

**Docket Number 1668**

**MOSITES CONSTRUCTION COMPANY to the use of Middle States Steel Construction  
COMPANY**

**Kenneth W. Lee, Esquire**

**VS.**

**COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION**

**John J. Buchy, Assistant Counsel**

**CLOSED**

**September 22, 1992**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$190,518.78+.

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**September 25, 1992**

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

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**September 29, 1992**

Acceptance of Service of Complaint received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 28, 1992.

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**October 5, 1992**

Acceptance of Service of Complaint received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 2, 1992.

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**November 6, 1992**

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

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**November 25, 1992**

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

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**October 15, 1993**

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

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**December 6, 1993**

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

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**January 26, 1994**

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

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**January 26, 1994**

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

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**January 26, 1994**

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

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**July 6, 1994**

Praeipie for Entry of Appearance filed by John J. Buchy, Assistant Counsel, attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**March 14, 1995**

Department's Second Request for Admissions filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 7, 1996**

Department's Second Set of Interrogatories Directed to Plaintiff, Mosites Construction Company filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 7, 1996**

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

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**May 6, 1996**

Panel Hearing scheduled for September 10, 11 and 12, 1996, in Board's Courtroom No. 2, 6th Floor, Fulton Building, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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

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Use Plaintiff's Response to Defendant's Second Request for Admissions filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 6, 1996**

Use Plaintiff's Answers and Objections to Department's Second Set of Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 6, 1996**

Use Plaintiff's Reply to Defendant's Request for Production of Documents - First Set filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 6, 1996**

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

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**August 6, 1996**

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

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**August 20, 1996**

Department's Brief in Opposition to Plaintiff's Motion to Compel Testimony filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**August 20, 1996**

Notice of Taking Deposition of Denny Shanefelter, d/b/a Shanefelter Industries, on Oral Examination Under Pa.R.C.P. 4007.1 filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**August 27, 1996**

Motion to Compel and Brief in Support, thereof, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 28, 1996**

Motion to Quash Subpoena and for Protective Order and Brief in Support, thereof, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 29, 1996**

Department's Answer to Plaintiff's Motion to Compel Testimony filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**August 29, 1996**

Department's Reply Brief in Opposition to Plaintiff's Motion to Compel Testimony filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**August 30, 1996**

Department's Answer to Plaintiff's Motion to Quash Subpoena and For Protective Order filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 3, 1996**

The Board rendered an Opinion and made the following Order: "AND NOW, this 3rd day of September, 1996, it is ORDERED and DECREED that the Motion to Compel as filed by counsel for Plaintiff, is hereby GRANTED. It is further ORDERED and DECREED that the Motion to Quash Subpoena and for a Protective Order is hereby DENIED." Copy forwarded to attorney for Plaintiff and attorney for Defendant via fax and U.S. Mail.

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**September 9, 1996**

Acceptance of Service of Opinion and Order dated September 4, 1996 filed by attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 6, 1996.

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**September 10, 1996**

Panel Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**September 11, 1996**

Panel Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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**September 12, 1996**

Panel Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m. *Case completed.*

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**October 8, 1996**

Testimony of hearing held September 10 & 11, 1996, filed.

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**October 17, 1996**

Testimony of hearing held September 12, 1996, filed.

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**October 22, 1996**

Copies of testimony of hearing held September 10, 11 & 12, 1996, forwarded to attorney for Defendant.

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**October 22, 1996**

Letter forwarded to parties setting briefing schedule.

**Plaintiff's Findings of Fact due 11/21/96.**

**Defendant's Findings of Fact due 12/23/96.**

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**November 1, 1996**

Acceptance of Service of testimony of Panel Hearing held September 10, 11 and 12, 1996, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 25, 1996.

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**April 8, 1997**

First Pages of Use Plaintiff's Proposed Findings of Fact, Conclusions of Law and Brief in Support, sent, via facsimile, by attorney for Use Plaintiff.

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**April 10, 1997**

Use Plaintiff's Proposed Findings of Fact, Conclusions of Law and Brief in Support thereof filed by attorney for Use Plaintiff. Copy forwarded to attorney for Defendant by attorney for Use Plaintiff. **Defendant's Findings of Fact Due on or about May 12, 1997.**

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**April 14, 1997**

Motion to Correct the Record (wording in some of the testimony and some of the Use Plaintiff's Findings of Fact) filed by attorney for Use Plaintiff. Copy forwarded to attorney for Defendant by attorney for Use Plaintiff.

**Response to Motion due from Defendant 5/20/97.**

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**May 9, 1997**

Letter received from attorney for Defendant requesting an extension of time until 6/30/97 to file Defendant's Answer to Plaintiff's Motion to Correct the Record, and Defendant's Findings of Fact, Conclusions of Law and Brief.

**Same granted 5/14/97.**

**Defendant's Answer to Plaintiff's Motion to Correct the Record  
due 6/30/97.**

**Defendant's Findings of Fact, Conclusions of Law, and Brief  
due 6/30/97.**

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**June 24, 1997**

Letter received from attorney for Defendant requesting an extension of time until 7/21/97 to file Department's Answer to Plaintiff's Motion to Correct the Record, Department's Proposed Findings of Fact and Conclusions of Law, and Brief in Support of its Proposed Findings of Fact and Conclusions of Law.

