

Docket Number: 1767

ADAMS COUNTY ASPHALT COMPANY

~~*Roy S. Cohen, Esquire
George Pallas, Esquire
Steven R. Waxman, Esquire
Glenn J. Smith, Esquire
Wendy Weikal-Beauchat, Esquire~~

CLOSED

~~ANDREW BILBILER, in his individual capacity and in his official
capacity as Assistant District Engineer for District and
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
Robert J. Shea, Esquire~~

~~*HOWARD YERUSELIM, SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION
Howard Yeruselim, P.E.~~

**AND
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

~~John J. Robinson, Jr., Chief Claims Attorney
Jeffrey W. Davis, Assistant Counsel~~

September 10, 1993

By Order of Commonwealth Court, case filed, ORDER as follows: "AND NOW, this 4th day of August, 1993, by its Amended Complaint in Equity, Adams County Asphalt Company (ACA) requests this court to make a declaratory judgment which requires, at least, an interpretation of sections 105.01(b), 105.05(a) and 108.05(b) of the Pennsylvania Department of Transportation (DOT) Publication 408 specifications.

Also applicable is Form FHWA 1273, revised 8-89, section VIII., 1., at page 6. (Appendix A, ACA's Amended Complaint in Equity.) All of these provisions are included in terms within the contract between ACA and DOT and as such, questions as to their interpretation and relevance to the issues raised in ACA's (sic) amended Complaint are properly brought before the Board of Claims. *Shovel Transfer & Storage*, Simpson, 523 Pa. 35, 561 A.2d 1153 (1989). Because we lack jurisdiction in this action, we transfer this matter to The Board of Claims.

THE FOLLOWING FILED IN COMMONWEALTH COURT:

CLOSED

June 22, 1993

Petition for Review/Notice of Appeal Filed.

June 22, 1993

Petitioner's Petition for Temporary Restraining Order and for a Preliminary Injunction filed.

June 22, 1993

Order as follows: "Petition for Temporary Restraining Order, in the nature of an application for Ex Parte Preliminary Injunction is DENIED. Hearing on Preliminary Injunction is filxed for 6/25/93 at 10:00 a.m. in Courtroom No. 1, HAR. Motion for expedited. Discovery is DENIED. Kelley, J. (Order exit 6/23/93)."

June 24, 1993

Motion for Continuance filed by Petitioner.

June 24, 1993

Memorandum of Law in Support of Motion for Continuance filed by Petitioner.

June 24, 1993

Order as follows: "Petitioner's Motion for Continuance is GRANTED. Hearing on Petitioner's Petition for Preliminary injunction, previously fixed for 6/25/93 at 9:30 a.m. is continued & is hereby rescheduled to 6/30/93 at 1:00 p.m., Courtroom No. 1, HAR. Kelley, J. (Order exit 6/24/93).

June 29, 1993

Memorandum of Law in Opposition to Petition for a Preliminary Injunction filed by Respondent.

June 29, 1993

Preliminary Objections filed by Respondents.

July 7, 1993

Petitioner's Exhibits 1 & 2 filed.

July 14, 1993

Hearing transcript filed.

July 19, 1993

Amended. Petitioner's amended complaint in equity.

August 4, 1993

Order as follows: "Transferred to Board of Claims because we lack jurisdiction. Friedman, J."

August 6, 1993

Preliminary Objections of Respondents Yerusehim & D.O.T. to Amended Complaint filed.

August 9, 1993

Order as follows: "Argument on Rep.'s P.O.'s to amended complaint is fixed FOR 8/31/93, 1:30 p.m., Courtroom No. 2, HAR. Rsp. brief in support of P.O.'s (50 due by 8/20/93. Pet. brief in opposition to P.O.'s (5) due by 8/27/93. Doyle, J. (order exit 8/10/93)."

August 11, 1993

Order as follows: "Court transferred this matter to Board of Claims on 8/4/93. Our order of 8/9/93 scheduling argument on respondent's P.O. is hereby VACATED as improvidently entered. Doyle, J. (Exit 8/12/93)."

August 10, 1993

Transferred to the Board of Claims.

BEFORE THE BOARD OF CLAIMS:

September 10, 1993

File received from Commonwealth Court.

***November 24, 1993**

Claim and filing fee filed by Plaintiff. Amount of Claim: \$325,000.00+.

