

Docket Number: 1727

THOMAS M. DURKIN & SONS, INC.

Paul A. Logan, Esquire

VS.

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~John J. Robinson, Jr., Chief Claims Attorney~~

~~Michael D. Alsher, Assistant Counsel~~

June 16, 1993

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: 1,820,761.54+.

June 24, 1993

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

June 28, 1993

Acceptance of Service of Complaint dated June 24, 1993 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 25, 1993.

July 1, 1993

Acceptance of Service of Complaint dated June 24, 1993 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General June 28, 1993.

July 23, 1993

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

August 30, 1993

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

May 3, 1994

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

May 3, 1994

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

September 2, 1994

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

September 15, 1994

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

September 15, 1994

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

September 16, 1994

Plaintiff, Thomas M. Durkin & Sons, Inc.'s Response to the Defendant's First Request for the Production of Documents filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 26, 1994

Expert Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 1, 1995

Motion to Compel Production of Documents After Rejected Request filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 21, 1995

Answer to Motion to Compel and Motion for a Protective Order filed by attorney for Plaintiff (via fax). Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 21, 1995

Motion for a Protective Order, Memorandum of Law in Support of Motion for a Protective Order and Proposed Order filed by attorney for Plaintiff (via fax). Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 22, 1995

Answer to Motion to Compel and Motion for a Protective Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 22, 1995

Motion for a Protective, Memorandum of Law in Support of Motion for a Protective Order and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 29, 1995

Defendant's Responses to Plaintiff's Expert Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 5, 1996

Defendant's Brief in Support of its Motion to Compel Production of Documents After Rejected Request filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 15, 1996

Response to Plaintiff's Motion for a Protective Order filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 14, 1996

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 14th day of March, 1996, the two (2) Motions, the Motion of the Defendant, Commonwealth of Pennsylvania, Department of Transportation, to Compel discovery and the Plaintiff's, Thomas M. Durkin & Sons, Inc., Motion for a Protective Order will be held in abeyance by this Board. The parties are directed to, again, enter the realm of discovery with the intent of discovering that which is necessary to continue with this litigation and not an exploration of how many avenues there may be out there that will lead to a dead end. If the parties are not able to resolve their problems after an honest effort to do so, the Board will then direct the parties to specifically direct the Board to documents requested by the Defendant and the Plaintiff's position thereon." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

March 20, 1996

Acceptance of Service of Opinion and Order dated March 14, 1996 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff, date unknown.

March 20, 1996

Acceptance of Service of Opinion and Order dated March 14, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 15, 1996.

May 16, 1996

Proposed Order as well as Defendant's Motion for Leave to Amend New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

August 7, 1996

Letter received from attorney for Defendant requesting the Board withdraw its Motion to Amend.

August 14, 1996

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

September 11, 1996

The Board rendered an Opinion and made the following Order: "AND NOW, this 11th day of September, 1996, it is ORDERED and DECREED that the Defendant's, Commonwealth of Pennsylvania, Department of Transportation, Motion for Leave to Amend New Matter, filed on May 16, 1996, is hereby DISMISSED as being MOOT." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

September 18, 1996

Acceptance of Service of Opinion and Order dated September 11, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 12, 1996.

September 20, 1996

Acceptance of Service of Opinion and Order dated September 11, 1996 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 17, 1996.

May 5, 1997

Status letter forwarded to parties.

Response due 6/4/97.

May 21, 1997

Hearing scheduled for January 12, 13, 14, 15 & 16, 1998; and January 20, 21, 22 & 23, 1998, if necessary, in Board's Courtroom No. 1, 6th Floor, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

May 22, 1997

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 22nd day of May, 1997, it is **ORDERED** and **DECREED** that this matter is hereby set for trial before the Board of Claims beginning on January 12, 1998 and continuing through January 23, 1998, if necessary, with the exception of January 19, 1998. State offices will be closed in observance of Martin Luther King Jr. Day. The hearing will be held in Courtroom No. 1 on the 6th Floor in the Fulton Bank Building, Harrisburg, Pennsylvania. It is further **ORDERED** and **DECREED** that counsel for both parties shall complete discovery at least sixty (60) days before the beginning of trial on January 12, 1998. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

CLOSED

May 30, 1997

Acceptance of Service of Opinion and Order dated May 21, 1997 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 28, 1997.

