

*** CLOSED ***

Docket Number: 2091-P

CONSOLIDATED WITH CASE DOCKET NOS. 2276 & 2426

RITE AID OF PENNSYLVANIA, INC.

Carleton O. Strouss, Esquire
David R. Overstreet, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE**

John A. Kane, Chief Counsel, Esquire
~~Doris M. Leisch, Chief of Litigation~~

*Joseph McHale, Esquire

*Kimberly A. Hendrix, Esquire

*Elizabeth R. Leong, Esquire

STRADLEY, RONON, STEVENS & YOUNG, LLP
Great Valley Corporate Center
30 Valley Stream Parkway
Malvern, PA 19355

CLOSED

April 1, 1996

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$4,825,000.00+

April 5, 1996

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT MAY 6, 1996

April 11, 1996

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 8, 1996.

April 12, 1996

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General April 9, 1996.

May 6, 1996

Preliminary Objections to Plaintiff's Claim filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. DEFENDANT'S BRIEF DUE JUNE 6, 1996.

June 6, 1996

Letter-type Motion for a 10-day extension of time filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 10, 1996

Motion to Dismiss Preliminary Objections for Failure to File a Timely Brief Or in The Alternative, to Suppress Department's Untimely Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 12, 1996

The Board rendered an Opinion and made the following Order: **AAND NOW**, this 12th day of June, 1996, it is **ORDERED** and **DECREED** that the Defendant's letter-type Motion for an extension of time is hereby **GRANTED**. It is further **ORDERED** that Defendant shall file its Brief in Support of Preliminary Objections within ten (10) days

from the exit date of this Order. In view of the foregoing, Plaintiff's Motion to Dismiss Preliminary Objections for Failure to file a Timely Brief or in the Alternative to Suppress Department's Untimely Brief is hereby **DENIED**.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

June 14, 1996

Acceptance of Service of Opinion and Order dated June 12, 1996 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 13, 1996.

June 14, 1996

Acceptance of Service of Opinion and Order dated June 12, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 13, 1996.

June 25, 1996

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

July 15, 1996

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

August 5, 1996

The Board rendered an Opinion and made the following Order: **AAND NOW**, this 5th day of August, 1996, the Preliminary Objections as filed by the Defendant, Commonwealth of Pennsylvania, Department of Public Welfare, are hereby **DENIED**. The Defendant is given thirty (30) days from the exit date of this Order to file its responsive pleadings.@ Copies forwarded to attorney for Plaintiff and attorney for Defendant.

August 7, 1996

Acceptance of Service of Opinion and Order dated August 5, 1996 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 6, 1996.

August 14, 1996

Acceptance of Service of Opinion and Order dated August 5, 1996 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 8, 1996.

September 5, 1996

Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.
Reply to New Matter due from Pltf. October 7, 1996.

October 4, 1996

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

November 13, 1996

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

December 9, 1996

Defendant's Response, Brief and Proposed Order to Plaintiff's Preliminary Objections filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 8, 1997

The Board rendered an Opinion and made the following Order: **AND NOW**, this 8th day of January, 1997, the Preliminary Objections as filed by the Plaintiff, Rite Aid of Pennsylvania, Inc., to the New Matter of the Defendant, Commonwealth of Pennsylvania, Department of Public Welfare, is adjudicated as following: 1 - the affirmative defense of the running of the Statute of Limitations will not be stricken and that will be viewed as an affirmative defense; 2 - the allegation of the jurisdiction of

the Board will not be stricken. The affirmative defense of the jurisdiction of the Board will become part of the New Matter. Paragraphs Twenty-Six (26) through Forty-Two (42), which the Board believes is merely history, will be **STRICKEN**.@ Copies forwarded to attorney for Plaintiff and attorney for Defendant.

January 14, 1997

Acceptance of Service of Opinion and Order dated January 8, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 9, 1997.

January 14, 1997

Acceptance of Service of Opinion and Order dated January 8, 1997 received from attorneys for Plaintiff. Receipt of same acknowledged by attorneys for Plaintiff January 13, 1997.

January 28, 1997

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

July 11, 1997

The Board rendered an Opinion and made the following Order: **AND NOW**, this 11th day of July, 1997, it is **ORDERED** and **DECREED** that the three cases, Docket Nos. 2091, 2276 and 2426 are hereby consolidated for trial. It is further **ORDERED** and **DECREED** that these cases be **STAYED** pending resolution of the parallel issue presently before the United States District Court for the Eastern District of Pennsylvania.@ Copies forwarded to attorney for Plaintiff and attorney for Defendant.

