

Docket Number: 2267

~~\*ON-POINT TECHNOLOGY SYSTEMS, INC.~~  
~~LOTTERY ENTERPRISES, INC.~~

~~\*\*David R. Overstreet, Esquire~~  
~~\*Robert W. Hayes, Esquire~~

VS.

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF REVENUE  
AND  
DEPARTMENT OF GENERAL SERVICES

~~Gregory C. Santoro, Chief Counsel~~  
~~Michael J. Semes, Chief Counsel~~  
Peter M. Good, Assistant Counsel

**CLOSED**

**September 13, 1996**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$4,000,000.00. \*\$21,000,000.00)

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**September 27, 1996**

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT OCTOBER 28, 1996.

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**OCTOBER 3, 1996**

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 1, 1996.

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**October 4, 1996**

Acceptance of Service of Claim received from attorney for Defendant (Department of General Services). Receipt of same acknowledged by attorney for Defendant (Department of General Services) October 2, 1996.

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**October 23, 1996**

Preliminary Objection to Plaintiff's Claim and Brief in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. **Response and Brief due from Plaintiff 12/4/96.**

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**November 7, 1996**

Stipulation Regarding Continuance executed and filed by parties.

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**\*January 16, 1997**

Amended Claim filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff. Response due from Defendant March 3, 1997.

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**February 6, 1996**

The Board rendered an Opinion and made the following Order: **AAND NOW, this 6th day of February, 1997, it is ORDERED and DECREED that the Preliminary Objections filed by the Defendants, Commonwealth of Pennsylvania, Department of Revenue and Department of General Services are DISMISSED as having been rendered moot by the filing of the Amended Claim. It is further ORDERED and DECREED that the case hereafter be known as On-Point Technology Systems, Inc. and that the amended amount of**

**the Claim shall be Twenty-One Million Dollars (\$21,000,000.00). Defendant is directed to file their response to Plaintiff's Amended Claim within thirty (30) days from receipt of same. Copy forwarded to attorney for Plaintiff and attorney for Defendants.**

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**March 6, 1997**

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

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**April 1, 1997**

Acceptance of Service of Opinion and Order dated February 5, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 10, 1997.

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**April 1, 1997**

Acceptance of Service of Amended Claim dated February 5, 1997 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 10, 1997.

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**April 9, 1997**

Stipulation as to Schedule for Filings with Respect to Defendant's Preliminary Objections to Plaintiff's Amended Statement of Claim filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 12, 1997**

Letter forwarded to parties requesting status of case. Response due from parties June 12, 1997.

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**May 23, 1997**

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

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**June 13, 1997**

Plaintiff's Response and Brief to Defendant's Preliminary Objections to Plaintiff's Amended Complaint filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 23, 1997**

Withdrawal of Appearance of Raymond Pepe, Esquire and David R. Over street, Esquire, filed on behalf of Plaintiff and Entry of Appearance of Stephen Cozen, Esquire, Robert W. Hayes, Esquire and Sarah E. Davies, Esquire filed on behalf of Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**February 26, 1998**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 26th day of February, 1998, it is **ORDERED** and **DIRECTED** that the Preliminary Objections filed by the Defendants=, Commonwealth of Pennsylvania, Department of Revenue and Department of General Services, are hereby **DENIED**. Defendant is given thirty (30) days in which to file their response to Plaintiff's Amended Claim.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**March 9, 1998**

Acceptance of Service of Opinion and Order dated February 26, 1998 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff March 5, 1998.

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**March 30, 1998**

Letter forwarded to parties requesting status. Response due from parties April 30, 1998.

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**March 27, 1998**

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

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**April 2, 1998**

Letter forwarded to attorney for Plaintiff requesting response to Defendant's New Matter. Response due May 2, 1998.

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**May 1, 1998**

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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**May 5, 1998**

Letter forwarded to parties directing parties to commence with discovery.

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**May 5, 1998**

Status letter received from attorney for Plaintiff advising that the parties are in discovery. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 13, 1998**

Praecipe to Substitute Verification of counsel filed with the Answer to New Matter of Plaintiff filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 27, 1998**

Acceptance of Service of Opinion and Order dated February 26, 1998 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 3, 1998.

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**July 1, 1998**

Certificate of Service of Defendants= Answers to Interrogatories, Response to Request for Production of Documents and Response to Requests for Admissions filed by attorney for Defendant.

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**September 28, 1998**

Petition of Plaintiff for Admission Pro Hac Vice of Miles D. Scully and Kevin W. Alexander and Proposed Order filed by attorney for Plaintiff.

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**September 30, 1998**

The Board rendered the following Order: ~~A~~AND NOW, this 30th day of September, 1998, upon consideration of the Petition of Plaintiff On-Point Technology Systems, Inc. For Admission Pro Hac Vice of Miles D. Scully and Kevin W. Alexander, and any response thereto, it is hereby ORDERED that the Petition is GRANTED.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**October 5, 1998**

Acceptance of Service of Order dated September 30, 1998 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 1, 1998.

