

Docket Number: 1433
Consolidated with Nos. 1390, 1382 and 1515

FAZEZH BEHJAT; VICHAI BUNYA; HOWARD B. COOPER; RANDALL DRAIN;
ESMERALDA GAMBETTA; DONALD GOODMAN; PHILIP E. INGAGLIO; ABU FAKHRUL
KHAN; MILTON KITEI; BARRY KOCH; TUSHAR B. MEHTA; SAMUEL SUGARMAN;
LUANNE THORNDYKE, ON BEHALF OF THEMSELVES AND A CLASS OF OTHERS
SIMILARLY SITUATED

Elliot B. Platt Esquire
S.
CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

John A. Kane, Chief Counsel

***May 1, 1990**

Claim and filing fee filed by Plaintiffs, additional information to be requested. Amount of Claim:

May 14, 1990

Letter forwarded to Plaintiffs requesting additional information. Copy forwarded to attorney for Defendant.

May 15, 1990

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

***May 17, 1990**

Amendment to Complaint received from Plaintiffs. Amount of Claim: \$93,589.00.

May 17, 1990

Acceptance of Service of Complaint received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 17, 1990.

May 22, 1990

Acceptance of Service of Complaint received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General May 17, 1990.

May 29, 1990

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

June 4, 1990

Acceptance of Service of Amendment to Complaint received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General May 31, 1990.

July 12, 1990

Preliminary Objections of Defendant filed by attorneys for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

September 7, 1990

Brief in Support of Preliminary Objections of Defendant filed by attorney for Defendant. Copy forwarded to attorney for Plaintiffs by attorney for Defendant.

October 19, 1990

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

November 30, 1990

The Board rendered an Opinion and made the following Order: "AND NOW, this 30th day of November, 1990, the Preliminary Objections as filed by the Defendant are hereby DENIED. The Defendant is given 30 days in which to file responsive pleadings. Copy forwarded to attorney for Plaintiffs and attorney for Defendant."

December 6, 1990

Acceptance of Service of Opinion and Order dated November 30, 1990 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General December 3, 1990.

December 18, 1990

Acceptance of Service of Opinion and Order dated November 30, 1990 received from attorney for Defendant. Receipt of same acknowledged by Defendant December 4, 1990.

December 27, 1990

Acceptance of Service of Opinion and Order dated November 30, 1990 received from attorney for Plaintiffs. Receipt of same acknowledged by Plaintiffs December 10, 1990.

***January 3, 1991**

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

February 4, 1991

Motion to Amend Defendant's Answer filed by attorney for Defendant (James S. Marshall, Assistant Counsel). Copy forwarded to attorney for Plaintiffs by attorney for Defendant.

February 4, 1991

Amended Answer to Complaint and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiffs by attorney for Defendant.

***February 13, 1991**

Consent to File Amended Complaint, Approval Consent to File Amended Complaint and Amended Complaint filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiffs.

February 20, 1991

The Board made the following Order: "AND NOW, this 20st day of February, 1991, the parties' Consent to File Amended Complaint is approved, and the Amended Complaint - Class Action appended to the Consent to File Amended Complaint is deemed filed as of this date." Copy forwarded to attorney for Plaintiffs, attorney for Defendant and Chief Deputy Attorney General.

February 20, 1991

Acceptance of Service of Approval of Consent to File Amended Complaint and Amended Complaint - Class Action received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General February 21, 1991.

February 26, 1991

Acceptance of Service of Approval of Consent to File Amended Complaint and Amended Complaint - Class Action received from attorney for Plaintiffs. Receipt of same acknowledged by attorney for Plaintiffs February 22, 1991.

February 26, 1991

Plaintiffs' First Request to Defendants for Production of Documents and Plaintiffs' First Interrogatories to Defendant filed by attorney for Plaintiffs. Copy forwarded to attorney for Defendant by attorney for Plaintiffs.

February 28, 1991

Acceptance of Service of Approval of Consent to File Amended Complaint and Amended Complaint - Class Action received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 21, 1991.

