

Docket Number: 2055-P

**PINECREST MANOR**

~~Edward G. Cherry, Esquire~~  
~~Louis J. Capozzi, Esquire~~  
Daniel Natirboff, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF PUBLIC WELFARE**

~~John A. Kane, Chief Counsel~~  
Jason Manne, Assistant Counsel

**January 16, 1996**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$300.00+.

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**January 26, 1996**

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT FEBRUARY 26, 1996.

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**February 2, 1996**

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 30, 1996.

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**February 2, 1996**

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General January 30, 1996.

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**February 7, 1996**

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

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**March 15, 1996**

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

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**March 31, 1997**

Letter forwarded to parties requesting status. Response due from parties May 1, 1997.

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**April 30, 1997**

Status letter filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**April 30, 1997**

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

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**May 2, 1997**

Status letter received from attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 12, 1997**

Withdrawal of Appearance of Latsha, Davis & Yohe filed by Kimber Latsha, Esquire. Copy forwarded to attorney for Plaintiff and attorney for Defendant by Kimber Latsha, Esquire.

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**August 15, 1997**

Claimant's Motion for a Protective Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff. Plaintiff requests 10 days in which to file its Brief in Support.

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**August 25, 1997**

Entry of Appearance of Louis J. Capozzi, Esquire, filed on behalf of Plaintiff.

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**August 25, 1997**

Claimant's Brief in Support of Claimant's Motion for Protective Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 26, 1998**

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

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**June 11, 1998**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 11th day of June, 1998, it is **ORDERED** and **DECREED** that the Plaintiff's, Pinecrest Manor, Motion for Protective Order is hereby **DISMISSED** as being moot. A Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**July 14, 1998**

Letter forwarded to parties requesting status. Response due from parties August 14, 1998.

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**August 17, 1998**

Status letter received from attorney for Plaintiff advising that the parties are in discovery and possible settlement negotiations.

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**April 13, 1999**

Notice of Service of Plaintiff's First Set of Interrogatories to Defendant filed by attorney for Plaintiff.

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**May 19, 1999**

Motion to Compel Answers to Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 21, 1999**

Letter forwarded to attorney for Defendant requesting response to Plaintiff's Motion to Compel Answers to Interrogatories. Response due June 21, 1999.

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**May 24, 1999**

Letter received from attorney for Defendant requesting an extension of time (60 days) in which to file Defendant's response to Plaintiff's Interrogatories.

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**May 25, 1999**

Letter forwarded to attorney for Defendant granting Defendant's request for an extension of time until July 26, 1999 in which to file Defendant's response to Plaintiff's Interrogatories.

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**October 29, 1999**

Letter forwarded to parties requesting status. Response due from parties November 29, 1999.

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**November 8, 1999**

Status letter received from attorney for Plaintiff advising that the parties are in settlement discussions.

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**December 8, 1999**

Letter forwarded to parties requesting status. Response due from parties **January 10, 2000.**

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**June 2, 2000**

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

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**July 11, 2000**

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

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**September 15, 2000**

The Board rendered the following Order: **AAND NOW**, this 15th day of September, 2000, upon Claimant's, Pinecrest Manor, Motion to Compel Answers to Interrogatories and Defendant's, Commonwealth of Pennsylvania, Department of Public Welfare, failure to file a response to said Motion or to answer the interrogatories, it is **ORDERED** and **DECREED** that Defendant file its responses to the interrogatories within twenty (20) days from the date of service of this Order or be subject to sanctions under Pa.R.C.P. 4019.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**September 20, 2000**

Acceptance of Service of Order dated September 15, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 18, 2000.

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**November 15, 2000**

Letter forwarded to parties requesting status. Response due from parties December 15, 2000.

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**December 20, 2000**

Status letter received from attorney for Plaintiff advising that discovery is complete and that the parties are currently negotiating a settlement in this matter.

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**June 20, 2001**

Letter forwarded to parties requesting status. RESPONSE DUE FROM PARTIES JULY 20, 2001.

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**July 19, 2001**

Status letter received from attorney for Plaintiff advising that the Plaintiff is in the process of preparing a settlement offer to Defendant and further if the parties are unable to settle this matter, Plaintiff will request a hearing be set.

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**July 27, 2001**

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

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**August 3, 2001**

Status letter received from attorney for Plaintiff requesting that this case be scheduled for hearing. Plaintiff further advises that this matter will request three consecutive days of hearing in the Board's Greensburg office.

