

Docket Number: 1150

GREEN CONSTRUCTION COMPANY

Paul A. Logan , Esquire (co-counsel)

VS.

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

John J. Robinson, Jr., Chief Claims Attorney

October 2, 1987

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$457,675.29+

October 8, 1987

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

October 13, 1987

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 9, 1987.

CLOSED

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

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

February 4, 1988

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

February 4, 1988

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

February 18, 1988

Plaintiff's Reply to Defendant's New Matter and Plaintiff's Answer to Defendant's Counterclaim with Affirmative Defenses filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

February 18, 1988

The Board made the following Order: "Under date of January 25, 1987, the Commonwealth of Pennsylvania, Department of Transportation, filed with the Board of Claims a pleading captioned, Answer, New Matter and Counterclaim. Upon review of the matter, the Commonwealth of Pennsylvania, Department of Transportation, through its counsel, discovered that the wording in the first sentence of Paragraph 31 of the New Matter was ambiguous. It sought, therefore, to clarify the meaning intended by the Department of Transportation. Under date of February 4, 1988, over the signature of John J. Buchy, Jr. is a Motion to Amend New Matter. Upon reasonable cause being shown and the Motion to Amend being in Order, the Board directs that the Motion to Amend New Matter be allowed and the Paragraph 31 of the New Matter shall read as follows: The Department's investigation revealed that the primary cause of the instability was excessive compactive effort for the moisture content of the material being placed in the embankment. The Department concluded, from its investigation that it was possible to construct a stable embankment and still comply with the contract requirements and, so, Green breached Section 206.3(c) of the Specifications by constructing an unstable embankment." The Claimant is granted thirty (30) days from the date hereof to file its response to the New Matter and Counterclaim. The New Matter of which was amended." Copy forwarded and to attorney for Plaintiff and attorney for Defendant.

February 19, 1988

Copy of Order dated February 18, 1988 forwarded to Attorney for Plaintiff and Attorney for Defendant.

February 22, 1988

Acceptance of Service of Opinion and Order dated February 18, 1988 received from Attorney for Defendant. Receipt of same acknowledged by Attorney for Defendant February 19, 1988.

March 2, 1988

The Board rendered an Opinion and made the following Order: "AND NOW, this 2nd day of March, 1988, upon good cause shown, a Motion to Amend New Matter is hereby GRANTED. Paragraph 31 of said New Matter shall hereinafter be read as follows: "The Department's investigation revealed that the primary cause of the instability was excessive compactive effort for the moisture content of the material being placed in the embankment. The Department concluded, from its investigation, that it was from its investigation, that it was possible to construct a stable embankment and still comply with Contract requirements and, so, Green breached Section 206.3(c) of the Specifications by constructing an unstable embankment. The docket entries of the Board shall so be noted. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

March 3, 1988

Acceptance of Service of Opinion and Order dated March 2, 1988 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 3, 1988.

March 7, 1988

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

April 13, 1988

Entry of Appearance filed by John J. Robinson, Jr., attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

July 11, 1988

Plaintiff's Request for Admissions - Second Set files by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 4, 1988

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

August 4, 1988

Defendant's Answers to Plaintiff's Request for Admissions - Second Set filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 18, 1990

Plaintiff's Motion to Consolidate Claims and to file an Amended Complaint filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

***May 18, 1990**

Amended Complaint filed by attorney for Plaintiff. Amount of Amended Complaint: \$9,730,340.70.

July 16, 1990

CLOSED

The rendered an Opinion and made the following Order: AND NOW this 16th day of July, 1990, it is ORDERED and DECREED that the cases docketed at Nos. 1150, 1167, 1311, and 1711, and are hereby consolidated into one (1) Amended Complaint, same bearing all of the above-referenced docket number. Further it is ORDERED and DECREED that Defendant, Commonwealth of Pennsylvania, Department of Transportation, shall file its Answer to the Amended Complaint, docketed under date of May 18, 1990, within thirty (30) days of this Order." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

July 16, 1990

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

July 17, 1990

Praecipe (to File Responsive Pleading to Amended Claim) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

July 18, 1990

Acceptance of Service of Amended Claim filed by attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 17, 1990

July 18, 1990

Acceptance of Service of Opinion and Order dated July 16, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 17, 1990.