March 20, 1991

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

March 22, 1991

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

May 16, 1991

Reply to New Matter filed by attorney for Plaintiffs. Copy forwarded to attorney for Defendant by attorney for Plaintiffs.

June 14, 1991

Plaintiffs Motion for Class Action Certification and Proposed Order filed by attorney for Plaintiffs. Copy forwarded to attorney for Defendant by attorney for Plaintiffs.

July , 1991

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

August 15, 1991

Letter over signature of Counsel for Department of Public Welfare that Department of Public Welfare does not oppose and therefore will not file any opposition to Plaintiffs' Motion for Class Certification filed by attorney for Defendant.

August 16, 1991

The Board made the following Order: **"AND NOW,** this 16th day of August, 1991, it appearing to the Board that these Plaintiffs have filed a Motion for Class Action Certification, and a hearing upon such Motion is required by Rule 1707 of the Pa. R.C.P., the 30th day of August, 1991, at 11:00 a.m., in Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania, is hereby set as the time and place for hearing upon Plaintiff's Motion."

Copy forwarded to attorney for Plaintiff, attorney for Defendant and R. Michael Kemler, Esquire.

August 26, 1991

Acceptance of Service of Order dated August 16, 1991 received from

attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 22, 1991.

August 27, 1991

Acceptance of Service of Order dated August 16, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 21, 1991.

August 30, 1991

Hearing held in Board's Courtroom No. 1, 707 Transportation & Safety Building, Harrisburg, Pennsylvania commencing at 11:00 a.m. (Motion for Certification on Class Action).

September 4, 1991

CLOSED

The Board made the following Order: "AND NOW, this 4th day of September, 1991, upon consideration of Plaintiff's Motion for Class Certification, Defendant's response thereto, and hearing held thereon, it is **ORDERED** that Plaintiffs, on behalf of a Plaintiff class of all primary care physicians who participated in the HealthPASS medical assistance program of the Department of Public Welfare at any time during the period of March 1, 1988 to March 1, 1989, but not including any primary care physicians who are Plaintiffs in Trustees of Univ. of Pa. v. Commonwealth of Pennsylvania, Department of Public Welfare, in the Pennsylvania Board of Claims, Docket No. 1382." Copy forwarded to attorney for Plaintiffs and attorney for Defendant.

September 10, 1991

Acceptance of Service of Order dated September 4, 1991 received from attorney for Plaintiffs. Receipt of same acknowledged by attorney for Plaintiffs September 6, 1991.

September 18, 1991

Acceptance of Service of Order dated September 4, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 13, 1991.

September 20, 1991

Testimony of hearing held August 30, 1991 filed.

September 23, 1991

Copy of testimony forwarded to attorney for Defendant.

September 30, 1991

Acceptance of Service of Testimony for hearing held August 30, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 24, 1991.

December 19, 1991

Motion for Approval of Class Action Notice and Proposed Order filed by attorney for Plaintiffs. Copy forwarded to attorney for Defendant by attorney for Plaintiffs.

January 9, 1992

The Board rendered the following Order: "AND NOW, this 9th day of January, 1992, upon consideration of the within Motion for Approval of Class Action Notice, it is ORDERED that said Motion is granted. Notice shall be sent to the members of the Plaintiff class within twenty (20) days of the date of this Order in the form proposed in the Motion. The Notice shall provide that the Election to be Excluded shall be returned to Plaintiffs' counsel by a date thirty (30) days from the mailing of the Notice. Sufficient copies of the Notice shall be provided by Plaintiffs to Healthcare Management Alternatives, through Defendant's counsel, and Defendant shall insure that Healthcare Management Alternatives shall mail them to all the physicians currently participating in the HealthPASS program, in an envelope bearing the return address of co-counsel for Plaintiff, Elliot B. Platt, Esquire. Defendant shall arrange that the cost of the postage for the notice will be borne by HealthCare Management Alternatives. Defendant will further provide counsel for Plaintiffs with a Certification that Notices were sent once HealthCare Management Alternatives Mails them, including a statement of the name and address of each person to whom a Notice was sent." Copy forwarded to attorney for Plaintiffs and attorney for Defendant.