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**October 9, 1998**

Motion of Plaintiff On-Point Technology Systems, Inc. to Compel Discovery Responses filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**October 14, 1998**

Letter forwarded to attorney for Defendant requesting response to Plaintiff's Motion to Compel Discovery Responses. Response due November 16, 1998.

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**October 26, 1998**

Acceptance of Service of Order dated September 30, 1998 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 12, 1998.

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**November 6, 1998**

Defendant's Answer to Plaintiff's Motion to Compel Discovery Responses and Memorandum of Law in Support filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**January 29, 1999**

The Board rendered an Opinion and made the following Order: **AND NOW**, this 28th day of January, 1999, it is **ORDERED** and **DECREED** that Plaintiff's, On-Point Technology Systems, Inc., Motion to Compel Responses is **GRANTED** and that Defendants, Department of Revenue and Department of General Services, are required to more fully and completely answer Interrogatories No. 1, 9 and 10. It is further **ORDERED** and **DECREED** that the objection to Interrogatory No. 5 is **DISMISSED**.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**February 5, 1999**

Acceptance of Service of Opinion and Order dated January 28, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 1, 1999.

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**February 10, 1999**

Acceptance of Service of Opinion and Order dated January 28, 1999 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 1, 1999.

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**March 2, 1999**

Letter/Certificate of Service of Defendant's Supplemental Answers to Plaintiff's First Set of Interrogatories.

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**March 19, 1999**

Notice of Service for the Notice of Deposition of Arthur Florio and Charles Kline filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**August 6, 1999**

Defendant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment and Brief in Support filed by attorney for Defendant. **Response due from Plaintiff September 10, 1999.**

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**August 18, 1999**

Letter received from attorney for Plaintiff requesting an extension of time until October 7, 1999 in which to response to Defendant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment.

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**August 24, 1999**

Letter forwarded to attorney for Plaintiff granting Plaintiff's request for an extension of time until October 7, 1999 in which to response to Defendant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment.

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**October 4, 1999**

Letter received from attorney for Plaintiff an extension of time until October 28, 1999 in which to respond to Defendant's Motion for Partial Summary Judgment on the Pleadings.

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**October 6, 1999**

Letter forwarded to attorney for Plaintiff granting Plaintiff's request for an extension of time until October 28, 1999 in which to respond to Defendant's Motion for Partial Summary Judgment on the Pleadings. **Response due October 28, 1999.**

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**October 28, 1999**

Opposition of Plaintiff on-Point Technology to Defendant's Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment as well as Brief in Support filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**November 8, 1999**

Praecipe to Substitute Declaration Signature Page filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**November 23, 1999**

Supplemental Submission in Support of the Opposition of Plaintiff On-Point Technology Systems, Inc. to Defendants' Motion for Judgment on the Pleadings or in the Alternative Motion for Summary Judgment filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**June 5, 2000**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 5th day of May, 2000, it is **ORDERED** and **DECREED** that after review of the Defendants', Commonwealth of Pennsylvania, Department of Revenue and Department of General Services, Motion for Summary Judgment on the Pleadings or in the Alternative Motion for Summary Judgment and On-Point's responses thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **DENIED**. The parties herein are directed to contact Senior Counsel to the Board of Claims to schedule the above-referenced matter for hearing." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**June 9, 2000**

Acceptance of Service of Opinion and Order dated June 5, 2000 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 6, 2000.

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**June 12, 2000**

Acceptance of Service of Opinion and Order dated June 5, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 8, 2000.

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**July 25, 2000**

The Board rendered the following Order: **AND NOW**, this 25th day of July, 2000, it is **ORDERED** and **DECREED** that this matter is set for a hearing before the Board beginning on April 9-13, 2001, as well as, April 16-20, 2001, if necessary. Said hearing shall be held in Courtroom No. 1, 6th Floor, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 am. It is further **ORDERED** and **DECREED** that all discovery be completed no later than forty-five (45) days prior to the commencement of the trial.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**July 27, 2000**

Acceptance of Service of Order dated July 25, 2000 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 27, 2000.

**July 31, 2000**

Acceptance of Service of Order dated July 25, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff July 28, 2000.

**July 25, 2000**

Acceptance of Service of Order dated July 25, 2000 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 27, 2000.

**March 8, 2001**

Plaintiff, On-Point Technologies, Inc.'s Pre-Trial Statement filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

**March 9, 2001**

Letter received via fax advising that Plaintiff feels prior to the hearing in the matter a settlement conference may help the parties to settle this case.

**March 15, 2001**

Settlement conference set for March 22, 2001 @ 1:00 p.m. in Judge Clipper's Chambers.

**March 16, 2001**

Defendant's Pre-Trial Statement filed.

**March 16, 2001**

Defendants', Department of General Services and Department of Revenue Motion for Service as well as supporting Brief filed by attorney for Defendant.

