

Docket Number: 1779

JAMES D. MORRISSEY, INC.

Timothy A. Sullivan, Esquire

VS.

**CLOSED**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION  
~~John J. Robinson, Jr., Chief Claim Attorney~~  
~~Stephen J. Gustonka, Assistant Counsel~~  
John J. Buchy, Assistant Counsel

**December 29, 1993**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$281,038.24+.

---

**January 7, 1994**

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

---

**January 12, 1994**

Acceptance of Service of Complaint received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General January 10, 1994.

---

**CLOSED**

---

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

---

**February 23, 1994**

Plaintiff's Response to Defendant's Preliminary Objections filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

---

**March 7, 1994**

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

---

**March 24, 1994**

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

---

**March 29, 1994**

Copy of Plaintiff's Brief in Opposition to Defendant's Preliminary Objections forwarded to attorney for Defendant.

---

**April 1, 1994**

Acceptance of Service of Plaintiff's Brief in Opposition to Defendant's Preliminary Objections received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 30, 1994.

---

**April 21, 1994**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 21st day of April, 1994, the Preliminary Objections as filed by the Defendant, Commonwealth of Pennsylvania, Department of Transportation, are hereby **DENIED**. 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.

**CLOSED**

---

**April 29, 1994**

Acceptance of Service of Opinion and Order dated April 21, 1994, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 25, 1994.

---

**August 9, 1994**

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

---

**September 12, 1994**

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

---

**October 11, 1994**

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

---

**December 9, 1996**

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

---

**January 14, 1997**

Department's First Set of Interrogatories Directed to Plaintiff, James D. Morrissey, Inc. filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

---

**January 14, 1997**

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

---

**March 21, 1997**

Department's Expert Interrogatories Directed to Plaintiff, James D. Morrissey, Inc., filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

---

**October 14, 1997**

Letter forwarded to the parties requesting a status report. Response due 11/13/97.

**CLOSED**

---

**November 17, 1997**

Letter received from attorney for Plaintiff advising that the parties are completing document production.

---

**November 17, 1997**

Letter received from attorney for Defendant advising that the parties are completing document production.

---

**September 10, 1998**

Copy of letter received from attorney for Defendant requesting an extension of time from Plaintiff to respond to Plaintiff's Second Set of Interrogatories and Request for Documents.

---

**September 30, 1998**

Notice of Service of Defendant's Answers and Objections to Plaintiff's Second Set of Interrogatories and Request for Production of Documents filed by attorney for Defendant.

---

**October 15, 1998**

Notice of Service of Deposition of Oral Examination Under Pa. R.C.P. 4007.1 filed by attorney for Defendant.

---

**October 15, 1998**

Amended Notice of Service of Department's Answers and Objections to Plaintiff's Second Set of Interrogatories and Request for Documents filed by attorney for Defendant.

---

**November 12, 1998**

Notice of Service of Plaintiff's Third Set of Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

---

**January 28, 1999**

Notice of Service of Department's Answers to Plaintiff's Third Set of Interrogatories filed by attorney for Defendant.

---

**March 11, 1999**

Letter received from attorney for Plaintiff advising that the Board schedule case for a hearing.

---

**March 19, 1999**

Letter received from attorney for Defendant advising that discovery is on going and the Board should not comply with Plaintiff's request to schedule the above-referenced case for trial.

---

**August 3, 1999**

Letter forwarded to parties requesting status. Status Due 9/3/99.

---

**August 9, 1999**

Letter received from attorney for Plaintiff requesting, per both parties, that this matter be scheduled for hearing.

---

**August 19, 1999**

Letter received from attorney for Defendant requesting that although there is remaining discovery this case can be scheduled for trial.

---

**September 2, 1999**

The Board made the following Order: **AND NOW**, this 2nd day of September, 1999, it is **ORDERED** and **DECREED** that this matter is set for a hearing before the Board beginning February 7, 2000 through February 18, 2000, if necessary. Said hearing shall be held in Courtroom No. 1, 6th Floor, Fulton Building, Harrisburg, PA, commencing at 9:30 a.m. It is further **ORDERED** and **DECREED** that all discovery be completed no later than January 7, 2000. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

**September 13, 1999**

Acceptance of Service of Order dated September 2, 1999 received by attorney for Plaintiff. Receipt of same acknowledged by attorney by for Plaintiff September 7, 1999.

**CLOSED**

Notice of Service of Department's Request for Admissions served upon Plaintiff's attorney by attorney for Defendant.

**January 7, 2000**

Department's Pre-Trial Statement and Department's Second Supplemental Answers to Plaintiff's First Set of Interrogatories filed by attorney for Defendant.

**January 10, 2000**

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

**January 24, 2000**

Notice to Attend filed by attorney for Defendant served upon attorney for Plaintiff.