January 31, 1992

Acceptance of Service of Order dated January 9, 1992 received from attorney for Plaintiffs. Receipt of same acknowledged by attorney for Plaintiffs January 13, 1992.

November 23, 1993

Pre-Trial Conference scheduled for December 17, 1993 in the Judge's Chambers, 707 Transportation & Safety Building, Harrisburg, PA

17120 commencing at 1:30 p.m.

December 17, 1993

Pre-Trial Conference scheduled for December 17, 1993 in the Judge's Chambers, 707 Transportation & Safety Building, Harrisburg, PA 17120 commencing at 1:30 p.m.

December 21, 1993

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 21st day of December, 1993, for the reason set forth in the foregoing Opinion it is **ORDERED** and **DECREED** that all issues relating to the issue of contractual liability between the Plaintiffs and the Defendant shall be determined in a separate trial. This trial shall start at 9:30 a.m. on July 6, 1994 and continue through July 15, 1994 if necessary. All conditions set forth in the foregoing Opinion shall be complied with prior to the beginning of the trial on July 6, 1994."

March 17, 1994

Stipulation of Facts filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiffs.

June 8, 1994

Settlement Agreement filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 8, 1994

Respondent's List of Pre-Trial Proposed Witnesses and Exhibits on Damages filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 27, 1994

Plaintiff's Memorandum of Law in Support of Motion of Commonwealth of Pennsylvania, Department of Public Welfare's Board of Claims Docket No. 1515 filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 27, 1994

Stipulation of Facts filed by attorney for Plaintiff executed by all parties.

July 5, 1994

The Board rendered an Opinion and made the following Order: "**AND**

NOW, this 5th day of July, 1994, it is **ORDERED** and **DECREED** that Plaintiff, Penn Health Corporation's Motion for Leave to file an Amended Verified Claim be, and is hereby, **DENIED**." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

July 5, 1994

Plaintiff's Reply Memorandum in Support of its Motion for Leave to File an Amended Verified Claim filed by attorney for Plaintiff.

August 8, 1994

Respondent's Pre-Trial List of Proposed Witnesses and Exhibits on Damages filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

Plaintiff's Proposed Findings of Fact and Conclusions of Law filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

Plaintiffs' Post-Trial Brief on Liability filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 10, 1994

Department of Public Welfare's Proposed Findings of Fact and Conclusions of Law filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 21, 1994

Reply Brief of Plaintiffs filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 21, 1994

Plaintiffs' Supplemental Proposed Findings of Fact and Conclusions of Law filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 2, 1994

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 2nd day of December, 1994, upon due consideration of the testimony presented and the arguments and briefs submitted by all parties, the Board is of the Opinion that a contract exists between Penn Health Corporation and the Commonwealth of Pennsylvania, Department of Public Welfare. The Board further finds a breach of contract on behalf of the Defendant. The Board is of the opinion that the Plaintiff is an independant General Contractor and not an agent of the Defendant. The Board is of the Opinion that the Plaintiff is an independent General Contractor and not an agent of the Defendant. The Board further finds a contract exists between Faezeh Behjat, Vichai Bunya, Howard B. Cooper, Randall Drain, Esmeralda Gambetta, Donald Goodman, Philip E. Ingaglio, Abu Fakhrul Khan, Milton Kitei, Barry Koch, Tuskar S. Mehta, Samuel Sugarman and Luanne Thondyke and the Commonwealth of Pennsylvania, Department of Public Welfare. The board further finds a contract exists between Faezeh Behjat." Copy forwarded to attorney for Plaintiffs and attorney for Defendant.

CLOSED December 7, 1994

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 7th day of December, 1994, it is **ORDERED** and **DECREED** that the scheduled hearing for December 12-16, 19-23, 1994 and January 4 & 5, 1995, is hereby continued until such time as the parties and the Board, by telephone conference call, can agree on rescheduled dates." Copy forwarded to attorney for Plaintiffs and attorney for Defendant.