November 30, 1993

Copies of Claim forwarded to Howard Yarusel, attorney for Defendant and Chief Deputy Attorney General.

December 3, 1993

Acceptance of Service of Claim filed by Attorney for Defendant (Department of Transportation). Receipt of same acknowledged by Attorney for Defendant (Department of Transportation) December 1, 1993.

December 9, 1993

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General December 2, 1993.

December 27, 1993

Preliminary Objections filed by attorney for Defendants. Copy forwarded to attorney for Plaintiff by attorney for Defendants.

February 1, 1994

Brief in Support of Preliminary Objections to Complaint filed by attorney for Defendants. Copy forwarded to attorney for Plaintiff by attorney for Defendants.

February 25, 1994

Plaintiff's Brief in Opposition to Defendants' Preliminary Objections filed by attorney for Plaintiff (Renee Biribin). Copy forwarded to attorney for Defendants by attorney for Plaintiff (Renee Biribin).

****February 25, 1994**

Amended Complaint filed by attorney for Plaintiff (Renee Biriban).

March 7, 1994

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

March 11, 1994

Acceptance of Service of Amended Claim dated March 7, 1994 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General March 9, 1994.

March 16, 1994

Preliminary Objections to Amended Complaint and Brief in Support of Preliminary Objections to Amended Complaint filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 15, 1994

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

May 13, 1994

The Board rendered an Opinion and made the following Order: "AND NOW, this 13th day of May, 1994, the Preliminary Objections as filed by the Defendant, Commonwealth of Pennsylvania, Department of Transportation are hereby DENEID. The Defendant is given thirty (30) days from the exit date of this Order to file responsive pleadings." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

May 17, 1994

Acceptance of Service of Opinion and Order dated May 13, 1994 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 16, 1994.

May 23, 1994

Acceptance of Service of Opinion and Order dated May 13, 1994 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 16, 1994.

June 13, 1994

Answer to Amended Complaint filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 9, 1996

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

April 2, 1997

Letter forwarded to parties requesting status. Response due from parties May 2, 1997.

CLOSED

December 8, 1997
Letter forwarded to parties requesting status. Response due from parties January 8, 1998

December 11, 1997
Letter received from attorney for Plaintiff advising that the parties are engaged in discovery and settlement negotiations. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 14, 1998

Letter received from attorney for Defendant advising that the parties are presenting attempting to settle this case.

July 13, 1998

Letter forwarded to parties requesting status. Response due from parties August 13, 1998.

August 6, 1998

Letter received from attorney for Defendant advising that the parties are in settlement negotiations.

February 24, 1999

Letter forwarded to parties requesting status. Response due from parties March 24, 1999.

March 25, 1999

Status letter received from attorney for Plaintiff advising that the parties are conducting settlement negotiations.

April 3, 2000

Letter forwarded to parties requesting status. Response due from parties May 3, 2000.

April 24, 2000

Letter received from attorney for Plaintiff removing themselves as attorney of record on behalf of Plaintiff.

June 2, 2000

Letter forwarded to parties requesting status. Response due from parties July 3, 2000.

CLOSED

June 14, 2000
Status letter received from attorney for Plaintiff advising that the parties are in discovery.
June 28, 2000

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 28th day of June, 2000, it is hereby **ORDERED** and **DECREED** that after consideration of correspondence dated April 19, 2000 and June 7, 2000 from George E. Pallas, Esquire, and Defendant's, Commonwealth of Pennsylvania, Department of Transportation, response dated June 12, 2000, it is hereby **ORDERED** and **DECREED** that George E. Pallas, Esquire and the firm of Cohen, Seglias, Pallas and Greenhall, P.C. is permitted to withdraw as counsel for the Plaintiff, Adams County Asphalt Company in the above-referenced matter. Adams County Asphalt Company is hereby **ORDERED** to notify the Board of Claims within thirty (30) days from the exit date of this Order whether it plans to proceed on a pro-se basis or if they are in the process of obtaining new counsel." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

July 10, 2000

Mail returned (Opinion and Order dated June 28, 2000) due to forwarding order expired.

July 12, 2000

Mail reforwarded (Opinion and Order dated June 28, 2000) with new address.

July 27, 2000

Defendant's Motion to Compel Plaintiff's Production of Documents and Answers to Interrogatories Pursuant to Pa. R.C.P. 4019 filed by attorney for Defendant. Response due from Plaintiff September 1, 2000.

