

Docket Number: 1371
Consolidated with Docket Nos. 1150, 1167, 1300

GREEN CONSTRUCTION COMPANY,
to the use of CHAPIN & CHAPIN

C. Grainger Bowman, Esquire

CLOSED
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

John J. Robinson, Jr., Chief Claims Attorney

***May 26, 1989**

Complaint and filing fee filed. Amount of Claim: \$3,321,196.37+.

June 6, 1989

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

June 7, 1989

Acceptance of Service of Complaint received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 6, 1989.

June 13, 1989

Acceptance of Service of Complaint received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General June 13, 1989.

July 3, 1989

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

August 8, 1989

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

August 10, 1989

Green's Answer to preliminary Objection: Lis Pendens filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 13, 1989

Brief of Green Construction Company in Opposition to Defendant's Preliminary Objection in the Nature of Lis Pendens filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 17, 1989

The Board rendered an Opinion and made the following Order: **"AND NOW,** this 17th day of November, 1989, the Preliminary Objections as filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 20, 1989

Acceptance of Service of Opinion and Order dated November 17, 1989, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant November 17, 1989.

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: \$3,738,340.70.

July 16, 1990

The Board 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, 1300, and 1371 be, and are hereby, consolidated into one (1) Amended Complaint, same bearing all of the above-referenced docket numbers. 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 17, 1990

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

July 18, 1990

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

November 9, 1990

Hearing scheduled for June 4, 5, 6 and 7, through June 11, 12, 13, 14, 18, 19, 20, 21, 25, 26, 27 and 28, 1991, if necessary, in Board's Court Room #1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania at 10:00 A.M.

March 5, 1991

Answer to Amended Complaint 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 (which was originally filed April 19, 1991) filed by attorney for Plaintiff.

April 26, 1991

The Board made the following Order: "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, L.P. 1043 (Section 4), Federal Project No. 04-0782-041 and about a report which John H. Schmertmann has issued entitled "Report on the Stability Problems with Hellestown-78 Bridge West Embankment".

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. Plaintiff has tendered an 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 Plaintiffs' 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." Copies 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 Admission 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 Admission 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 Admission 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.

CLOSED

May 1, 1991

Acceptance of Service Order dated April 26, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 27, 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 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 2, 1991 and the Interrogatories serves 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." Copies 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. 1003.5 and 1019(a) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 4, 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 report of the testimony expected to be utilized by the Commonwealth during the trial, as it relates to individuals 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

Answers 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 22, 1991

Acceptance of Verdict 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 (Paul A. Logan, Esquire) 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 to a later date.

June 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.

July 9, 1991

Testimony for hearings 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 12, 1991.

July 16, 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, commencing at 10:00 a.m.

July 25, 1991

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

July 26, 1991

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

July 31, 1991

Copy of testimony for hearings held June 11, 12, 13, 14, 18 & 19, 1991 forwarded to attorney for Defendant.

August 2, 1991

Acceptance of Service of testimony for hearings 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. Copies 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 July 26, 1991 (of witness Fred Barata) filed.

August 20, 1991

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

August 21, 1991

Acceptance of Service of testimony for hearing held June 20, 21, 25, and July 26, 1991 (of witness Fred Barata) 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 Plaintiff.

May 1, 1992

Defendant's Proposed Findings of Fact, Defendant's Proposed Conclusions of Law and Defendant's Post-Trial Memorandum 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 VIII Subbase (1) Foster 82,823.25 (2) Green 1,656.46 Total \$1,676,885.76. Further it 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." Copies 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 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 on 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 7th 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 25, 1996

File returned from Commonwealth Court.

CLOSED

December 3, 1996

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 3rd day of December, 1996, it is hereby **ORDERED** and **DECREED** that Plaintiffs', Green Construction Company and Chapin & Chapin, Inc., Motion to Dismiss Defendant's Counterclaim is hereby **GRANTED**."

Copies forwarded to attorneys for Plaintiff and attorney for Defendant.

December 5, 1996

Acceptance of Service of Opinion and Order dated December 3, 1996 received from attorney for Plaintiff (C. Grainger Bowman, Esquire).

Receipt of same acknowledged by attorney for Plaintiff December 4, 1996.

December 11, 1996

Acceptance of Service of Opinion and Order dated December 3, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December 5, 1996.

CLOSED