March 23, 1995

Plaintiffs' Motion to Sever Trial on Damages filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 14, 1995

Defendant Department of Public Welfare's Answer to Plaintiff's Motion to Sever Trial on Damages filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 26, 1995

Memorandum of Plaintiff, Penn Health Corporation, Concerning Motion for the Behjat Plaintiffs to Sever Trial on damages filed by attorney for Plaintiff. Copy forwarded to attorney for Plaintiff (Behjat) and attorney for Defendant by attorney for Plaintiff (Penn Health).

August 25, 1995

Motion of the Defendant, Commonwealth of Pennsylvania, Department of Public Welfare for a Continuance filed by attorney for Defendant.
Copy forwarded to attorney for Plaintiff by attorney for Defendant.

August 25, 1995

Withdrawal of Appearance of James S. Marshall, counsel for Defendant.

August 25, 1995

Entry of Appearance of Michael A. Finio, Esquire, Constance B. Foster, Esquire and William W. Warren, Jr., Esquire on behalf of Defendant filed by attorneys for Defendant.

September 13, 1995

Acceptance of Service of Opinion and Order dated September 6, 1995 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 13, 1995.

September 18, 1995

Acceptance of Service of Opinion and Order dated September 6, 1995 received from attorney for Plaintiff (Kenneth Oliver, Esquire). Receipt of same acknowledged by attorney for Plaintiff September 6, 1995.

September 18, 1995

Acceptance of Service of Opinion and Order dated September 6, 1995 received from attorney for Plaintiff (Elliot Platt, Esquire). Receipt of same acknowledged by attorney for Plaintiff September 6, 1995.

September 18, 1995

Hearing held in Board's Courtroom No. 1, commencing at 9:30 a.m.

September 19, 1995

Hearing held in Board's Courtroom No. 1, commencing at 9:30 a.m.

September 20, 1995

Hearing held in Board's Courtroom No. 1, commencing at 9:30 a.m.
CASE CONTINUED.

September 20, 1995

Hearing rescheduled until October 2-6, 1995 in Board's Court Room No. 1, commencing at 9:30 a.m.

September 26, 1995

Testimony for hearing held September 18, 1995, filed.

September 29, 1995

Testimony for hearing held September 19 & 20, 1995 filed.

October 2, 1995

Hearing held in Board's Court Room No. 1 commencing at 9:30 a.m.

October 3, 1995

Hearing held in Board's Court Room No. 1 commencing at 9:30 a.m.

October 4, 1995

Hearing held in Board's Court Room No. 1 commencing at 9:30 a.m.

October 5, 1995

Hearing held in Board's Court Room No. 1 commencing at 9:30 a.m.

October 6, 1995

Hearing held in Board's Court Room No. 1 commencing at 9:30 a.m.

October 10, 1995

Copy of testimony for hearing held September 18, 19 & 20, 1995 forwarded to attorney for Defendant.

October 12, 1995

Testimony for hearing held October 2, 1995 filed.

October 16, 1995

Acceptance of Service of testimony for hearing held September 18, 19 & 20, 1995 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 13, 1995.

October 24, 1995

Testimony for hearing held October 3, 1995 filed.

October 25, 1995

Copy of testimony for hearing held October 2 & 3, 1994 forwarded to attorney for Defendant.

October 26, 1995

Testimony for hearing held October 4, 1995 filed.

October 30, 1995

Testimony for hearing held October 5 & 6, 1995 filed.

November 1, 1995

Copy of testimony for hearing held October 4, 5 & 6, 1995 forwarded to attorney for Defendant.

November 3, 1995

Acceptance of Service of testimony for hearing held October 2, 3, 4, 5 & 6, 1995 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 31, 1995.

CLOSED

Hearing scheduled for November 10, 1995 in Board Courtroom No. 1 commencing at 9:30 a.m.

January 23, 1996

Testimony for hearing held November 30, 1995 filed.

