

Docket Number: 1304

WARNER COMPANY, INC.

Victor P. Stabile, Esquire
Barbara Brown, Esquire
Steve Mathis, Esquire

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

~~Keith E. Welks, Chief Counsel~~
Mary Martha Truschel, Assistant Counsel

October 14, 1988

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$889,022.00+.

October 18, 1988

Corrected Notice to Plead of Complaint received from attorney for Plaintiff.

October 20, 1988

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

October 24, 1988

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

October 28, 1988

Acceptance of service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 25, 1988.

November 21, 1988

Notice of Appearance filed by Mary Maria Truschel, Assistant Counsel, attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 21, 1988

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

November 21, 1988

Commonwealth's Motion to Stay filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 20, 1988

Warner Company, Inc.'s Opposition to Commonwealth's Preliminary Objections filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 20, 1988

Warner Company, Inc.'s Opposition to Commonwealth's Motion to Stay filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 20, 1988

Warner Company, Inc.'s Preliminary Objection to Commonwealth's Preliminary Objections filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 27, 1988

Commonwealth's Brief in Support of Preliminary Objections and Motion to Stay filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 18, 1989

Warner Company, Inc.'s Memorandum of Law in Opposition to the Department of Environmental Resources Preliminary Objections and Motions to Stay filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 18, 1989

Warner Company, Inc.'s Memorandum of Law in Support of its Preliminary Objections to the Department of Environmental Resources Preliminary Objections filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 30, 1989

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 30th day of January, 1989, the Preliminary Objections as filed by the Defendant are **DENIED**. The Defendant is ordered to file appropriate pleadings within thirty (30) days from the date of this Order." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

January 30, 1989

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 30th day of January, 1989, the request of the Defendant in the nature of a Motion to Stay is **DENIED**." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

February 6, 1989

Acceptance of Service of Opinions and Orders dated January 30, 1989 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 2, 1989.

February 7, 1989

Acceptance of Service of Opinions and Orders dated January 30, 1989 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 2, 1989.

March 1, 1989

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

March 1, 1989

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

April 19, 1989

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

April 19, 1989

Warner Company, Inc.'s First Request for Admissions filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 19, 1989

First Set of Interrogatories to Defendant filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 14, 1989

Commonwealth's Response to Warner Company's First Set of Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 15, 1989

Commonwealth's Response to Warner Company's First Set of Requests for Admissions filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

August 17, 1989

Notice of Oral Deposition of Eugene Frund and A.E. Friedrich filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 17, 1989

Motion of Plaintiff Warner Company to Compel Discovery and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 17, 1989

Memorandum of Law in Support of Plaintiff Warner Company's Motion to Compel Discovery filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 22, 1989

Motion of Plaintiff Warner Company to Determine Sufficiency of Answers to Requests for Admissions and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 22, 1989

Memorandum of Law in Support of Plaintiff Warner Company's Motion to Determine Sufficiency of Answers to Requests for Admissions filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 21, 1989

Commonwealth's Memorandum of Law in Response to Warner's Motion to Compel and Motion to Determine Sufficiency filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 3, 1989

Plaintiff's Reply to Commonwealth's Response to Motion to Compel and Motion to Determine Sufficiency of Responses to Requests for Admissions filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 10, 1990

The Board rendered an Opinion and made the following Order: **"AND NOW,** this 10th day of January, 1990, upon consideration of the Motion of Plaintiff, Warner Company, Inc., to Compel Discovery, and the Motion of Plaintiff, Warner Company, Inc., to Determine Sufficiency of Answers to Requests for Admissions, it is hereby **ORDERED** that the motions are **DENIED**. The Commonwealth of Pennsylvania, Department of Environmental Resources, shall have thirty (30) days from the date of this Order in which to file full and complete responses to the Order in which it filed full and complete responses to the Requests for Admissions. DER's failure to respond to the requests may be deemed by this Board as an admission of the facts as stated by Warner Company, Inc. in the Requests for Admissions."

CLOSED

Copy forwarded to attorney for Plaintiff and attorney for Defendant.

January 18, 1990

Acceptance of Service of Opinion and Order dated January 10, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 12, 1990.

January 24, 1990

Acceptance of Service of Opinion and Order dated January 10, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff January 19, 1990.