July 15, 1997

Acceptance of Service of Opinion and Order dted July 11, 1997 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff July 14, 1997.

July 23, 1997

Acceptance of Service of Opinion and Order dated July 11, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 15, 1997.

November 26, 1997

Stipulation with Respect to Prospective Claims and Proposed Order, duly executed and filed by parties.

December 5, 1997

Proposed Order, which was filed by parties, executed by Judge Clipper. Order as follows: **AND NOW**, this 5th day of December, 1997, upon consideration of a Stipulation with Respect to Prospective Claims presented jointly by Rite Aid of Pennsylvania, Inc. and the Department of Public Welfare, it is Ordered that such stipulation is accepted and approved.® Copies forwarded to attorneys for Plaintiff and attorney for Defendant.

December 9, 1997

Acceptance of Service of Order dated December 5, 1997 received from attorneys for Plaintiff. Receipt of same acknowledged by attorneys for Plaintiff December 8, 1997.

December 15, 1997

Acceptance of Service of Order dated December 5, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant (undated).

March 10, 1998

Letter forwarded to parties requesting a status report be filed. Status Report due on or before April 9, 1998.

April 9, 1998

Status Report filed by from attorney for Plaintiff which advises that these matters are still pending before the Federal Court and trial is scheduled before that Court for August, 1998. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 4, 1998

Motion to Lift Stay of Proceedings and to Convene Status Conference Pursuant to BOC R.P. 501(a), Brief in Support of Motion to Lift Stay and to Convene Status Conference and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 7, 1998

Defendant's Response in Opposition to Plaintiff's Motion to Stay and to Convene a Status Conference as well as Defendant's Brief in Opposition to Plaintiff's Motion to Lift Stay filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 14, 1998

Plaintiff's Reply Memorandum in Support of Motion to Lift Stay filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 28, 1999

The Board rendered an Opinion and made the following Order: **AND NOW**, this 28th day of January, 1999, upon consideration of Plaintiff's Motion to Lift Stay and to Convene a Status Conference pursuant to BOC R.P. 501(a), it is hereby **ORDERED** that the motion is **GRANTED** and the stay of proceedings entered by the Board on July 11, 1997 is hereby lifted. The claims shall proceed forward on a consolidated basis. **FURTHER, IT IS ORDERED** that within thirty (30) days of the exit date of this Order, each party shall submit a proposed schedule for discovery and for any dispositive motions which it may file. A status conference pursuant to BOC 501(a) will be scheduled by the Board.® Copy forwarded to attorneys for Plaintiff and attorney for Defendant.

February 1, 1999

Acceptance of Service of Opinion and Order dated January 28, 1999 received from attorneys for Plaintiff. Receipt of same acknowledged by attorneys for Plaintiff January 29, 1999.

***February 19, 1999**

Entry of Appearance of Joseph McHale, Esquire, Kimberly A. Hendrix, Esquire and Elizabeth R. Leong, Esquire, on behalf of Defendant, filed by attorney for Defendant.

February 26, 1999

Plaintiff's Memorandum Regarding Schedule and Proposed Scheduling Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

March 1, 1999

Defendant's AScheduling Order® filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 19, 1999

Letter received from attorney for Plaintiff, advising that, as agreed to by all parties and Senior Counsel to the Board, the Answer as filed in Docket No. 2091 shall be deemed asserted with respect to the Statements of Claim filed by the Plaintiff in Docket Nos. 2276 and 2426, as well as the Answer to New Matter with respect to Defendant's New Matter in all three claims.