**January 25, 2000**

Plaintiff's Motion in Limine to Preclude Defendant's Expert Testimony and Brief in Support filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff. **Defendant's Response & Brief in Opposition due March 1, 2000.**

**January 28, 2000**

Department's Answer to Plaintiff's Motion in Limine to Preclude Expert Testimony and Department's Brief in Opposition to Plaintiff's Motion in Limine to Preclude Expert Testimony filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant

**January 28, 2000**

Certificate of Service of Plaintiff's Response to Defendant's Request for Admissions filed by attorney for Plaintiff.

**January 31, 2000**

Notice to Attend filed by attorney for Plaintiff served upon attorney for Defendant.

**February 2, 2000**

**CLOSED**  
The Board rendered an Opinion and made the following Order **AND NOW:** this 2nd day of February, 2000 Plaintiff's Motion in Limine to Preclude Defendant's Expert Testimony is **GRANTED**. Defendant's expert Michael J. Minckler, may testify at the time of trial, at the time of trial Plaintiff may introduce any evidence showing they have been prejudiced by the inclusion of the testimony of Mr. Minckler. Copies forwarded to attorney for Plaintiff and attorney for Defendant.

**February 7, 2000**

Hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, commencing at 4:00 p.m.

**February 8, 2000**

Hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, commencing at 4:00 p.m.

**February 9, 2000**

Hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, commencing at 12:00 p.m.

**February 10, 2000**

Hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, commencing at 10:00. a.m.

**February 10, 2000**

Acceptance of Service of Opinion and Order dated February 2, 2000

received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 4, 2000.

---

**March 7, 2000**

Testimony of hearing held February 7, 8 and 9, 2000 filed.

---

**March 9, 2000**

Testimony of hearing held February 10, 2000 filed.

---

**March 14, 2000**

Copy of testimony of hearing held February 7, 8, 9 & 10, 2000 forwarded to attorney for Defendant. **Pltf's Findings of Fact, etc. due 4/13/00.**

---

**April 2, 2000**

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.

---

**May 11, 2000**

Letter received from attorney for Defendant requesting a thirty (30) day extension of time to file Department's Proposed Findings of Fact, Conclusions of Law and Brief in support.

---

**May 15, 2000**

Letter received from attorney for Plaintiff objecting to the Board granting Defendant's thirty (30) day extension of time to file Proposed Findings of Fact, etc.

---

**May 16, 2000**

Letter forwarded to Defendant granting their thirty (30) day extension of time in which to file Department's Proposed Findings of Fact, Conclusions of Law and Brief. DUE 6/12/00.

---

**June 12, 2000**

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

---

**June 12, 2000**

Brief in Support of Department's Proposed Findings of Fact and

Conclusions of Law filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

---

**February 15, 2001**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 15th day of February, 2001, an award is entered in favor of the Claimant, James D. Morrissey, Inc., and against the Defendant, Commonwealth of Pennsylvania, Department of Transportation, in the amount of Two Hundred Four Thousand Seven Hundred Eighty-One Dollars and Thirty-Nine Cents (\$204,781.39) with interest at the rate of six percent (6%) from December 29, 1993. Each party to bear their own costs and attorney fees. Copy forwarded to Attorney for Plaintiff and Defendant, as well as, Chief Deputy Attorney General.

---

**CLOSED**

---

**February 23, 2001**

Acceptance of Service of Opinion and Order dated February 15, 2001 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General February 20, 2001.

---

**February 26, 2001**

Department's Motion for Post-Trial Discovery and Brief in Support of Department's Motion for Post Trial Relief filed by attorney for Defendant. Pltf's Answer due 4/5/01.

---

**March 21, 2001**

Plaintiff'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.

---

**March 30, 2001**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 30th day of March, 2001, Defendant's Motion for Post-Trial Relief is hereby **DENIED** and the Board affirms this award to Plaintiff, James D. Morrissey, Inc." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

---

**March 30, 2001**

Letter forwarded to parties requesting a status report. Due 4/30/01.

---

**April 6, 2001**

Acceptance of Service of Opinion and Order dated March 30, 2001

received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 2, 2001.

---

**April 6, 2001**

Acceptance of Service of Opinion and Order dated March 30, 2001 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 4, 2001.

---

**April 26, 2001**

Petition for Review as filed in Commonwealth Court filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

---

**May 1, 2001**

Copy of Petition for Review received from Commonwealth Court. No. 981 C.D. 2001.

---

October 1, 2002  
Copy of Order received from Supreme Court. Order as follows: **AND NOW**, this 12th day of September, 2002, the Petition for Allowance of Appeal is denied.

---

Commonwealth Court issued Order: **AND NOW**, this 11th day of January, 2002, the order of the Commonwealth of Pennsylvania Board of Claims, dated March 30, 2001, is reversed.

---

**December 9, 2003**

Commonwealth Court returned file.

---