

Docket Number: 1101

THOMAS M. DURKIN & SONS, INC.

Paul A. Logan, Esquire

VS.

**CLOSED**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

Kenneth L. Sable, Chief Counsel  
James W. Kutz, Assistant Counsel  
\*Stephen S. Stokwitz, Assistant Counsel  
John J. Robinson, Jr., Assistant Counsel

**February 2, 1987**

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

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**February 6, 1987**

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

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**February 9, 1987**

Acceptance of Service of Claim recieved from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 6, 1987.

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February 13, 1987  
Acceptance of Service of Claim received from office of Attorney General. Receipt of same acknowledged by office of Attorney General February 9, 1987.

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October 28, 1987

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

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**November 5, 1987**

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

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**December 7, 1987**

Answer to Plaintiff's Request for Admissions filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**December 17, 1987**

Plaintiff's Interrogatories Directed to Defendant - Second Set - filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 18, 1987**

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

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**June 23, 1988**

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

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**May 5, 1989**

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

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**May 5, 1989**

Defendant's Interrogatories to Plaintiff, Thomas M. Durkin & Son, Inc. - First Set - filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**July 10, 1989**

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

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**July 21, 1989**

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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**June 27, 1991**

Hearing scheduled for February 11, 12, 13 and 14, 1992, February 18, 19, 20 and 21, 1992, as well as February 25, 26, 27 and 28, 1992, if necessary, in Board's Courtroom No. 1, Room 707 Transportation & Safety Building, Harrisburg, Pennsylvania at 10:00 a.m.

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**October 21, 1991**

Plaintiff's Interrogatories Addressed to Defendant (Third Set) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**November 8, 1991**

Plaintiff's Fourth Set of Interrogatories to Defendant and Notice of Taking Deposition of Joel Moehlmann filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 23, 1991**

Department's Answers to Plaintiff's Interrogatories Addressed to Defendant (Third Set) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**December 23, 1991**

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

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**February 3, 1992**

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

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**February 10, 1992**

Department of Transportation's Second Supplemental Answer to Plaintiff's First Set of Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 11, 1992**

Hearing held in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania commencing at 10:10 a.m.

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**February 12, 1992**

Hearing held in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania commencing at 10:10 a.m.

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**February 12, 1992**

Joint Stipulation and Damage Stipulation filed at time of hearing by attorney for Plaintiff.

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**February 13, 1992**

Hearing held in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania commencing at 11:10 a.m.

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**February 14, 1992**

Hearing held in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania commencing at 10:20 a.m.

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**February 18, 1992**

Hearing originally scheduled this date in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania continued to February 19, 1992.

**February 19, 1992**

Hearing held in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania commencing at 10:10 a.m. Case completed.

**March 30, 1992**

Testimony of hearing held February 11, 12, and 19, 1992 filed.

**March 31, 1992**

Copy of Testimony for hearing held February 11, 12, and 19, 1992 forwarded to attorney for Defendant.

**April 3, 1992**

Acceptance of Service of Testimony for hearings held February 11, 12 and 19, 1992 dated March 31, 1992 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 1, 1992.

**April 6, 1992**

Testimony of hearing held February 13 and 14, 1992 filed.

**April 7, 1992**

Copy of testimony of hearing held February 13 and 14, 1992, forwarded to attorney for Defendant.

**April 10, 1992**

Acceptance of Service of testimony for hearing held February 13 and 14, 1992, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 8, 1992.

**June 4, 1992**

Plaintiff's Proposed Findings of Fact and Conclusions of Law and Proposed Order, as well as Thomas M. Durkin & Sons, Inc.'s Memorandum of Law in Support of its Proposed Findings of Fact and Proposed Conclusions of Law filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**August 28, 1992**

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

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**October 2, 1992**

Thomas M. Durkin & Sons, Inc.'s Reply Memorandum of Law filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**October 27, 1992**

Letter/Motion to Quash and Motion for right to file Response to Plaintiff's Reply Brief filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**November 12, 1992**

The Board rendered an Opinion and made the following Order: **AND NOW, this 12th day of November, 1992, the motion to quash Plaintiff's Reply Brief is DENIED and further, Department of Transportation is GRANTED forty-five (45) days to respond to Plaintiff's Reply Brief as it deems appropriate. The letter concerning this Opinion is read and is being docketed as a Motion to Quash and a Motion for the right to file a response to Plaintiff's Reply Brief."** Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**November 16, 1992**

Acceptance of Service of Opinion and Order dated November 12, 1992 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant November 13, 1992.

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**February 17, 1993**

Letter filed by attorney for Defendant advising that Defendant waives its right to respond to Plaintiff's Reply Brief. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**August 31, 1993**

The Board rendered an Opinion and made the following Order: **"AND NOW,** this 31st day of August, 1993, an award in the amount of Three Hundred Twenty-Three Thousand Three Hundred Seventy-Nine Dollars and Eleven Cents (\$323,379.11) is hereby made in favor of the Plaintiff, Thomas M. Durkin & Sons, Inc., and against the Defendant, Commonwealth of Pennsylvania, Department of Transportation. The Board calculated the same as follows: Count I (Engineering for Earth Disturbance Permit) \$7,035.96 Count I, Count II and Count III (Alleged Delays) No Damages Count III (Redington Road Structures) No Damages Count IV (Island Park Road Structures) \$143,998.84 Count V (Termination/Demobilization) \$166,605.88 Count V (Additional Demobilization Storage Area) \$5,738.43 Total Damages \$23,379.11 Interests due at the legal rate of six percent (6%) per annum from the docketed date of the filing of this action which is February 2, 1987. Upon receipt of said award, Plaintiff shall forthwith file with the Board a Praecipe that the case be marked settled, discontinued and ended with prejudice. Each party to bear its own costs and attorneys' fees." Copy forwarded to attorney for Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

**September 3, 1993**

Acceptance of Service of Opinion and Order dated August 31, 1993 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 1, 1993.

**September 7, 1993**

Acceptance of Service of Opinion and Order dated August 31, 1993 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General September 1, 1993.

**September 8, 1993**

Acceptance of Service of Opinion and Order dated August 31, 1993 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 3, 1993.

**October 4, 1993**

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

October 7, 1993

Petition for Review received from Commonwealth Court. [No. 2354 C.D. 1993]

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\*October 14, 1993

Praecipe for Entry of Appearance filed by Stephen S. Stokwitz, Assistant Counsel and John J. Robinson, Jr., Assistant Counsel, attorneys for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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November 10, 1993

File transmitted to Commonwealth Court.

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October 13, 1994

Copy of Opinion and Order received from Commonwealth Court. Order as follows: **AND NOW,** this 13th day of October, 1994, the order of the Board of Claims in the above captioned matter is affirmed."

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July 11, 1995

Copy of Order received from Supreme Court. Order as follows: "**PER CURIAM:** AND NOW, this 28th day of June, 1995, the Petition for Allowance of Appeal is hereby **DENIED.** Mr. Justice Frank J. Mentemuro is sitting by designation."

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August 7, 1995

File returned from Commonwealth Court.

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