March 23, 1999

The Board made the following Scheduling Order: **AND NOW**, this 23rd day of March, 1999, upon consideration of presentations by the parties, this Scheduling Order is hereby entered pursuant to BOC R.P. 501(a)(2), and it is hereby **ORDERED**: 1. In order to facilitate the consolidation of the three above-captioned matters, said consolidation having been previously ordered by the Board's Order of July 11, 1997, the answers and defenses asserted by the Defendant in its Answer filed at Docket No. 2091 on September 4, 1996 (as limited by the Board's Order of January 8, 1997), shall also be deemed asserted with respect to the Statements of Claim filed by the Plaintiff at Docket Nos. 2276 and 2426. 2. The Answer to New Matter filed by Plaintiff on January 28, 1997, shall be deemed asserted with respect to Defendant's New Matter in all three claims. 3. Pleadings and other filings subsequent hereto shall be filed and docketed only to Docket No. 2091, without the necessity of filing additional copies of Docket Nos. 2276 and 2426. 4. Discovery shall be concluded by June 25, 1999. 5. Motions for Partial Summary Judgment, or Summary Judgment, together with their Briefs in Support thereof, shall be filed on or before July 1, 1999. 6. Briefs in Opposition to Motions for Partial Summary Judgment or Summary Judgment shall be filed on or before July 30, 1999. 7. Reply Briefs in Support of Motions for Partial Summary Judgment or Summary Judgment shall be filed on or before August 19, 1999.®

Copy forwarded to attorneys for Plaintiff and attorneys for Defendant.

March 26, 1999

Acceptance of Service of Scheduling Order dated March 23, 1999 received from attorneys for Plaintiff. Receipt of same acknowledged by attorneys for Plaintiff March 25, 1999.

March 29, 1999

Acceptance of Service of Scheduling Order dated March 23, 1999 received from attorneys for Defendant. Receipt of same acknowledged by attorneys for Defendant March 25, 1999.

October 28, 1999

Letter forwarded to parties requesting a Status Report. Status Report due on or before **November 29, 1999**.

November 24, 1999

Status Report filed by Plaintiff, and concurred to by Defendant, advising that the parties expect to be able to advise the Board, within the next 30 days, that a settlement has been approved, for the above-captioned matters.

March 16, 2000

Letter forwarded to parties requesting a Status Report. Status Report due on or before **April 17, 2000**.

April 3, 2000

Status Report filed by attorney for Plaintiff, and concurred to by attorney for Defendant, advising that the parties believe that settlement of all outstanding federal and state court litigation, including all proceedings before the Board, is likely in the near future.

October 17, 2000

Letter forwarded to parties requesting a Status Report. Status Report due on or before November 16, 2000.

November 14, 2000

Letter received from attorney for Defendant advising that the parties have reached an agreement in principal to settle these cases, that Plaintiff has submitted an executed settlement agreement to the Defendant; however, Defendant has deferred execution of same pending attempts to obtain approval from the Federal Healthcare Financing Administration for settlement of an unrelated matter which will create an offset against amounts owed by Plaintiff to Defendant pursuant to the settlement agreement.

November 20, 2000

Letter forwarded to attorney for Defendant, with copy to attorney for Plaintiff, granting Defendant's request for a

general continuance of this matter pending finalization of settlement between the parties. Status Report due from parties on or before **February 20, 2000.**

February 16, 2001

Status Report received from attorney for Plaintiff advising that through negotiations, the parties reached an agreement in principle to settle these lawsuits and reasonably believe that settlement of all outstanding federal and state court litigation, including all of the proceedings before the Board, is likely in the near future.

August 23, 2001

Letter forwarded to parties requesting a Status Report. Status Report due on or before **September 24, 2001**.

September 24, 2001

Status Report received from attorneys for Plaintiff advising that they have been advised that DPW reasonably believes that settlement of all outstanding federal and state court litigation, including all of the proceedings before the Board, is likely in the near future and wants this matter to be continued generally pending said settlement.

September 27, 2001

Letter forwarded to attorneys for Plaintiff, with copy to attorneys for Defendant, granting Plaintiff a sixty (60) day extension of time pending settlement. Status Report due on or before **November 26, 2001**.

November 26, 2001

Status Report received from attorney for Plaintiff wherein they request a general continuance pending settlement.

November 28, 2001

Letter forwarded to attorney for Plaintiff, with copies to attorneys for Defendant, granting Plaintiff's request for a general continuance of this matter.

December 22, 2004

Plaintiff filed Praecipe for Discontinuance. Copy forwarded to Defendant.

December 23, 2004

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 23rd day of December, 2004, upon receipt of a Praecipe For Discontinuance filed by Raymond Pepe, Esquire, docketed with this Board under date of December 22, 2004, it is **ORDERED** and **DIRECTED** that said cases be marked "closed, discontinued and ended with prejudice."

January 4, 2005

Plaintiff filed Acceptance of Service of Opinion and Order dated December 23, 2004. Receipt of same acknowledged by Plaintiff December 27, 2004.