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**August 8, 2001**

Letter received from attorney for Defendant advising that Defendant is against a hearing be set and further advising that this case is not ready for hearing.

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**August 8, 2001**

Defendant's First Motion to Compel Discovery and Brief in Support filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. Response due from Plaintiff September 10, 2001.

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**August 13, 2001**

Status letter replying to Defendant's letter of August 8, 2001, advising that Plaintiff feels this case should move ahead to hearing.

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**August 20, 2001**

The Board rendered the following Order: **AAND NOW**, this 20th day of August, 2001, it is **ORDERED** and **DECREED** that this matter is scheduled for hearing before the Board's Panel, composed of Daniel Bekavac, Esquire, Panel Attorney, and A. T. McLaughlin, P.E., Engineer Member, beginning on November 6, 2001 through November 8, 2001, if necessary. Said hearing shall be held in Room 101, 2900 Seminary Drive, Greensburg, Pennsylvania, commencing at 9:30 a.m. It is further **ORDERED** and **DECREED** that all discovery herein shall be completed no later than forty-

five (45) days prior to November 6, 2001.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**September 5, 2001**

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

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**September 7, 2001**

Notice of Service of Claimant's Answer to DPW's Second Set of Interrogatories as well as DPW's Second Request for Production of Documents filed by attorney for Plaintiff.

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**September 10, 2001**

Letter received from Defendant advising that they responded to the Claimant's document request and requests that Claimant's motion be denied without prejudice to renew the motion upon review of the Defendant's response.

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**September 10, 2001**

Claimant's Response to DPW's First Motion to Compel Discovery and Renewed Motion for a Protective Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**September 12, 2001**

Notice of Service of Deposition to Sam Shamash as well as Deposition to Respondent filed by attorney for Plaintiff.

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**September 12, 2001**

Notice of Service of Deposition to Respondent filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**September 12, 2001**

Notice of Service of Claimant's Response to DPW's Third Request for Interrogatories to Claimant filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for

Plaintiff.

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**September 12, 2001**

Notice of Service of Response to Discovery filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 14, 2001**

DPW's Reply Memorandum in Support of First Motion to Compel Discovery filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 14, 2001**

DPW's Motion in Limine or in Alternative Motion to Stay as well as Brief in Support filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 17, 2001**

DPW's Second Motion to Compel Discovery as well as Brief in Support filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 17, 2001**

DPW's Third Motion to Compel Discovery as well as Brief in Support filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 19, 2001**

Notice of Service of Claimant's Amended Response to DPW's Interrogatories to Claimant filed.

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**September 19, 2001**

Notice of Service of Claimant's Amended Answers to DPW's Second Set of Interrogatories filed.

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**September 19, 2001**

Notice of Service of Claimant's Response to DPW's Third Request for Interrogatories to Claimant filed.

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**September 19, 2001**

Notice of Service of Designation of Witness for Deposition filed  
by attorney for Defendant.

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**September 19, 2001**

Status letter received from attorney for Plaintiff advising that Plaintiff is hereby withdrawing its challenge to the validity of DPW=s nursing hours regulations as well as amended its responses to DPW=s Interrogatories and therefore Plaintiff feels DPW=s Motion in Limine or in the Alternative Motion to Stay should be dismissed as moot.

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**September 21, 2001**

DPW=s Withdrawal of (1) First Motion to Compel Discovery; (2) Second Motion to Compel Discovery; and (3) Motion in Limine or in Alternative Motion to Stay filed by attorney for Defendant via facsimile. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 21, 2001**

Claimant=s Motion to Compel Attendance of a Witness as well as Brief in Support of Claimant=s Motion to Compel Attendance of a Witness at Deposition filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**September 24, 2001**

DPW=s Withdrawal of (1) First Motion to Compel Discovery; (2) Second Motion to Compel Discovery; and (3) Motion in Limine or in Alternative Motion to Stay filed by attorney for Defendant via U.S. Mail. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 24, 2001**

DPW=s Second Motion in Limine or, in the Alternative, Motion to Reopen Discovery and Reschedule Trial as well as DPW=s Memorandum in Support of Second Motion in Limine or, in the Alternative, Motion to Reopen Discovery and Reschedule Trial filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**September 25, 2001**

Claimant=s Withdrawal of its Motion to Compel Attendance of a Witness at Deposition filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**September 27, 2001**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 27th day of September, 2001, it is hereby **ORDERED** that Defendant=s, Commonwealth of Pennsylvania, Department of Public Welfare, Motion in Limine or in the Alternative a Motion to Stay filed with this Board on September 14, 2001, and Defendant=s First Motion to Compel filed on August 8, 2001, and Defendant=s Second Motion to Compel filed on September 17, 2001, are hereby **DISMISSED** as being **MOOT**.@ Copy forwarded to attorney for

Plaintiff and attorney for Defendant.