April 26, 2001

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 26th day of April, 2001, it is **ORDERED** and **DECREED** that Plaintiff's, Adams County Asphalt Company, Complaint be dismissed with prejudice unless Answers to Interrogatories are filed and Plaintiff complies with the Motion to Compel Production of Documents within thirty (30) days from the entry date of this Order." Copy forwarded to attorney for Plaintiff and attorneys for Defendant.

May 2, 2001

Motion for Continuance and Proposed Order filed by attorney for Plaintiff.

May 22, 2001

Entry of Appearance of Glenn J. Smith, Esquire on behalf of Plaintiff filed (via fax) by attorney for Plaintiff.

May 22, 2001

Letter forwarded to attorney for Plaintiff granting an extension until July 23, 2001 to file Answers to Interrogatories. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

May 23, 2001

Entry of Appearance of Glenn J. Smith, Esquire on behalf of Plaintiff filed (via U.S. mail) by attorney for Plaintiff.

May 23, 2001

Certificate of Service of Entry of Appearance and Motion for a Continuance filed by attorney for Plaintiff.

July 23, 2001

Answers to Defendant's First Request for Production of Documents and Answers to Defendant's First Set of Interrogatories filed (via fax) by attorney for Plaintiff.

July 26, 2001

Answers to Defendant's First Request for Production of Documents and Answers to Defendant's First Set of Interrogatories filed (via U.S. mail) by attorney for Plaintiff.

August 3, 2001

Certificate of Service of Plaintiff's Answers to Defendant's First Set of Interrogatories together with Plaintiff's Answer to Defendant's First Request for Production of Documents filed by attorney for Plaintiff.

September 17, 2001

Certificate of Service of Plaintiff's Request for Production of Documents filed by attorney for Plaintiff.

January 28, 2002

Letter forwarded to parties requesting Status Report. Status Report due on or before 2/27/02.

February 27, 2002

Letter received (via fax) from Wendy Weikal-Beauchat, Esquire advising that she has taken over the case for the Plaintiff and is awaiting instructions from the client on going forward.

August 30, 2002

Letter forwarded to parties requesting a Status Report. Status Report due on or before 9/30/02.

October 1, 2002

Letter received (via fax) from attorney for Plaintiff advising that the parties are in the process of completing discovery.

October 2, 2002

Letter received (via U.S. Mail) from attorney for Plaintiff advising that the parties are in the process of completing discovery.

October 22, 2002

Letter received from attorney for Plaintiff via facsimile advising that the parties are working together to resolve all outstanding discovery issues and request that the Board take no action per its August 23, 2002 opinion until the counsel have met to resolve this matter.

October 24, 2002

Letter received from attorney for Plaintiff via U.S. Mail advising that the parties are working together to resolve all outstanding discovery issues and request that the Board take no action per its August 23, 2002 opinion until the counsel have met to resolve this matter.

CLOSED

December 13, 2002

Defendant's Motion for Sanctions and Brief in Support filed by attorney for defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. Response due from Plaintiff 1/15/03.

February 26, 2003

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 26th day of February, 2003, the Board of Claims, upon its own motion and discretion hereby issues upon Adams County Asphalt Company, Plaintiff, a Rule to Show Cause why the Commonwealth of Pennsylvania, Department of Transportation's Motion for Sanctions should not be granted. Rule is returnable in thirty (30) days. Upon failure to respond timely, the Rule shall be made Absolute and the instant Complaint shall be dismissed with prejudice." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

April 22, 2003

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 22nd day of April, 2003, upon consideration of the Motion for Sanctions filed by the Commonwealth of Pennsylvania, Department of Transportation, on December 13, 2002, this Board's earlier Order of April 26, 2001, and most recent Order of February 26, 2003, the Rule contemplated by the Board's Order of February 26, 2003, is made **ABSOLUTE**. It is hereby **ORDERED** that the Complaint filed by Plaintiff, Adams County Asphalt Company, is hereby **DISMISSED** with prejudice in conjunction with the entry of a judgment of non pros pursuant to Pa. R.C.P. 4019 (c)(3). **IT IS SO ORDERED**. Costs to be borne by the Plaintiff." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

April 23, 2003

Letter received from attorney for Defendant requesting the Board
dismiss the Plaintiff's complaint with prejudice.

CLOSED