

Docket Number: 2295

BNZ MATERIALS, INC.

~~Lawrence J. Baldasare, Esquire~~
Karen F. Bove, Esquire

VS.

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY, STATE WORKERS' INSURANCE FUND
~~J. Matthew Wolfe, Chief Counsel~~
Mary T. Fox, Esquire (SWIF)
Elaine Lytle Mead, Deputy Chief Counsel (SWIF)
Richard C. Lengler, Deputy Chief Counsel - (Labor & Industry)

December 2, 1996

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim:\$90,041.80.

December 17, 1996

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT January 16, 1997.

December 24, 1996

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December 20, 1996.

CLOSED

Motion for Enlargement of Time filed, via facsimile, by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 23, 1997

Letter forwarded to attorney for Defendant, with copy to attorney for Plaintiff, granting Def's Motion for Enlargement of Time. **Defendant's Responsive Pleading due February 17, 1997**

February 14, 1997

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

March 24, 1997

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

March 28, 1997

Letter forwarded to attorney for Plaintiff and attorney for Defendant directing them to proceed with discovery.

September 30, 1997

Letter forwarded to parties requesting status report. STATUS REPORT DUE ON OR BEFORE OCTOBER 30, 1997.

October 30, 1997

Letter/Status Report received from Plaintiff advising that Plaintiff is in the process of serving written discovery and once depositions are completed, Plaintiff will be in a position to proceed to trial.

July 22, 1999

Letter forwarded to parties requesting status report. Status Report due on or before August 23, 1999.

CLOSED

August 23, 1999

Letter/Status Report received from attorney for Plaintiff advising that by the time we receive this letter, they believe that they will have spoken with Defendant and secured dates for the depositions that Defendant desires to take in this case.

January 18, 2000

Notice of Deposition of Darryl Boehmer filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 12, 2000

Motion for Summary Judgement, Proposed Order, and Brief in Support of Motion for Summary Judgment filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 12, 2000

Plaintiff's Consented to Motion for Extension of Time of 5 days from the date of taking the deposition of the Designee of the US Postal Service, for Plaintiff to file its Response/Brief in Opposition to Defendant's Motion for Summary Judgment, filed by attorney for Plaintiff, via facsimile. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 15, 2000

Plaintiff's Consented to Motion for Extension of Time of 5 days from the date of taking the deposition of the Designee of the US Postal Service, for Plaintiff to file its Response/Brief in Opposition to Defendant's Motion for Summary Judgment, filed by attorney for Plaintiff, via US Mail. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 18, 2000

The Board made the following Order: "**AND NOW**, this 18th day of May, 2000, upon consideration of Plaintiff's/Claimant's, BNZ Materials, Inc, Consented to Motion for Extension of Time, it is **ORDERED** that said Motion is **GRANTED**. Plaintiff/Claimant shall file its Answer and Brief in Opposition to Defendant's Motion for Summary Judgment not later than five (5) days after the date of the deposition of the Designee of the United State Postal Service. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

May 30, 2000

Letter/Request for an extension of time (Per the Parties' Agreement) until June 9, 2000 for Plaintiff to file its Brief in Opposition to Motion for Summary Judgment with Defendant's Reply Brief due 10 days from receipt of service of Plaintiff's Opposition Brief filed by attorney for Plaintiff, via facsimile. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

May 18, 2000

Acceptance of Service of Order dated May 18, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 22, 2000.

May 22, 2000

Acceptance of Service of Order dated May 18, 2000 received from attorney for Defendant (Richard Lengler). Receipt of same acknowledged by attorney for Defendant May 22, 2000.

June 12, 2000

Plaintiff's Response to Defendant's Motion for Summary Judgment, Brief in Opposition to Defendant's Motion for Summary Judgment and Appendix to Plaintiff's Brief in Opposition filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 23, 2000

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

July 18, 2000

Motion for Leave of Court to File a Response to Defendant's Reply Brief and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

July 25, 2000

The Board made the following Order: **"AND NOW**, this 25th day of July, 2000, it is hereby Ordered, Adjudged and Decreed that Plaintiff's Motion for Leave of Court to File a Response to the Reply Brief for Defendant is hereby granted." Copy forwarded to attorneys for Plaintiff and attorney for Defendant.