July 23, 1990

Acceptance of Service of Amended Claim received from Office of Attorney General. Receipt of same acknowledged by Office of Attorney General July 18, 1990.

September 13, 1990

Entry of Appearance of Paul L. Logan, Esquire, filed on behalf of Plaintiff filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 9, 1990

Hearing scheduled for June 4, 5, 6 and 7, 1991, June 11, 12, 13 and 14, 1991, June 18, 19, 20 and 21, 1991 as well as June 25, 26, 27 and 28, 1991, if necessary, in Board's Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania at 10:00 a.m.

March 5, 1991

Answer to Amended Claim with New Matter and Counterclaim filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 19, 1991

Motion for the Production of John H. Schmertmann for Deposition by Oral Examination and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 24, 1991

Revised Proposed Order (originally filed April 19, 1991) filed by attorney for Plaintiff.

April 26, 1991

The Board made the following Order: "AND NOW, this 26th day of April, 1991, upon consideration and after oral argument regarding Plaintiffs' Motion for The Production of John H. Schmertmann for The Purpose of Taking Deposition by Oral Examination, and over the objection of the Defendant, it is hereby ORDERED that: 1. The deposition by oral examination of John H. Schmertmann may be taken by Plaintiffs at a time and place convenient to the parties in the vicinity of Gainesville, Florida on or before May 9th, 1991. 2. The deposition by oral examination shall permit inquiry into any and all matters which have come within the knowledge of John H. Schmertmann about the instant Project, located at Northampton County, I.R. 1045 (Section 4), Federal Project 04-0782-041, and about a report which John H. Schmertmann has issued, entitled "Report on the Stability Problems with Hellerton I-7 Bridge West Embankment".

3. A subpoena duces tecum shall issue from this Board directing John H. Schmertmann to bring with him to the oral deposition all documents which support his testimony. 4. Plaintiffs have tendered and are hereby directed to pay a reasonable sum for the deposition testimony of John H. Schmertmann, which reasonable sum is hereby fixed at the rate of \$100.00 per hour plus 25 cents per mile for travel to and from place of deposition. John H. Schmertmann shall invoice directly to Plaintiffs, through Plaintiff's counsel, who shall pay the deponent within 30 days of invoice, or otherwise promptly bring objections to the invoice to the Board's attention. 5. Otherwise, each party shall bear its own costs." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

April 26, 1991

Plaintiff's Request for Admissions Directed to Defendant, Commonwealth of Pennsylvania, Department of Transportation (First Set) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 26, 1991

Plaintiff's Request for Admissions Directed to Defendant, Commonwealth of Pennsylvania, Department of Transportation (Second Set) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 26, 1991

Plaintiff's Request for Admissions Directed to Defendant, Commonwealth of Pennsylvania, Department of Transportation (Third Set) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 26, 1991

Plaintiff's Request for Admissions Directed to Defendant, Commonwealth of Pennsylvania, Department of Transportation (Fourth Set) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 26, 1991

Plaintiff's Interrogatories Directed to Defendant, Commonwealth of Pennsylvania, Department of Transportation (First Set) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 1991

Acceptance of Service of Order dated April 26, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 27, 1991.

May 1, 1991

Acceptance of Service of Order dated April 26, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 30, 1991.

May 2, 1991

Plaintiff's Request for Admissions Directed to Defendant, Commonwealth of Pennsylvania, Department of Transportation (Fifth Set) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 20, 1991

Motion for Sanction Order Under Pa. R.C.P. 4019(a) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 20, 1991

Motion for a Protective Order Under Pa. R.C.P. 4012(a) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 23, 1991

Answer of Green Construction Company and Chapin & Chapin, Inc. to Commonwealth of Pennsylvania, Department of Transportation's Motion for Protective Order Under PA R.C.P. No. 4012(A) filed by Use-Plaintiff. Copy forwarded to attorney for Defendant by attorney for Use-Plaintiff.