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**October 2, 2001**

Acceptance of Service of Opinion and Order dated September 27, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 28, 2001.

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**October 9, 2001**

DPW's Third Motion in Limine or in the Alternative Motion to Reopen Discovery and Continue Trial as well as Brief in Support filed by attorney for Defendant via facsimile and U.S. Mail. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 9, 2001**

DPW's Fourth Motion in Limine or in the Alternative Motion to Reopen Discovery and Continue Trial as well as Brief in Support filed by attorney for Defendant via facsimile and U.S. Mail. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 10, 2001**

Letter received from attorney for Plaintiff advising of the agreement of the parties to continue the hearing scheduled as well as a list of the corrections with has occurred. The parties further agree that the discovery deadline will be extended until December 15, 2001 for deposition of Michael Gonsales, Steven Gorlieb, Ian Cohen and Defendant agrees not withdraw all pending discovery motions.

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**October 18, 2001**

Status letter received from attorney for Defendant advising that he is unable to attend the revised hearing dates for January 9, 10, 11, 2002.

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**November 19, 2001**

The Board rendered the following Order: **AAND NOW**, this 19th day of November, 2001, it is **ORDERED** and **DECREED** that this matter originally scheduled for hearing before the Board's Panel, composed of Daniel Bekavac, Esquire, Panel Attorney, and A. T. McLaughlin, P.E., Engineer Member, beginning on January 9, 2002

through January 11, 2002, is rescheduled to January 24 & 25, 2002. Said hearing shall be held in Room 101, 2900 Seminary Drive, Greensburg, Pennsylvania, commencing at 9:30 a.m. It is further **ORDERED** and

**November 19, 2001 (Continued)**

**DECREED** that all discovery herein shall be completed no later than forty-five (45) days prior to January 24, 2001.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**November 27, 2001**

Acceptance of Service of Order dated November 19, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff November 26, 2001.

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**December 25, 2001**

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

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**January 7, 2002**

Defendant's Pretrial Statement filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**January 10, 2002**

Second copy of Defendant's Pretrial Statement filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**January 15, 2002**

Claimant's Motion in Limine and Motion to Quash filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**January 16, 2002**

Amended Claimant's Pre-Hearing Statement filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**January 16, 2002**

Notice to Produce filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**January 18, 2002**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 18th day of January, 2002, in view of Defendant's withdrawal of its Second Motion in Limine or, in the Alternative, Motion to Reopen Discovery and Reschedule Trial filed September 24, 2001, DPW's Fourth Motion in Limine, or in the Alternative, Motion to Reopen Discovery and Continue Trial filed October 9, 2001 and DPW's Third Motion in Limine, or in the Alternative, Motion to Reopen Discovery and Continue Trial filed October 9, 2001, the Motion's are **DISMISSED** with prejudice. Plaintiff's Motion to Compel Attendance of a Witness filed September 21, 2001 and Plaintiff's withdrawal of its Motion Attendance of a Witness filed September 25, 2001, are **DISMISSED** with prejudice.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

**January 18, 2002**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 18th day of January, 2002, Plaintiff's Motion in Limine and Motion to Quash filed with the Board on January 16, 2002, for procedural reasons is hereby **DISMISSED**. Dismissal of this Motion does not preclude or estop Plaintiff from responding at the hearing to the introduction of evidence or witnesses pertaining to Plaintiff's status as a hospital based facility or from challenging the introduction of such evidence.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

**January 18, 2002**

Notice to Attend to Richard Bruno filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

**January 18, 2002**

Notice to Attend to Gregory Bauer filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**January 23, 2002**

DPW's Motion to Disqualify Capozzi and Associates or Alternatively Motion in Limine and Memorandum in Support filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**January 23, 2002**

Claimant's Response to DPW's Motion to Disqualify Capozzi & Associates filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**January 24, 2002**

Acceptance of Service of Opinion and Order dated January 18, 2002 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff January 22, 2002.

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**January 24, 2002**

Panel hearing held (Bekavac/McLaughlin) in Greensburg, PA commencing at 9:30 am.