January 23, 1996

Joint Motion of Plaintiffs and Defendant for Preliminary and Final Approval of Class Action Settlement, Memorandum of Law in Support of Joint Motion of Plaintiffs and Defendant for Preliminary and Final Approval of Class Action Settlement, Proposed Order Regarding Notice and Hearing on Class Action Settlement and Proposed Order Approving Class Action Settlement and Discontinuing Proceeding with Prejudice in Docket No. 1433 executed by all parties of record filed by attorney for Plaintiff. Copy forwarded to all parties of record by attorney for Plaintiff.

January 26, 1995

Copy of testimony for hearing held November 30, 1995 forwarded to attorney for Defendant.

January 26, 1995

The Board rendered the following Order: **"ORDER REGARDING NOTICE AND HEARING ON CLASS ACTION SETTLEMENT: AND NOW,** this 26th day of January, 1996 upon review and consideration of the Settlement Agreement entered into as of January 15, 1996, between the Class

and DPW, providing, among other things, for a settlement of this proceeding with the Named Plaintiffs and the Class they represent, and upon motion of the parties to that Settlement Agreement, it is hereby **ORDERED** that: 1. The Settlement Agreement is preliminarily approved for the purpose of giving notice to the Class and for scheduling a Settlement Hearing concerning whether this Board should give final approval to the settlement as memorialized in the Settlement Agreement. 2. The Class Notice as identified as Exhibit 1 is hereby approved. 3. By Order date January 9, 1992, the Board established a procedure for persons to exclude themselves from the Class, and provided that only those Class members who did not exclude themselves from the Class would be bound by the final disposition of this proceeding. 4. By its Order dated September 4, 1991, the Board certified the Class. For purposes of this Order, the Class is defined as: (a) primary care physicians who participated in the HealthPASS Program at any time on or between March 1, 1988 and March 1, 1989, but shall not include any primary care physicians who (1) submitted timely notice of exclusion from the Class, or who (2) are plaintiffs in the Pennsylvania Board of Claims proceeding captioned Trustees of the University of Pennsylvania v. Commonwealth of Pennsylvania, Department of Public Welfare, and docketed with the Board of Claims as No. 1382 ("Trustees Proceeding"). or who (3) are persons or entities who, although not Plaintiffs in the Trustees Proceeding, participated in the settlement of the Trustees Proceeding and have agreed not to seek payment of any claim in the proceeding pending before the Pennsylvania Board of Claims and captioned Behjat v. Commonwealth of Pennsylvania, Department of Public Welfare, and docketed with the Board as No. 1433 ("PCP Litigation"); and 5. On or before February 7, 1996, Class Counsel shall cause a copy of the Class Notice to be sent by direct mail to each Class member who has not delivered to Class Counsel in "Election to be Excluded" form, and who, although not a Plaintiff in the Trustees Proceeding, participated in the settlement of the Trustees Proceeding and has agreed not to seek payment of any claim in the PCP Litigation. An amount up to five thousand dollars (\$5,000.00) may be utilized from the Settlement Funds for the purpose of reimbursing Class Counsel for the cost of providing the Class Notice in the event the Settlement Agreement is finally approved. 6. On or before February 15, 1996, Class Counsel shall file with the Board an affidavit evidencing compliance with Paragraph 5 of this Order. 7. On or before February 19, 1996, Class Counsel shall file with this Board a Motion in support of the Board's final approval of the Settlement Agreement and any request by Class Counsel for attorneys' fees and/or reimbursement of expenses, and a memorandum in support thereof. 8. Pursuant to Rule 1714(a) of the Pennsylvania Rules of Civil Procedure, a Settlement Hearing on the Settlement Agreement and Class Counsel's