May 30, 1997

Acceptance of Service of Opinion and Order dated May 21, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 28, 1997.

December 29, 1997

Defendant's Pre-Trial Statement filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 5, 1998

Plaintiff's Pre-Trial Statement filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 5, 1998

Motion in Limine to Preclude the Testimony of Frederick R. Miller, CPA or Paul W. Pocalyko, CPA filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 7, 1998

Supplemental Pre-Hearing Memorandum of Plaintiff Thomas M. Durkin & Sons, Inc. filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 8, 1998

Letter-Response to Motion in Limine filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 12, 1998

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 12th day of January, 1998, it is **ORDERED** and **DECREED** that Plaintiff's Motion in Limine is **DENIED**. Counsel for the Plaintiff may pursue the Motion in Limine at the close of all testimony in the pending trial.

January 13, 1998

Hearing held this date in Court Room No. 1, Fulton Building, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

January 13, 1998

Motion for Protective Order and Proposed Order, filed by attorney for Plaintiff at time of trial.

January 13, 1998

Motion to Exclude Parol and Extrinsic Evidence, Memorandum of Law of Thomas M. Durkin & Sons, Inc, and Proposed Order filed by attorney for Plaintiff at time of trial.

January 14, 1998

Hearing held this date in Court Room No. 1, Fulton Building, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

January 16, 1998

Hearing held this date in Court Room No. 1, Fulton Building, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

January 20, 1998

Hearing held this date in Court Room No. 1, Fulton Building, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

January 21, 1998

Hearing held this date in Court Room No. 1, Fulton Building, 200 North Third Street, Harrisburg, Pennsylvania, commencing at 9:30 a.m. Case completed.

February 10, 1998

Testimony of hearing held January 12 and 13, 1998, filed.

CLOSED

Testimony of hearing held January 14, 1998, filed.

February 17, 1998

Copies of testimony of hearing held January 12, 13, and 14, 1998, forwarded to attorney for Defendant.

February 17, 1998

Testimony of hearing held January 16, 1998, filed.

February 19, 1998

Testimony of hearing held January 20 and 21, 1998, filed.

February 23, 1998

Copies of testimony of hearing held January 16, 20, and 21, 1998, forwarded to attorney for Defendant.

Plaintiff's Findings of Fact due 3/25/98.

Defendant's Findings of Fact due 4/24/98.

February 23, 1998

Acceptance of Service of testimony of hearing held January 12, 13 and 14, 1998, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 18, 1998.

March 24, 1998

Proposed Order as well as Plaintiff's Motion for Time Extension to File Post-Trial Submissions filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 7, 1998

The Board made the following Order: "AND NOW, this 7th day of April, 1998, upon consideration of Plaintiff's motion for a time extension in which to file post-trial submissions, and Defendant's consent thereto, it is hereby ORDERED that Plaintiff's motion is GRANTED. Plaintiff's post-trial submissions shall be due on or before April 25, 1998." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

April 10, 1998

Acceptance of Service of Order dated April 7, 1998, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 9, 1998.

CLOSED

April 13, 1998

Acceptance of Service Order dated April 7, 1998, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 8, 1998.

April 24, 1998

Letter received from attorney for Plaintiff requesting a 30-day extension of time to file Plaintiff's Findings of Fact, Conclusions of Law and Brief.

May 8, 1998

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

June 12, 1998

Letter received from attorney for Defendant requesting an extension of time until 6/26/98 to file their Findings of Facts. Same granted 6/23/98.

June 26, 1998

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

March 4, 1999

The Board rendered an Opinion and made the following Order: **AND NOW**, this 4th day of March, 1999, after hearing and review of Briefs, it is hereby **ORDERED** and **DECREED** that judgement be entered against Defendant, Commonwealth of Pennsylvania, Department of Transportation, and in favor of Plaintiff, Thomas M. Durkin and Sons, Inc. in the amount of Four Hundred Sixteen Thousand Two Hundred Eight Dollars and Seventy-Three Cents (\$416,208.73) plus costs and interest at the legal rate of six percent (6%) per annum from June 16, 1993, the date the Complaint was filed. Upon receipt of said award, Plaintiff shall forthwith file with the Board a Praecipe requesting the case be marked "closed, discontinued and ended with prejudice". Each party to bear its own costs and attorney's fees." Copy forwarded to attorney for Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

CLOSED

March 5, 1999

Acceptance of Service of Opinion and Order dated March 4, 1999 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff March 8, 1999.