July 28, 2000

Acceptance of Service of Order dated July 25, 2000 received from attorney for Defendant (Fox). Receipt of same acknowledged by attorney for Defendant July 28, 2000.

August 2, 2000

Acceptance of Service of Order dated July 25, 2000 received from attorney for Defendant (Lengler). Receipt of same acknowledged by attorney for Defendant July 28, 2000.

August 4, 2000

Acceptance of Service of Order dated July 25, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 1, 2000.

September 18, 2000

Plaintiff's Sur-Reply Brief in Opposition to Defendant's Motion for Summary Judgment filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 2, 2000

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 2nd day of November, 2000, after consideration of Defendant's Motion for Summary Judgment, and the Briefs filed in opposition and support thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **DENIED**." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

November 6, 2000

Acceptance of Service of Opinion and order dated November 2, 2000 received from attorney for Defendant (Lengler). Receipt of same acknowledged by attorney for Defendant November 6, 2000.

November 13, 2000

Acceptance of Service of Opinion and Order dated November 2, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff November 6, 2000.

March 30, 2001

The Board made the following Order: "AND NOW, this 30th day of March, 2001, it is **ORDERED** and **DECREED** that this matter is set for a hearing before the Board's Panel, composed of Frederick D. Giles, Esquire, Panel Attorney, and Conrad E. Kammer, P.E., Engineer, Member, beginning on September 5, 2001 through September 7, 2001, if necessary. Said hearing shall be held in Courtroom No. 2, 4th Floor, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m.

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.

April 5, 2001

Acceptance of Service of Order dated March 30, 2001 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 2, 2001.

April 5, 2001

Acceptance of Service of Order dated March 30, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 2, 2001.

August 3, 2001

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

August 6, 2001

Notice to Attend Pursuant to Pa. Rule R.C.P. 234.3(a) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

August 8, 2001

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

September 4, 2001

Plaintiff's First Supplemental Pre-Trial Statement, Plaintiff's Second Supplemental Pre-Trial Statement as well as a Notice to Produce Pursuant to Pa. Rule R.C. P. 234.3(b) filed by attorney for Plaintiff.
Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 4, 2001

Letter received from Defendant relative to Plaintiff's Supplemental Pre-Trial Statements; and advising that the letter supplements Defendant's Pre-Hearing Statement to the extent necessary to reserve the right to call, or recall, as its witness, any of its employees appearing on Plaintiff's witness list and directed to appear at hearing under a notice to attend.

Panel Hearing held (Giles/Kambic) this date in Board of Claims Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, PA, commencing at 9:30 a.m.

September 6, 2001

Panel Hearing held (Giles/Kambic) this date in Board of Claims Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, PA, commencing at 9:30 a.m. Case Completed.

October 19, 2001

Testimony for Panel Hearing held September 5, 2001 filed.

October 22, 2001

Copy of testimony for Panel Hearing held September 5, 2001 forwarded to attorney for Defendant.

October 23, 2001

Testimony for Panel Hearing held September 6, 2001 filed.

October 25, 2001

Copy of testimony for Panel Hearing held September 6, 2001 forwarded to attorney for Defendant. **Plaintiff's Findings of Fact, etc. due on or before November 26, 2001.**

October 29, 2001

Acceptance of Service of testimony of hearing held September 5, 2001 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 26, 2001.

October 31, 2001

Acceptance of Service of testimony of hearing held September 6, 2001 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 29, 2001.

November 2, 2001

Proposed Corrections to Transcripts filed by Defendant, requesting the Board to direct the Court Reporter to correct same or such other relief as is just and proper. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 8, 2001

Letter received from attorney for Plaintiff requesting an extension of time until January 3, 2002 in which to file Plaintiff's Findings of Fact, Conclusions of Law and Brief in Support.