May 23, 1991

Plaintiff's Answer to Motion for Sanction Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 24, 1991

The Board rendered an Opinion and made the following Order: "AND NOW, this 24th day of May 1991, the request of the Defendant, Commonwealth of Pennsylvania, Department of Transportation, for a Protective Order directed to the Plaintiff, Green Construction Company's, Request for Admissions filed April 26, 1991 and May 1, 1991 and the Interrogatories served on May 2, 1991 is GRANTED. The Defendant does not have to answer the Admissions and Interrogatories.

Further, the Motion for Sanction Order Under PA. R.C.P. No. 4019(a) as filed by the Defendant, Commonwealth of Pennsylvania, Department of Transportation, is considered MOOT by the Board inasmuch as the answers have been filed. If, in the opinion of the Defendant, the answers are not adequate, the Board will now put the Defendant on notice that it will not entertain any type of motion that reflects or directs the Board's attention and/or requests for any additional information based upon this inadequacy. The reasoning of the Board is set forth above." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

May 24, 1991

Acceptance of Service of Opinion and Order dated May 24, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 24, 1991.

May 30, 1991

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

May 30, 1991

Acceptance of Service of Opinion and Order dated May 24, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 28, 1991.

May 30, 1991

Hearing originally scheduled to commence June 4, 1991 at 10:00 a.m.
rescheduled to commence on June 5, 1991 at 10:00 a.m.

June 4, 1991

Motion in Limine and For Sanctions to Preclude Expert Testimony Pursuant to Pa. R.C.P. 4003.5 and 4019(A) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney by Plaintiff.

June 5, 1991

The Board rendered an Opinion and made the following Order: "AND NOW, this 5th day of June, 1991, the Motion in Limine, as set forth herein is hereby DISMISSED as being untimely, however, it is directed that the Commonwealth shall furnish a part of the testimony expected to be utilized by the Commonwealth during the trial as it relates to individual set forth in said Motion. The Motion may be raised again to the attention of the legal member of the Board at or prior to, the time these witnesses are called upon by the Commonwealth to testify. Under no circumstances will this case be continued for lack of compliance with needed discovery, pursuant to the Pennsylvania Rules of Civil Procedure as appertains thereto." Copies hand-delivered to all counsel of record at time of hearing.

June 5, 1991

Acceptance of Service of Opinion and Order dated June 5, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 5, 1991.

June 5, 1991

Acceptance of Service of Opinion and Order dated June 5, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 5, 1991.

June 5, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:31 a.m.

June 6, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 6, 1991

Answer to Interrogatories Addressed to Defendant (First Set) filed

by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 7, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 11, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 12, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 13, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:30 a.m.

June 14, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 18, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 19, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 20, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 21, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:15 a.m.

June 21, 1991

Acceptance of Service of Opinion and Order dated June 5, 1991 received from attorney for Plaintiff (Paul A. Logan, Esquire). Receipt of same acknowledged by attorney for Plaintiff June 5, 1991.

June 25, 1991

Hearing held in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania, commencing at 10:15 a.m. Hearing continued until a later date.

July 9, 1991

Testimony for hearing held June 5, 6, 7, 1991 filed.

July 11, 1991

Copy of testimony for hearings held June 5, 6, 7, 1991 forwarded to attorney for Defendant.

July 15, 1991

Acceptance of Service of testimony for hearings held June 5, 6, 7, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 17, 1991.

July 18, 1991

Hearing (of witness Fred Barata) scheduled for July 26, 1991 in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania, at 10:00 a.m.

July 25, 1991

Testimony of hearings held June 11, 12, 13, 14, 18, 19, 1991 filed.

July 26, 1991

Hearing (of witness Fred Barata) held this date in Board's Court Room No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania, commencing at 10:00 a.m. Case Completed.