March 16, 1999

Acceptance of Service of Opinion and Order dated March 4, 1999 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General March 5, 1999.

March 18, 1999

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

April 8, 1999

Petition for Review (as filed by Plaintiff) received from Commonwealth Court. {No. 0851 C.D. 1999}

April 9, 1999

Thomas M. Durkin & Sons, Inc.'s Response to "Department's Motion for Post-Relief" and Brief in Opposition to PaDOT's Motion for Post-Trial Relief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 14, 1999

Respondent's Cross-Petition for Review, as filed in Commonwealth Court, filed by attorney for Defendant. {No. 0952 C.D. 1999}

April 19, 1999

File Transmitted to Commonwealth Court.

December 10, 1999

Copy of Opinion and Order rendered in Commonwealth Court, received from Defendant. Order as follows: "AND NOW, this 24th day of November, 1999, the order of the Pennsylvania Board of Claims is vacated as to Thomas M. Durkin & Sons, Inc. Claim C (partial award for equipment standby costs), and this claim is remanded to the Board for a new decision consistent with the foregoing opinion. The Court affirms the Board's order as to Claim J (no award for temporary concrete barrier and temporary impact attenuators costs, and Claim G award for rock removal). Jurisdiction relinquished.

Letter received from attorney for Defendant requesting that in the event the Commonwealth Court's Order is not appealed, the Board allow Defendant two weeks to file Proposed Findings of Fact, Conclusions of Law and Brief in Support relative to the one issue being remanded to the Board from Commonwealth Court.

December 20, 1999

Copy of Opinion and Order rendered in Commonwealth Court received from Commonwealth Court. (*For Order, See above entry dated December 10, 1999)

February 3, 2000

File Returned from Commonwealth Court.

February 4, 2000

Letter forwarded to attorney for Plaintiff, with copy to attorney for Defendant, giving Plaintiff fifteen (15) days in which to respond to Defendant's letter received December 10, 1999 relative to filing Proposed Findings of Fact, Conclusions of Law and Brief in Support.

February 24, 2000

Letter received from Plaintiff advising that he objects to Defendant's request to file additional Findings, etc. relative to the issue that was remanded from the Commonwealth Court.

March 1, 2000

Letter received from attorney for Defendant relative to requesting the filing of additional Findings of Fact and Conclusions of Law.

March 10, 2000

Letter received from attorney for Plaintiff advising that they now suggest that the Board allow the filing of additional Findings of Fact and Conclusions of Law.

March 10, 2000

Letter forwarded to attorney for Plaintiff and attorney for Defendant granting the parties twenty (20) days in which to file additional Findings of Fact and Conclusions of Law relative to the remanded issue from Commonwealth Court. Findings due 7/30/00.

March 19, 2000

Proposed Findings of Fact, Conclusions of Law and Memorandum of Law in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 30, 2000

Plaintiff's Proposed Supplemental Findings of Fact and Proposed Conclusions of Law and Proposed Order, as well as Memorandum of Law in Support of Proposed Supplemental Findings of Fact and Proposed Conclusions of Law filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

July 20, 2000

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 20th day of July, 2000, after hearing and review of Briefs, it is hereby **ORDERED** and **DECREED** that judgement be entered against Defendant, Commonwealth of Pennsylvania, Department of Transportation, and in favor of Plaintiff, Thomas M. Durkin and Sons, Inc. in the amount of One Hundred Forty Thousand Three Hundred Fourteen Dollars and Sixty-One Cents (\$140,314.61) plus costs and interest at the legal rate of six percent (6%) per annum from June 16, 1993, the date the Complaint was filed. Upon receipt of said award, Plaintiff shall forthwith file with the Board a Praecipe requesting the case be marked 'closed, discontinued and ended with prejudice'. Each party to bear its own costs and attorney's fees." Copy forwarded to attorney for Plaintiff, attorney for Defendant and Chief Deputy Attorney General

July 26, 2000

Acceptance of Service of Opinion and Order dated July 20, 2000 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General July 21, 2000.

July 31, 2000

Acceptance of Service of Opinion and Order dated July 20, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff July 24, 2000.

August 1, 2000

Acceptance of Service of Opinion and Order dated July 20, 2000 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant (undated)

CLOSED