request for attorneys' fees and reimbursement of expenses shall be held by the Board on February 27, 28 & 29, 1996 a.m. in Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania 17101-1501. 9. Any Class member who objects to the Settlement Agreement or any request by Class Counsel for attorneys' fees and/or reimbursement of expenses may appear at the Settlement Hearing and show cause why the Board should not enter an Order granting final approval of the Settlement Agreement or an Order awarding attorneys' fees and reimbursement of expenses. However, in no event shall a person be heard, and in no event shall any paper or brief submitted by any such person be accepted by or considered by the Board unless, on or before February 19, 1996, such person: (a) files with the Pennsylvania Board of Claims a notice of such person's intention to appear, together with a statement that indicates the basis for any such objection and any supporting documentation, and (b) causes copies of such notice, statement and documentation, together with copies of any other papers or briefs such person files with the Board, to be actually received by Class Counsel and by DPB's counsel, in accordance with the method set out in the Class Notice. 10. The Board may adjourn the Settlement Hearing from time to time without further notice and may approve the Settlement Agreement and award attorneys' fees and reimbursement of expenses at or after the Settlement Hearing. The Settlement Agreement may be modified by agreement of the Settling Parties, subject to the approval of the Board, without further notice to the Class. If the Settlement Agreement is not approved or consummated for any reason whatsoever, the proposed settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the parties to the action, except as provided in the Settlement Agreement. **SO ORDERED.**" Copy forwarded to attorney for Plaintiff and attorney for Defendant.

February 1, 1996

Acceptance of Service of testimony received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 30, 1996.

February 5, 1996

Acceptance of Service of Order dated January 26, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 31, 1996.

February 7, 1996

The Board rendered the following Amended Order: "**AND NOW**, this 7th day of February, 1996, it is **ORDERED** and **DECREED** that the foregoing Stipulation is approved. The Order of this Board dated January 26, 1996, is hereby amended to authorize Class Counsel to substitute the Schedules attached hereto as Exhibits A, B, C and D for Schedules 1, 2, 5 and 6 to the Class Notice approved in the Order dated January 26, 1996."

February 15, 1996

Acceptance of Service of Amended Order dated February 7, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 12, 1996.

February 16, 1996

CLOSED

February 20, 1996

Motion of Elliot B. Platt and R. Michael Kemler for Allowance of Attorneys' Fees and Costs, Brief in Support and Proposed Order filed by attorneys for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

February 26, 1996

Hearing scheduled for February 27, 28 & 29, 1996 canceled.

February 29, 1996

Proposed Stipulation & Order regarding Supplemental Notice and Hearing on Class Action Settlement filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

March 4, 1996

Stipulation for Entry of Order regarding Supplemental Notice and Hearing on Class Action Settlement and Proposed Order filed by attorney for Plaintiff and attorney for Defendant.

March 5, 1996

The Board made the following Order: **"AND NOW**, this 5th day of March, 1996, having been advised by Class Counsel that the original Class Notice in this matter was insufficient, it is hereby **ORDERED** that this Court's Orders of January 26, 1996 and February 7, 1996 are **AMENDED** as follows: 1. The Supplemental Class Notice in the form attached hereto as Exhibit 1 is hereby approved; 2. The Notice by Publication in the form attached hereto as Exhibit 2 is hereby approved; 3. On or before March 8, 1996, Class Counsel shall cause a copy of the Supplemental Class Notice to be sent by direct mail to each Class member who has not delivered to Class Counsel an "Election to be Excluded" form, and who, although not a Plaintiff in the Trustees of the University of Pennsylvania v. Commonwealth of Pennsylvania, Department of Public Welfare, and docketed as No. 1388 ("Trustees Proceeding"), participated in the settlement of the Trustees Proceeding and has agreed not to seek payment of any claim in the PCP Litigation; 4. On or before March 11, 1996, Class Counsel shall cause the Notice by Publication to be published at least (six) (6) times, in each of the following: The Philadelphia Inquirer, The Philadelphia Daily News, and The Physicians News Digest; 5. On or before March 12, 1996, Class Counsel shall file with the Board an affidavit evidencing compliance with Paragraphs 3 and 4 of this Order; 6. Pursuant to Rule 1714(a) of the Pennsylvania Rules of Civil Procedure, a Settlement Hearing on the Settlement Agreement and Class Counsel's request for attorneys' fees and reimbursement of expenses shall be held by the Board on March 29, 1996 at 9:30 a.m. in Courtroom No. 1, 200 North Third Street, Fulton Building, Harrisburg, Pennsylvania 17101-1501; 7. Any class member who objects to the Settlement Agreement or the request by Class Counsel for attorneys' fees and/or reimbursement of expenses may appear at the Settlement Hearing and show cause why the Board should not enter an Order granting final approval of the Settlement Agreement or an Order awarding attorneys' fees and reimbursement of expenses. However, in no event shall a person be heard, and in no event shall any paper or brief by any such person be accepted by or considered by the Board unless, on or before March 20, 1996, such person (a) files with the Pennsylvania Board of Claims a notice of such person's intention to appear, together with a statement that indicates the basis for any such objection and supporting documentation, and (b) causes copies of such notice, statement and documentation, together with copies of any other papers or briefs such persons files with the Board, to be actually received by Class Counsel and by DPW's counsel, in accordance with the method and the time limitations set out in the Supplemental Notice; 8. The Board may adjourn the Settlement Hearing from time to time without further notice and may approve the Settlement Agreement and award attorneys' fees and reimbursement of expenses at or after the Settlement Hearing; and 9. Except as