August 2, 1991

Acceptance of Service of testimony for hearing held June 11, 12, 13, 14, 18 & 19, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 1, 1991.

August 12, 1991

Supplemental Answers to Interrogatories Addressed to Defendant (First Set) filed by attorney for Defendant. Copy hand-delivered to attorney for Plaintiff on day of hearing (June 11, 1991) by attorney for Defendant.

August 14, 1991

Testimony of hearing held June 20, 21, 25 and 26, 1991 (of witness Fred Barata) filed.

August 20, 1991

Copy of testimony of hearing held June 20, 21, 25 and 26, 1991 (witness Fred Barata) forwarded to attorney for Defendant.

August 21, 1991

Acceptance of Service of testimony for hearing held June 20, 21, 25 & 26, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 20, 1991.

December 6, 1991

Findings of Fact, Conclusions of Law and Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Defendant by attorney for Plaintiff.

May 13, 1992

Defendant's Proposed Findings of Fact, Defendant's Proposed Conclusions of Law and Defendant's Post-Trial Memorandum of Law filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 17, 1992

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 17th day of December, 1992, an award in the amount of One Million Six Hundred Seventy-Six Thousand Eight Hundred Eighty-Five Dollars and Seventy-Six Cents (\$1,676,885.76) is hereby made in favor of the Plaintiff, Green Construction Company, and against the Defendant, Commonwealth of Pennsylvania, Department of Transportation. The Board has calculated the same as follows: Count I 1985 Class I Excavation 0.00 Count II 1986 Unpaid Standby Equipment 105,412.67 Count III 1986 Class I Excavation (additional cost) 390,448.85 Count IV "Time-Related" Additional Cost 204,344.00 Count V Extended Site Overhead 608,606.00 Count VI Abatement of Liquidated Damages 204,900.00 Count VII Concrete Paving (1) Chapin 77,151.50 (2) Green 1,543.03 Count VII Subbase (1) Foster 82,823.25 (2) Green 1,656.46 Total \$1,676,885.76. Further is hereby **ORDERED** that interest at the statutory rate of six percent (6%) per annum shall be paid from the date of August 30, 1988, the date of the completion of the directed extra work. Each party to bear its own costs and attorneys' fees." Copy forwarded to attorney for

Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

December 18, 1992

Acceptance of Service of Opinion and Order dated December 17, 1992 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December 17, 1992.

December 29, 1992

Acceptance of Service of Opinion and Order dated December 17, 1992, received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General December 18, 1992.

January 19, 1993

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

February 3, 1993

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

February 8, 1993

Acceptance of Service of Opinion and Order dated December 17, 1992 received from attorney for Plaintiff (C. Grainger Bowman, Esquire). Receipt of same acknowledged by attorney for Plaintiff December 21, 1992.

March 25, 1993

Copy of Order received from Commonwealth Court. Order as follows: NOW, March 23, 1993, it appearing that the above-captioned Petition for Review was filed by January 29, 1993, and that a notice to certify the record was sent on February 2, 1993, and that the record has not been certified, it is hereby ordered that the Board of Claims shall certify the record to this Court within twenty (20) days of the date of this Order."

March 25, 1993

Petition for Review received from Commonwealth Court. [No. 0137 C.D. 1993]

March 25, 1993

Cross-Petition for Review received from Commonwealth Court. [No. 0251 C.D. 1993]

April 12, 1993

File transmitted to Commonwealth Court.

June 9, 1994

Opinion and Order received from Commonwealth Court. Order as follows: AND NOW, this 9th day of June, 1994, the order of the Board of Claims is affirmed to the extent indicated in this opinion. The case however is remanded to the Board for a ruling on Green Construction Company's motion to dismiss the counterclaim filed by the Department of Transportation. Jurisdiction relinquished."

February 16, 1996

Petition for Allowance of Appeal from Commonwealth Court denied.
{No. 396 M.D. Allocatur DKT. 1994}.

April 5, 1995

File returned from Commonwealth Court.

CLOSED