**April 6, 2001**

Stipulation of Facts not in Dispute as well as Plaintiff's Supplemental Identification of Witnesses and Summary of Testimony filed by attorney for Plaintiff.

**April 9, 2001**

Hearing held in Board's Courtroom No. 1, 200 North Third Street,

Suite 600, Harrisburg, Pennsylvania commencing at 9:30 a.m.

**April 10, 2001**

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania commencing at 9:30 a.m.

**April 11, 2001**

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania commencing at 9:30 a.m.

**April 12, 2001**

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania commencing at 9:30 a.m. Hearing continued until April 17, 2001 @ 10:00 am.

**April 17, 2001**

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 600, Harrisburg, Pennsylvania commencing at 11:00 am. Case Completed.

**May 2, 2001**

Testimony of hearing held April 9 & 10, 2001 filed. Copy forwarded to attorney for Defendant.

**May 11, 2001**

Testimony for hearing held April 11, 2001 filed.

**May 14, 2001**

Testimony for hearing held April 11, 2001 forwarded to attorney for Defendant.

**May 17, 2001**

Testimony for hearing held April 12 & 17, 2001 filed.

**May 18, 2001**

Testimony for hearing held April 12 & 17, 2001 forwarded to attorney for Defendant. Plaintiff's Findings of Fact, Conclusion of Law and Brief due on June 18, 2001, Defendant's Findings of Fact, Conclusion of Law and Brief due on July 18, 2001.

**May 22, 2001**

Acceptance of Service of testimony received from attorney for Defendant. Receipt of same acknowledged by attorney for

Defendant May 18, 2001.

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**May 24, 2001**

Acceptance of Service of testimony received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 22, 2001.

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**June 18, 2001**

Plaintiff's Proposed Findings of Facts, Conclusions of Law and Brief filed. Copy forwarded to attorney for Defendant by attorney for Plaintiff. Defendant's due July 18, 2001.

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**July 17, 2001**

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

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**August 17, 2001**

Reply of Plaintiff, On-Point Technology Systems, Inc., in Support of Plaintiff's Findings of Fact and Conclusions of Law filed by attorney for Plaintiff.

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**March 21, 2002**

The Board rendered the following Opinion and Order: **AAND NOW**, this day of March, 2002, an award is hereby entered in favor of the Plaintiff, On-Point Technology Systems, Inc. and against the Defendants, Commonwealth of Pennsylvania, Department of Revenue and Department of General Services as follows: a. Reduced payment withheld on the 1993 contract. \$21,645.00 b. Improper penalty assessment under the 1993 contract. \$37,695.00 c. Repair and service upon expired warranty items. \$70,202.00 d. Loss of profits, 1995 contract upon sales. \$1,851,000.00 e. Loss of profits, 1995 contract upon annual service. \$1,615,000.00 f. Reliance damages for advance money spent. \$932,507.52 **TOTAL PRINCIPAL DAMAGE \$4,528,049.52** Further, it is hereby **ORDERED** that interest is awarded upon the award herein at six percent (6%) per annum as follows: a. On \$21,645.00 from April 1, 1996, the payment due date. b. On \$37,695.00 from April 1, 1996, the payment due date. c. On \$70,202.00 from March 15, 1997, the date of the last shipment date. d. On \$1,851,000.00 from December 31, 1996, the estimated completion delivery date. e. On \$1,615,000.00 upon annual due payments as follows: (1)

\$323,000.00 commencing December 31, 1996. (2)\$323,000.00 commencing December 31, 1997. 3)\$323,000.00 commencing December 31, 1998. (4)\$323,000.00 commencing December 31, 1999. (5) \$323,000.00 commencing December 31, 2000. f. On \$932,507.52 from July 25, 1996, the date of the Commonwealth's breach.@ Copy forwarded to attorney for Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

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**March 25, 2002**

Acceptance of Service of Opinion and Order dated March 21, 2002 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 21, 2002.

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**March 28, 2002**

Acceptance of Service of Opinion and Order dated March 21, 2002 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General March 26, 2002.

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**April 11, 2002**

Petition for Review received from Commonwealth Court. (No. 885 C.D. 2002)

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**May 1, 2002**

File transmitted to Commonwealth Court. (No. 885 C.D. 2002)

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**March 17, 2003**

Commonwealth Court issued Opinion and Order. Order as follows:  
**NOW**, March 17, 2003, the order of the Board of Claims in the above captioned matter is affirmed as to the damages awarded pursuant to the 1993 contract, but reversed as to all additional damages.

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**November 20, 2003**

Case transferred to Supreme Court. [264 MAP 2003].

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**March 30, 2005**

Supreme Court rendered an Opinion and Order. Order as follows:

**AND NOW**, this 30<sup>th</sup> day of March, 2005 the Order of the Commonwealth Court is hereby **AFFIRMED**.

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**May 19, 2005**

File returned from Commonwealth Court.