amended by the express terms of this Order, this Board's Orders of January 26, 1996 and February 7, 1996 shall remain in full force and effect. **SO ORDERED.**" Copy forwarded to attorney for Plaintiffs and attorney for Defendant.

March 18, 1996

Affidavit of Michael T. Bancroft, M. Ruchalski, D. Wise and Peter A. Heisman filed by attorney for Plaintiff.

March 29, 1996

Hearing held this date in Board's Courtroom No. 1, commencing at 9:30 a.m. Case settled.

March 29, 1996

Stipulation for Amending Order and proposed Amending Order filed by attorneys for parties at time of hearing.

March 29, 1996

Proposed Order Approving Class Action Settlement and Discontinuing Proceeding with Prejudice filed by attorneys for parties at time of hearing.

March 29, 1996

The Board made the following Amended Order: "**AND NOW**, this 29th day of March, 1996, this Board's Order of March 5, 1996 in this proceeding is hereby **AMENDED** as follows: 1. On February 29, 1996, the Board of Claims approved, by oral order, the Supplemental Class Notice Form and the Notice of Publication Form, designated respectfully as Exhibits 1 and 2 to the written Order of March 5, 1996. Both forms were officially approved for dissemination as of February 29, 1996. 2. To memorialize the February 29, 1996 Order on the official docket, the Board subsequently issued a formal written Order dated March 5, 1996. 3. The Order of March 5, 1996 is hereby **AMENDED** to reflect that the Board had approved the Supplemental Class Notice Form and the Notice by Publication Form on February 29, 1996." Copy faxed to attorney for Plaintiff and attorney for Defendant.

March 29, 1996

The Board made the following Order Approving Class Action Settlement and Discontinuing Proceeding with Prejudice: "**AND NOW**, this 29th day of March, 1996, having found, pursuant to Rules 1702, 1708, and 1709 of the Pennsylvania Rules of Civil Procedure, that this proceeding should be certified as a Class Action, and upon consideration of the Settlement Agreement between Plaintiffs (a Class of persons similarly situated and certified as a Class in accordance

with the Pennsylvania Rules of Civil Procedure) and the Commonwealth of Pennsylvania, Department of Public Welfare, and upon the parties' joint motion for approval of the settlement memorialized that same Settlement Agreement (attached hereto as Exhibit "1", as modified by the First Amendment attached hereto as Exhibit "2"), and following a hearing held before this Board, it is hereby **ORDERED** that: 1. This Board of Claims hereby adjudges the terms of the Settlement Agreement to be fair reasonable, and adequate, and in the best interests of the Class. 2. This Board of Claims therefore **APPROVES** the Settlement Agreement and the First Amendment to Settlement Agreement pursuant to PA. R. Civ. P. 1714, and the parties are directed to implement the settlement in accordance with the terms of the Settlement Agreement and the First Amendment to Settlement Agreement.