November 8, 2001

Letter forwarded to attorney for Plaintiff, with copy to attorney for Defendant, granting Plaintiff's request for an extension of time to file Plaintiff's Findings of Fact, Conclusions of Law and Brief.

Plaintiff's Findings, etc. now due on or before January 3, 2002.

January 4, 2002

Proposed Findings of Fact, Conclusions of Law and Order as well as Brief of Plaintiff - Claimant, BNZ Materials, Inc., filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 10, 2002

The Board made the following Order: "**AND NOW**, this 10th day of January, 2002, upon consideration of Defendant's Proposed Corrections to Transcripts and Plaintiff's lack of response thereto, it is **ORDERED** that the Transcript of Proceedings held September 5, 2001, in this matter be corrected as follows:

Page	Line	Present Text	Corrected Text
10	5	Everett	Effort
24	23	make	name
37	11	The witness	Mr. Lengler
37	18	Baldsare	Lengler
95	5	Everett	Effort
95	5	or	of
136	1	Gerald Palmer	Darryl Boehler
176	15, 18, 21	Englada	Anglada
177	8	Englada	Anglada
187	6	Englada	Anglada
228	30	on	no
234	8, 12	P-3	D-3
235	2	P-3	D-3
268	1	no	on
288	9	Kagul Dairy	Kay Galdieri
290	4	Kirnoshak	Keronshek
293	15	t	to
294	1	sing	sign

Therefore, the Court Reporter, Commonwealth Reporting Company, Inc., is **DIRECTED** to cause these changes to be made to the transcript within thirty (30) days of the exit date of this Order." Copy forwarded to attorney for Plaintiff, attorneys for Defendant and Commonwealth Reporting Company.

January 15, 2002

Acceptance of Service of Order dated January 10, 2002 received from attorney for Defendant (Lengler). Receipt of same acknowledged by attorney for Defendant January 14, 2002.

January 22, 2002

Acceptance of Service of Order dated January 10, 2002 received from attorney for Defendant (Fox). Receipt of same acknowledged by attorney for Defendant January 17, 2002.

January 25, 2002

Acceptance of Service of Order dated January 10, 2002 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff January 14, 2002.

February 4, 2002

Brief for Defendant, State Workmen's Insurance Fund (including proposed Findings of Fact and Conclusions of Law) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 12, 2002

Corrected copy of testimony of Panel Hearing held September 6 and 7, 2001 filed.

February 14, 2002

Corrected copy of testimony of Panel Hearing held September 6 and 7, 2001 forwarded to attorney for Defendant.

February 21, 2002

Acceptance of Service of corrected copy of testimony of Panel Hearing held September 6 and 7, 2002 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 19, 2002.

May 7, 2002

Panel Report (Giles/Kambic) filed.

July 31, 2002

Praecipe for Substitution of Counsel filed by Karen F. Bove, Esquire, on behalf of Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 3, 2002

Praecipe for Withdrawal of Appearance of Lawrence J. Baldasare, Esquire, on behalf of Plaintiff, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 17, 2002

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 17th day of October, 2002, after hearing, it is **ORDERED** and **DECREED** that judgment be entered in favor of Defendant, Commonwealth of Pennsylvania, Department of Labor & Industry, State Workers' Insurance Fund, and against Plaintiff, BNZ Materials, Inc.

All claims are **DISMISSED WITH PREJUDICE**. Each party shall bear its own costs and attorney's fees." Copy forwarded to attorney for Plaintiff, attorneys for Defendant and Chief Deputy Attorney General.

October 23, 2002

Acceptance of Service of Final Opinion and Order received from attorney for Defendant (Mingler). Receipt of same acknowledged by attorney for Defendant October 21, 2002.

October 25, 2002

Acceptance of Service of Final Opinion and Order dated October 18, 2002 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 18, 2002.

October 28, 2002

Acceptance of Service of Final Opinion and Order dated October 17, 2002 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 21, 2002.