing at 10:30 a.m. Case settled.

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**July 16, 1990**

Acceptance of Service of Opinion and Order dated July 2, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff July 10, 1990.

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**July 30, 1990**

Testimony of Hearing held July 11, 1990 filed.

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**August 1, 1990**

Copy of testimony for hearing held July 11, 1990 forwarded to attorney for Defendant.

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**September 17, 1990**

The Board rendered an Opinion and made the following Order: "AND NOW, this 17th day of September 1990, it is ORDERED and DECREED that Plaintiff, Assessment Systems, Inc., and the Defendant, Commonwealth

of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs, do hereby remise, release and acquit and forever discharge each other from all claims and counterclaims averred in the aforesaid actions Docket No. 1076 and 1317. it is further ORDERED and DECREED that the settlement shall act as release of future claims, if any, arising from the aforestated actions Docket Numbers 1076 and 1317. It is further ORDERED and DECREED that the settlement shall act as release of future claims, if any, arising from the aforestated actions Docket Numbers 1076 and 1317 whether such claims are currently known, unknown, foreseen or unforeseen.

Counsel for the Plaintiff is DIRECTED to filed with the Board of Claims, a Praecipe indicating that all terms of the settlement have been complied with, when same has been completed and requesting that the case be marked and terminated and closed with prejudice. Each party to bear its own costs."

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**September 18, 1990**

Copy of Opinion and Order dated September 17, 1990 forwarded to attorney for Plaintiff and attorneys for Defendant.

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**September 20, 1990**

Acceptance of Service of Opinion and Order dated September 17, 1990 received from attorney for Defendant (Joyce McKeever, Chief Counsel).

Receipt of same acknowledged by attorney for Defendant September 20, 1990.

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**September 28, 1990**

Acceptance of Service of Opinion and Order dated September 17, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 24, 1990.

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**November 26, 1990**

Letter/Praecipe filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**November 29, 1990**

The Board made the following Order: "AND NOW, this 29th day of November, 1990, upon receipt of letter advising that payment has been received, executed by Aaron Jay Beyer, Esquire, representing Plaintiff, Same of which is docketed with the Board under date of

November 26, 1990, it is ORDERED and DIRECTED that said case be marked 'settled, discontinued and ended with prejudice'." Copy forwarded to attorney for Plaintiff and attorneys for Defendant.

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**December 3, 1990**

Acceptance of Service of Order dated November 29, 1990 received from attorney for Defendant (Steven Wennberg, Assistant Counsel). Receipt of same acknowledged by attorney for Defendant November 30, 1990.

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**December 18, 1990**

Acceptance of Service of Order dated November 29, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff December 4, 1990.