February 12, 1990

The Department's Second Response to Warner Coal Company, Inc.'s Request for Admissions filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 20, 1990

Dual Notice of Appearance filed by Patrick H. Bair, Assistant Counsel and Marc A. Roda, Assistant Counsel, attorneys for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 5, 1990

Department's Second Response to Warner Coal Company, Inc.'s First Set of Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 24, 1990

Motion of Plaintiff Warner Company for Partial Summary Judgment, Memorandum of Law in Support of Motion of Plaintiff Warner Company for Partial Summary Judgment and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 4, 1990

Request for Extension of Time for Filing filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 12, 1990

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 12th day of June, 1990, it is **ORDERED** and **DECREED** that Defendant, Department of Environmental Resources, has until July 5, 1990, to file its Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment. Thereafter, Plaintiff shall have an additional thirty (30) days in which to file a reply brief." Copy forwarded to attorneys for Plaintiff by attorneys for Defendant.

June 15, 1990

Acceptance of Service of Opinion and Order dated June 12, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 13, 1990.

June 25, 1990

Acceptance of Service of Opinion and Order dated June 12, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 21, 1990.

July 20, 1990

Response to Complainant's Motion for Partial Summary Judgment, and Motion to Dismiss for Lack of Jurisdiction as well as Memorandum of Law in Opposition to Complainant's Motion for Partial Summary Judgment and in Support of Defendant's Motion to Dismiss for Lack of Jurisdiction filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

July 27, 1990

Amended Memorandum of Law in Opposition to Complainant's Motion for Partial Summary Judgment and in Support of Defendant's Motion to Dismiss for Lack of Jurisdiction filed by attorney for Defendant.
Copy forwarded to attorney for Plaintiff by attorney for Defendant.

August 20, 1990

Memorandum in Reply to Commonwealth's Opposition to Motion for Partial Summary Judgment and in Opposition to Cross-Motion to Dismiss filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 20, 1990

Warner Company's Opposition to Commonwealth's Motion to Dismiss for Lack of Jurisdiction filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 17, 1990

Response to Complainant's Memorandum in Reply to Commonwealth's Opposition to Motion for Partial Summary Judgment and in Opposition to Cross-Motion to Dismiss filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

September 19, 1990

Affidavit of Terry L. Confer filed by attorney for Plaintiff.

September 27, 1990

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 27th day of September, 1990, the Motion of the Plaintiff in the nature of a Partial Summary Judgment is **DENIED**. The request of the Defendant in the nature of a Motion to Dismiss Because of Lack of Jurisdiction is also **DENIED**. Inasmuch as the pleadings are now closed, the Board will, within the near future, list this case for hearing unless discovery is sought by the parties and the Board so notified of same." Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

October 2, 1990

Acceptance of Service of Opinion and Order received from attorney for Plaintiff (Victor P. Stabile, Esquire). Receipt of same acknowledged by attorney for Plaintiff September 28, 1990.

October 3, 1990

Acceptance of Service of Opinion and Order received from attorney for Plaintiff (Barbara Brown, Esquire). Receipt of same acknowledged by attorney for Plaintiff October 1, 1990.

October 4, 1990

Acceptance of Service of Opinion and Order dated September 27, 1990 received from attorney for Defendant (Marc A. Roda, Assistant Counsel). Receipt of same acknowledged by attorney for Defendant October 1, 1990.

October 9, 1990

Motion to Amend Order Sur Motion to Dismiss for Lack of Jurisdiction filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 10, 1990

Motion to Amend Order Sur Motion to Dismiss for Lack of Jurisdiction (Grammar and Substantive Corrections) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 2, 1990

Warner Company's Opposition to Commonwealth's Motion to Amend Order Sur Motion to Dismiss for Lack of Jurisdiction and Proposed Order filed by attorney for Plaintiff received via FAX. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 5, 1990

Warner Company's Opposition to Commonwealth's Motion to Amend Order Sur Motion to Dismiss for Lack of Jurisdiction and Proposed Order filed by attorney for Plaintiff received via FIRST CLASS MAIL. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 7, 1990

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 7th day of November 7, 1990, the Department's Motion to Amend this Board's Order denying the Department's Motion to Dismiss for Lack of Jurisdiction is **GRANTED** by adding the following statement:

This Order involves a question as to whether or not this Board has jurisdiction to entertain the Claim as filed by the Plaintiff who had entered into a contract with the Department of Environmental Resources wherein the Plaintiff believes a violation of that contract exists. It is the Defendant's position that the Board lacks

jurisdiction to entertain the request of the Plaintiff.
November 7, 1990 (cont'd)

The question is a controlling question of law as to the jurisdiction of this Board to which there is a substantial ground for a difference of opinion and that an immediate appeal of this Order under 42 Pa. C.S. §702 may materially advance the ultimate determination of this matter." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

November 15, 1990

Acceptance of Service of Opinion and Order dated November 7, 1990 received from attorney for Defendant (Marc A. Roda, Assistant Counsel). Receipt of same acknowledged by attorney for Defendant November 9, 1990.

November 16, 1990

Acceptance of Service of Opinion and Order dated November 7, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff November 9, 1990.

April 4, 1990

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

June 24, 1991

Department's Response to Warner Coal Company, Inc.'s Second Set of Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 26, 1991

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

August 16, 1991

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 16th day of August, 1991, the Plaintiff's Objections and Response to Defendant's Request for Production of Documents are **DENIED**. The Board urges Plaintiff and Defendant to move as expeditiously and amicably as possible through the discovery proceedings. If legitimate objections arise that cannot be resolved through the efforts of both Plaintiff and Defendant, the Board will be more than happy to review these objections." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

August 21, 1991

Acceptance of Service of Opinion and Order dated August 16, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff of August 19, 1991.

August 22, 1991

Acceptance of Service of Opinion and Order dated August 16, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 20, 1991.

October 5, 1992

Hearing scheduled for December 8, 1992 through December 11, 1992, if necessary, in Board's Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania at 11:00 a.m. on December 8, 1992 and 10 a.m. on December 9, 10, & 11, 1992.

October 20, 1992

Dual Withdrawal of Appearance filed by Patrick H. Bair and Marc A. Roda, attorneys for Defendant. Copy forwarded to attorneys for Plaintiff by attorneys for Defendants.

October 20, 1992

Dual Notice of Appearance filed by Dennis A. Whitaker and Gina Thomas, attorneys for Defendant. Copy forwarded to attorneys for Plaintiff by attorneys for Defendant.

November 4, 1992

Withdrawal of Appearance of Stephen J. Mathes, Esquire filed by attorneys for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 4, 1992

Notice of change of address filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 3, 1992

Warner Company, Inc.'s Trial Memorandum of Law in Support of its Claim filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 4, 1992

Faxed copy of corrections to Warner Company, Inc.'s Trial Memorandum of Law in Support of its Claim filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 7, 1992

Copy of corrections to Warner Company, Inc.'s Trial Memorandum of Law in Support of its Claim received by U.S. Mail filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 8, 1992

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

December 9, 1992

Hearing held in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania, commencing at 11:15 a.m.

December 10, 1992

Hearing held in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania, commencing at 10:05 a.m. Case canceled due to Judge Pace's illness, to be continued at a later date.

December 11, 1992

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

December 14, 1992

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

January 19, 1993

Testimony of hearing held December 8, 9 and 10, 1992 filed.

January 21, 1993

Copy of testimony forwarded to attorney for Defendant.

April 19, 1993

Hearing scheduled for July 6, 7, 8 and 9, 1993, as well as July 13, 14, 15 and 16, 1993, if necessary, in Board's Courtroom 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania, at 10:00 a.m.

April 23, 1993

Hearing originally scheduled for July 6, 7, 8 and 9, 1993, as well as July 13, 14, 15 and 16, 1993, rescheduled for July 13, 14, 15, 16, 1993, and July 20, 21, 22, and 23, 1993, in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania at 10:00 a.m.

June 28, 1993

Discontinuance of Action filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

July 2, 1993

Hearing scheduled July 13, 14, 15, and 16, 1993 and July 20, 22 and 23, 1993 canceled due to the filing of Discontinuance for Action by attorney for Plaintiff.

August 25, 1993

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 25th day of August, 1993, it is **ORDERED** and **DECREED** that this case be marked terminated with prejudice. Each party to bear its own costs and attorneys' fees." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

September 1, 1993

Acceptance of Service of Opinion and Order dated August 25, 1993 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 30, 1993.