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**January 25, 2002**

Panel hearing held (Bekavac/McLaughlin) in Greensburg, PA commencing at 9:30 am. Case completed.

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**March 1, 2002**

Testimony of Panel hearing held January 24 & 25, 2002 filed.

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**March 5, 2002**

Copy of testimony of Panel hearing held January 24 & 25, 2002 forwarded to attorney for Defendant. Plaintiff's Findings of Fact, Conclusions of Law and Brief due April 5, 2002.

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**March 19, 2002**

Letter received from attorney for Plaintiff advising that at the time of trial they were advised their Findings of Fact, Conclusions of Law and Brief were due in sixty (60) days not thirty (30).

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**March 20, 2002**

Letter forwarded to Plaintiff advising Plaintiff that their Findings of Fact, Conclusions of Law and Brief are in fact due in sixty (60) days and not thirty (30) as outlined in the Board's letter of March 5, 2002. Plaintiff's Findings of Fact, Conclusions of Law and Brief due May 6, 2002. Defendant's due July 8, 2002.

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**May 1, 2002**

Letter received from attorney for Plaintiff requesting an additional week in which to file Plaintiff's Findings of Fact, Conclusions of Law and Brief.

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**May 2, 2002**

Letter forwarded to attorney for Plaintiff granting Plaintiff's request for an additional week in which to file Plaintiff's Findings of Fact, Conclusions of Law and Brief. DUE MAY 13, 2002.

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**May 14, 2002**

Claimant's Post-Hearing Brief as well as Proposed Findings of Fact filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff. Defendant's due July 8, 2002.

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**May 15, 2002**

Claimant's Amended Post-Hearing Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 30, 2002**

Corrected copy of exhibits C-1, C-3, C-4 and C-6 filed. Plaintiff requests same replace original exhibits presented at hearing by mutual agreement of Plaintiff and Defendant.

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**July 5, 2002**

Letter received from attorney for Defendant requesting an extension of time until August 13, 2002, in which to file Defendant's Post Hearing Brief (Findings of Fact, Conclusions of Law & Brief).

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**July 9, 2002**

Letter forwarded to attorney for Defendant granting Defendant's request for an extension of time until August 13, 2002, in which to file Defendant's Post Hearing Brief (Findings of Fact, Conclusions of Law & Brief).

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**August 12, 2002**

Letter received from attorney for Defendant requesting a second extension of time until September 12, 2002 in which to file Defendant's Post Hearing Brief (Findings of Fact, Conclusions of Law & Brief).

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**August 13, 2002**

Letter forwarded to attorney for Defendant granting Defendant's request for an extension of time until September 12, 2002, in which to file Defendant's Post Hearing Brief (Findings of Fact, Conclusions of Law & Brief).

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**August 28, 2002**

Letter received from attorney for Defendant requesting a third extension of time until October 4, 2002 in which to file Defendant's Post Hearing Brief (Findings of Fact, Conclusions of Law & Brief).

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**August 29, 2002**

Letter forwarded to attorney for Defendant granting Defendant's request for an extension of time until September 12, 2002, in which to file Defendant's Post Hearing Brief (Findings of Fact, Conclusions of Law & Brief).

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**September 30, 2002**

DPW's Response to Claimant's Proposed Findings of Fact and Alternate Proposed Findings of Fact filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 3, 2002**

DPW's Post-Hearing Brief filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 23, 2002**

Letter received from attorney for Plaintiff requesting a two-week extension of time in which to submit Claimant's Reply Brief.

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**October 29, 2002**

Letter forwarded to attorney for Plaintiff granting Plaintiff's request for a two-week extension of time in which to submit Claimant's Reply Brief.

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**November 12, 2002**

Reply Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 19, 2002**

Panel Report (A.T. McLaughlin/Mr. Bekavac) filed.

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**April 14, 2003**

Supplemental Panel Report (A.T. McLaughlin/Mr. Bekavac) filed.

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**June 29, 2005**

Board issued Opinion and Order. Order as follows: "AND NOW, this 29<sup>th</sup> day of June, 2005, it is **ORDERED** and **DECREED** that pursuant to 42 Pa. C.S.A. §5103(a) and Pa. R.C.P. 213(f), this matter and the record thereof is **TRANSFERRED** to the Department of Public Welfare, Bureau of Hearings and Appeals." Copy forwarded to Plaintiff and Defendant.

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**June 30, 2005**

Board transferred file to Department of Public Welfare, Bureau of Hearings and Appeals.

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