

Docket Number: 1563

**MERGENTIME CORPORATION**

~~Timothy A. Sullivan, Esquire~~  
~~George E. Rahn, Jr., Esquire~~  
~~Susan K. Herschel, Esquire~~  
Peter M. Kutil, Esquire  
Richard B. Henry, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION**

~~John J. Robinson, Jr., Chief Legal Attorney~~  
~~Jeffrey W. Davis, Assistant Counsel~~  
Stephen S. Stokwitz, Assistant Counsel

CLOSED

**August 19, 1991**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$4,007,173.00+.

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**August 23, 1991**

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

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**August 27, 1991**

Acceptance of Service of Complaint received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 26, 1991.

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**CLOSED**

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

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**October 25, 1991**

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

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**November 21, 1991**

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

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**November 21, 1991**

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

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**December 2, 1991**

Counter-Reply to New Matter in Plaintiff's Reply to Counterclaim filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**April 23, 1992**

Response to Plaintiff's First Request for Inspection of Documents and Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**November 19, 1993**

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

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**December 15, 1993**

Withdraw of Appearance of Timothy A. Sullivan as attorney on behalf of Plaintiff. Copy forwarded to attorney for Defendant by Timothy A. Sullivan, Esquire.

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**January 3, 1994**

Letter/Entry of Appearance filed by George E. Rahn, Jr., Esquire, attorney for Plaintiff.

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**January 10, 1994**

Copy of Letter/Entry of Appearance of George E. Rahn, Jr., Esquire, forwarded to attorney for Defendant.

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**January 13, 1994**

Acceptance of Service of Letter/Entry of Appearance of George E. Rahn, Jr., Esquire, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 11, 1994.

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**May 8, 1995**

Consent to Change Attorneys filed by attorneys for Plaintiff.

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**May 10, 1995**

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

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**May 10, 1995**

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

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**December 15, 1995**

The Board rendered an Opinion and made the following Order: "AND NOW, this 15th day of December, 1995, it is ORDERED and DECREED that all proceedings herein will be stayed. Parties hereto are directed to file a status report within forty-five (45) days from the exit date of this Order." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**December 26, 1995**

Acceptance of Service of Opinion and Order dated December 15, 1995 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December 21, 1995.

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**CLOSED**

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Status Report filed by Peter M. Kutil, Esquire (Plaintiff). Copy forwarded to attorney for Defendant by Mr. Kutil.

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**August 12, 1996**

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

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**May 19, 1997**

Letter forwarded to parties requesting a status report.  
**Response due 6/18/97.**

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**June 18, 1997**

Letter received from attorney for Plaintiff advising that Plaintiff intends to produce document in August. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**July 1, 1997**

Letter received from attorney for Defendant advising that once discovery documents are produced, further discovery will be conducted. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**July 25, 1997**

Letter received from attorney for Plaintiff advising that the parties are conducting discovery. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**January 13, 1998**

Status letter forwarded to the parties.

**Response due 2/12/98.**

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**February 13, 1998**

Letter received from attorney for Plaintiff requesting a hearing be scheduled.

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**March 30, 1998**

Hearing scheduled for December 7, 8, 9, 10 and 11, 1998; and December 13, 15, 16, 17 and 18, 1998 in the Board's Court Room No. 1, 6th Floor, Fulton Building, 200 North Third Street, Harrisburg, Pennsylvania commencing at 9:30 a.m.

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**August 24, 1998**

Praecipe for Entry of Appearance of Stephen S. Stokwitz, Assistant Counsel, filed. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 30, 1998**

Motion for Admission Pro Hac Vice filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**October 30, 1998**

Consent to Change Attorneys filed by attorneys for Plaintiff. Copy forwarded to attorney for Defendant by attorneys for Plaintiff.

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**November 9, 1998**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 9th day of November, 1998, it is **ORDERED** and **DECREED** that the Motion for Admission Pro Hac Vice is hereby **GRANTED**." Copies forwarded to attorneys for Plaintiff and attorney for Defendant.

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**November 16, 1998**

Acceptance of Service of Opinion and Order dated November 9, 1998, received from attorney for Plaintiff (Richard B. Henry, Esquire). Receipt of same acknowledged by attorney for Plaintiff November 12, 1998.

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**November 18, 1998**

Acceptance of Service of Opinion and Order dated November 9, 1998, received from attorney for Plaintiff (Peter M. Kutil, Esquire). Receipt of same acknowledged by attorney for Plaintiff November 14, 1998.

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**December 7, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**December 8, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**December 9, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**December 10, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**December 11, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**December 14, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**December 15, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

**December 16, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**December 17, 1998**

Hearing held in Board's Court Room No. 1, Fulton Building, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania, commencing at 9:30 a.m. Case completed.

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**January 21, 1998**

Testimony for hearing held December 7, 8, 9, 10 and 11, 1998 as well as December 14, 15, 16, and 17, 1998.

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**February 5, 1999**

Testimony for hearing held December 7, 1998 etc. forwarded to Defendant.

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**February 5, 1999**

Letter forwarded to attorney for Plaintiff directing them to file their Findings of Fact, Conclusions of Law and Brief in Support.

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**March 5, 1999**

Letter faxed to the Board from attorney for Plaintiff requesting a two week extension of time in which to file their Findings of Fact, Conclusions of Law and Brief in Support.

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**March 5, 1999**

Letter forwarded to Plaintiffs granting them an extension of time until April 5, 1999, in which to file their Findings of Fact, Conclusions of Law and Brief in Support.