**SAME GRANTED 6/27/97.**

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**July 22, 1997**

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

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**July 22, 1997**

Department's Motion to Correct Record filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**Plaintiff's Response due 8/27/97.**

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**August 21, 1997**

The Board rendered an Opinion and made the following Order: "AND NOW, this 21st day of August, 1997, it is **ORDERED** and **DECREED** that the Motions to Correct the Record are hereby **DISMISSED** as being **MOOT** by agreement of the parties. It is further **ORDERED** and **DECREED** that counsel for Defendant, Commonwealth of Pennsylvania, Department of Transportation, has additional time until at least August 22, 1997 to file its reply brief." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**August 25, 1997**

Use Plaintiff's Brief in Reply to Defendant's Brief in Support of Defendant's Proposed Findings of Fact filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 26, 1997**

Acceptance of Service of Opinion and Order dated August 21, 1997, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 22, 1997.

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**August 27, 1997**

Acceptance of Service of Opinion and Order dated August 21, 1997, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 25, 1997.

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**April 10, 1998**

Panel Report filed.

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**June 4, 1998**

The Board rendered an Opinion and made the following Order: "AND NOW, this 4th day of June, 1998, it is **ORDERED** and **DECREED** that judgment is entered in favor of the Respondent, Commonwealth of Pennsylvania, Department of Transportation, and against the Plaintiff, Mosites Construction Company. Each party to bear its own costs and attorneys' fees." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**June 12, 1998**

Acceptance of Service of Opinion and Order dated June 4, 1998, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 9, 1998.

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**June 12, 1998**

Acceptance of Service of Opinion and Order dated June 4, 1998, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 8, 1998.

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**June 12, 1998**

Use-Plaintiff'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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**June 17, 1998**

Use Plaintiff's Brief in Support of Motion for Post-Trial Relief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**July 2, 1998**

Petition for Review, as filed in Commonwealth Court, received from attorney for Plaintiff. [No. 1737 C.D. 1998]

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**July 13, 1998**

Letter received from attorney for Defendant advising that they will not be filing a response to Plaintiff's Motion for Post-Trial Relief.

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**July 15, 1998**

Petition for Review received from Commonwealth Court.

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**July 17, 1998**

Courtesy copies of Petitioner's Motion for Declaratory Relief, Petitioner's Brief in Support of its Motion for Declaratory Relief, and Motion to Stay as filed in Commonwealth Court, filed by attorney for Plaintiff.

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**July 31, 1998**

Courtesy copy of Respondent's Brief in Response to Petitioner's Motion for Declaratory Relief filed by attorney for Defendant.

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**August 17, 1998**

File transmitted to Commonwealth Court.

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**August 31, 1998**

Courtesy copy of Designation of Record and Brief Statement of Issues filed by attorney for Plaintiff.

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**September 17, 1998**

Courtesy copy of Reply Brief of Petitioner to Respondent's Brief in Response to Petitioner's Motion for Declaratory Relief filed by attorney for Plaintiff.

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**September 17, 1998**

Acceptance of Service of Opinion and Order dated June 4, 1998, received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General June 8, 1998.

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**October 26, 1998**

Praeipue to Enter Judgment Pursuant to PA. R.C.P. 227.4(b) filed by attorney for Plaintiff.

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**November 2, 1998**

Courtesy copy of Petition for Review from the Judgment entered on October 26, 1998 from the Order of the Board of Claims of the Commonwealth of Pennsylvania dated June 4, 1998 entered at Board of Claims Docket No. 1668 filed by attorney for Plaintiff.

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**November 18, 1998**

Courtesy copy of Motion to Consolidate, as filed in Commonwealth Court, filed by attorney for

Plaintiff. [No. 1737 C.D. 1998] [No. 2962 C.D. 1998]

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**November 23, 1998**

Courtesy copy of Motion for Leave to Enlarge the Reproduced Record and Suspend Briefing Schedule, as filed in Commonwealth Court, filed by attorney for Plaintiff.

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**December 23, 1998**

Order received from Commonwealth Court. Order as follows: "NOW, December 21, 1998, upon consideration of petitioner's motion for leave to enlarge the reproduced record and suspend briefing schedule, to which no answer has been filed, the motion is granted. The Board of Claims shall, no later than January 8, 1999, certify a record consisting of at least its docket entries for the events occurring after the initial appeal docketed at No. 1737 C.D. 1998 and the praecipe to enter judgment pursuant to Pa. R.C.P. No. 227.4 filed with the Board on October 26, 1998. Petitioner shall file another volume of the reproduced record consisting of: The Board's docket indicating no disposition of the motion for post-trial relief by the Board for 30 days and the entry of the judgment pursuant to Pa. R.C.P. No. 227.4 on October 26, 1998. 2. The Praecipe to Enter Judgment pursuant to Pa. R.C.P. No. 227.4 filed with the Board on October 26, 1998. The Petition for Review filed at docket number 2962 C.D. 1998."

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**January 6, 1999**

Copy of certified Docket Entries and Praecipe to Enter Judgment Pursuant to PA. R.C.P. 227.4(b) forwarded to Deputy Prothonotary - Chief Clerk.

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**July 5, 1999**

Opinion Announcing the Judgment of the Court filed by Chief Clerk of the Supreme Court [No. 0027 W.D. Appeal Docket 1997] remanding this case back to the Board of Claims.

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**September 2, 1999**

Praecipe for Substitution of Counsel entering the appearance of Kenneth W. Lee, Esquire and Reager & Adler, P.C. on behalf of Plaintiff, and withdrawing the appearance of Plowman, Spiegel & Lewis, P.C. filed by attorney for Plaintiff.

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**March 6, 2000**

Copy of Opinion and Order received from Commonwealth Court. Order as follows: **AND NOW**, this 29th day of October 1999, with regard to MSS' petition for review, docketed at 1737 C.D. 1998, the order of the Board of Claims, entered June 4, 1998 is hereby affirmed. MSS' petition to review the deemed denial of its post-trial motions, docketed at 2962 C.D. 1998, is hereby dismissed as duplicative.

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**March 6, 2000**

This file was returned from Commonwealth Court.

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