3. Within ten (10) days after this Order becomes final and not subject to any further review by or appeals to any court or forum, the Commonwealth of Pennsylvania Department of Public Welfare (DPW) shall tender to the Class the sum of two million one hundred thousand dollars (\$2,100,000.00). 4. Within twenty (20) days after this Order becomes final and not subject to any further review by or appeals to, any court or forum, DPW shall tender to the Class interest on the sum set forth in Paragraph 3 above. The interest shall be calculated at the rate of six percent (6%) per annum, beginning on January 15, 1996 and accumulating until February 27, 1996, and beginning again on March 29, 1996 and terminating ten (10) days after this Order becomes final and not subject to any further review by, or appeals to, any court or forum. 5. All Claims included in the original and amended Class Action Complaints in this litigation are declared **SETTLED**, and are hereby **DISCONTINUED** and **ENDED WITH PREJUDICE**. 6. DPW, the Commonwealth of Pennsylvania, Penn Health Corporation, Maxicare Health Plans, Inc., and each of their successors, assigns, employees, insurers, reinsurer, agents, and attorneys are hereby **RELEASED** and **DISCHARGED** from all claims and liability of any kind which were or could have been asserted in this litigation, whether known or unknown, suspected or unsuspected, contingent or non-contingent, and whether or not heretofore asserted, including (but not limited to) any and all claims for direct liability, contribution, indemnity, or restitution, under any legal theory, however denominated, arising from any cause or conduct at any time before the signing of the Class Release prescribed by the Settlement Agreement. 7. All members of this certified Class are **PERMANENTLY ENJOINED** from further prosecution of any claims that have been or could have been asserted in this litigation against DPW, the Commonwealth of Pennsylvania, Penn Health Corporation, Maxicare Health Plans, Inc., and each of their successors, assigns, employees, insurers, reinsurer, agents, and attorneys. 8. The parties shall bear their own costs. 9. This Board of Claims retains

jurisdiction over all matters relating to the consummation and implementation of the Settlement Agreement and over all matters relating to the enforcement of this Order and the Settlement Agreement and the related Class Release." Copy faxed to attorney for Plaintiff and attorney for Defendant.

April 9, 1996

The Board made the following Order: **"AND NOW**, this 9th day of April, 1996, upon consideration of the Motion of Elliot B. Platt, and R. Michael Kemler for Allowance of Attorneys' Fees and Costs, and hearing held on the Motion, it is **ORDERED** that the Motion is **GRANTED**. The allowance of a counsel fee from the settlement funds of Two Million One Hundred Thousand Dollars (\$2,100,000.00) is approved as meeting the standards of Rule 1716 of the Pennsylvania Rules of Civil Procedure. The fee shall be in the amount of Six Hundred Thirty-Eight Thousand Nine Hundred Forty Five Dollars and Fifty Cents (\$638,945.50) which amount shall be deducted from the settlement funds and paid equally to Elliot B. Platt Esquire and R. Michael Kemler, Esquire, and which is the amount allowed for all counsel fees and costs." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

April 8, 1996

Acceptance of Service of two (2) Orders dated April 2, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 5, 1996.

April 18, 1996

Acceptance of Service of Order dated April 9, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 12, 1996.

April 30, 1996

Testimony for hearing held March 29, 1996 filed.

May 8, 1996

Copy of testimony for hearing held March 29, 1996 forwarded to attorney for Defendant.

May 15, 1996

Acceptance of Service of Testimony received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant 5/13/96.

September 9, 1997

Letter forwarded to parties requesting a status. Response due from parties October 9, 1997.

September 22, 1997

Status letters (two) received from attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 7, 1997

Letter received from attorney for Plaintiff advising that this case has not been declared final as litigation continues on appeal to the Commonwealth Court and in the Bankruptcy Court in California.

March 26, 1998

Status letter received from attorney for Plaintiff advising of the distribution of funds.

November 23, 1998

Status letter received from attorney for Plaintiff advising of the distribution of funds.

May 27, 1999

Notice of Discontinuance filed by Chief Clerk, Deputy Prothonotary of the Commonwealth Court of Pennsylvania as follows: "This is to notify you that the above-captioned matter has been withdrawn, discontinued and ended." [1072 C.D. 1997 consolidated with 1196 C.D. 1997]