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**April 5, 1999**

Plaintiff Mergentime Corporation's Post Trial Submission filed by attorney for Plaintiff. **Defendant's Findings of Fact and Conclusions of Law due: May 7, 1999.**

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**June 8, 1999**

Letter received from attorney for Defendant requesting an additional extension of time of thirty days to file **Findings of Fact, Conclusions of Law, and Supporting Brief**

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**June 8, 1999**

Letter forwarded to Defendant granting a thirty day extension of time on which to file Findings of Fact, etc. Findings of Fact due July 8, 1999.

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**July 8, 1999**

Letter received from attorney for Defendant requesting an additional extension of time until July 16, 1999 to file post-hearing papers.

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**July 8, 1999**

Letter forwarded to parties granting their request for an extension until July 16, 1999 to file post hearing papers.

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**July 16, 1999**

Proposed Findings of Fact and Conclusions of Law Submitted on behalf of Defendant, Commonwealth of Pennsylvania and Brief in Support of its Proposed Findings and Fact Conclusion of Law filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**July 23, 1999**

Letter received from attorney for Plaintiff requesting an opportunity to reply to Defendant's Findings of Fact and Conclusions of Law.

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**July 28, 1999**

Letter forwarded to Plaintiff granting their request to reply to Defendant's Findings of Fact and Conclusions of Law. NOW DUE 8/15/99.

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**August 16, 1999**

Plaintiff Mergentime Corporation's Reply Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 30, 2000**



The Board rendered an Opinion and made the following Order: "**AND NOW**, this 30th day of August, 2000, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the Claimant, Mergentime Corporation, is hereby awarded Four Hundred Thirty-Five Thousand Seven Hundred Ninety-Eight Dollars and Sixty-Six Cents (\$435,798.66) for the cement overlay claim, Two Hundred Fifty-Five Thousand Three Hundred Thirteen Dollars and Forty-Seven Cents (\$255,313.47) for the Expansion Joint portion of the claim, and the balance of Mergentime's claims are **DENIED**. The Commonwealth's Counterclaim is hereby **DENIED**, although Mergentime's award shall be reduced by One Hundred Forty-Four Thousand Four Hundred Sixteen Dollars (\$144,416.00), representing Sixty-Seven Thousand Four Hundred Sixteen Dollars (\$67,416.00) Mergentime was obligated to pay the Commonwealth for M & P of Traffic associated with repainting, and Seventy-Seven Thousand Dollars (\$77,000.00) offset which the parties agreed to, per the Claimant's testimony. The net award of Five Hundred Forty-Six Thousand Six Hundred Ninety-Six Dollars and Thirteen Cents (\$541,696.13) shall be awarded thereon at the rate of six percent (6%) per annum from August 19, 1999, the date the complaint was filed. Upon receipt of said award, the Claimant shall forthwith file with the Board of Claims a Praeceptum to mark the case "closed, discontinued and ended with prejudice". Each party to bear their own costs and attorneys' fees." Copy forwarded to attorney for Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

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**September 7, 2000**

Acceptance of Service of Opinion and Order dated August 30, 2000 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General August 31, 2000.

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**September 11, 2000**

Acceptance of Service of Opinion and Order dated August 30, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 31, 2000.

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**September 14, 2000**

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

**NOW**, this 14th day of September, 2000, it is **ORDERED** and **DECREED** that the Defendant's Motion for Post-Trial Relief is hereby **DENIED**.

The Board, however, will grant Defendant's request to waive the briefing requirements of Board Rule 301 (a)." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**September 19, 2000**

Plaintiff Mergentime Corporation's Opposition to Defendant's Motion for Post-Trial Relief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**September 22, 2000**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 22nd day of September, 2000, it is **ORDERED** and **DECREED** that Plaintiff's Cross Motion for Post-Trial Relief is **DENIED**. Plaintiff's opposition to Defendant's Motion for Post-Trial Relief is hereby **DISMISSED** as being Moot.

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Acceptance of Service of Opinion and Order dated September 14, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 21, 2000.

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**October 6, 2000**

Acceptance of Service of Opinion and Order dated September 22, 2000, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 29, 2000.

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**October 19, 2000**

Petition for Review filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and Chief Deputy Attorney General by attorney for Defendant.

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**October 30, 2000**

Respondent's Mergentime Corporation's Cross-Appeal and Cross Petition for Review filed by attorney for Plaintiff. Copy served on attorney for Defendant and Attorney General's Office by attorney for Plaintiff.

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**December 8, 2000**

File transmitted to Commonwealth Court.

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**June 20, 2001**

Letter/Praecipe filed by Plaintiff.

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**July 3, 2001**

The Board made the following Order: **AND NOW**, this 3rd day of July, 2001, upon receipt of a Letter/Praecipe, advising that "...Claimant, by its attorney, Peter M. Kutil, Esquire states that the above-captioned case has been settled and plaintiff, Mergentime Corporation requests that these proceedings be closed, discontinued and ended with prejudice, and docketed with this Board under date of June 20, 2001, it is **ORDERED** and **DIRECTED** that said case be marked "closed, ended and discontinued with prejudice" Copy forwarded to attorney for Plaintiff and Defendant.

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**July 3, 2001**

Acceptance of Service of Order dated July 3, 2001, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff July 9, 2001.

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**July 23, 2001**

Notice of Discontinuance of Action filed by the Commonwealth Court of Pennsylvania.

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**July 23, 2001**

File returned from Commonwealth Court.

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