

Docket Number: 2553

**BALFOUR BEATTY CONSTRUCTION, INC.**

Charles W. Rubendall, II, Esquire

Donald M. Lewis, III, Esquire

\*Sean M. Dillon, Esquire (Co-Counsel)

\*Gregory S. Martin, Esquire (Co-Counsel)

VS.

**CLOSED**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

~~John J. Robinson, Jr., Chief Claims Attorney~~

Jeffrey W. Davis, Assistant Counsel

Gerald R. Schultz, Assistant Counsel (Co-Counsel)

**January 7, 1998**

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

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**January 14, 1998**

Copies of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. **ANSWER DUE FROM DEFENDANT: February 13, 1998.**

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**January 21, 1998**

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 14, 1998.

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**CLOSED**

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Letter received from attorney for Defendant requesting until March 2, 1998, in which to file its responsive pleading to Plaintiff's Complaint. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**February 18, 1998**

Petitions for Admission, Pro Hac Vice, of Sean M. Dillon, Esquire and Gregory S. Martin, Esquire, and Proposed Orders filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**February 19, 1998**

Letter forwarded to attorney for Defendant, with copy to attorney for Plaintiff, granting request for an extension of time until March 2, 1998, for Defendant to file its responsive pleading to Plaintiff's Complaint.

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**February 24, 1998**

Proposed Order filed by Plaintiff February 18, 1998 rendered by Judge Clipper. Order as follows: "AND NOW, this 24th day of February, 1998, upon consideration of Balfour Beatty Construction, Inc.'s petition to admit Sean M. Dillon, Esquire, pro hac vice, it is hereby **ORDERED** that said petition is **GRANTED** and that said attorney is specially admitted to practice before the Board of Claims for all purposes in the above-captioned claim." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**February 24, 1998**

Proposed Order filed by Plaintiff February 18, 1998 rendered by Judge Clipper. Order as follows: "AND NOW, this 24th day of February, 1998, upon consideration of Balfour Beatty Construction, Inc.'s petition to admit Gregory S. Martin, Esquire, pro hac vice, it is hereby **ORDERED** that said petition is **GRANTED** and that said attorney is specially admitted to practice before the Board of Claims for all purposes in the above-captioned claim." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

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**February 20, 1998**

Letter received from attorney for Plaintiff (Charles Rubendall, II, Esquire) requesting the Board set a discovery cut-off date of July 1, 1998 and requests a status conference pursuant to Rule 899.501 to facilitate the scheduling and progression of the litigation. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**February 25, 1998**

Letter forwarded to attorney for Plaintiff, with copy to attorney for Defendant, denying Plaintiff's request for a discovery cut-off date of July 1, 1998 as well as his request for a status conference.

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**March 2, 1998**

Answer with New Matter filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant. Plaintiff's Reply due on or before **April 2, 1998**.

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**February 27, 1998**

Acceptance of Service of Orders (2) dated February 24, 1998 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 25, 1998.

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**March 3, 1998**

Entry of Appearance of Gerald R. Schultz, Assistant Counsel, on behalf of Defendant, filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**March 24, 1998**

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

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**April 1, 1998**

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

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**April 21, 1998**

Notice of Service Re: Notices of Intent to Serve Subpoenas Dues Term filed by attorney for Plaintiff.

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**May 1, 1998**

Objections to Subpoena Pursuant to R.C. P. 4009.21 filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**May 12, 1998**

The Board rendered an Opinion and "AND NOW, this 12th day of May, 1998, it is **ORDERED** and **DECREED** that the Defendant's Objections to Subpoena are hereby **DISMISSED**." Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**May 12, 1998**

Certificate Prerequisite to Service of Subpoenas Pursuant to Rule 4009.22 filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**May 15, 1998**

Acceptance of Service of Opinion and Order dated May 12, 1998 received from attorneys for Plaintiff (Rubendall and Lewis). Receipt of same acknowledged by attorneys for Plaintiff May 14, 1998.

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**June 1, 1998**

Notice of Service Re: Answer to Request for Production of Documents filed by attorney for Plaintiff.

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**September 3, 1998**

Notice of Service Re: Response to Def's 2nd Set of Interr. filed by attorney for Plaintiff.

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**October 15, 1998**

Notice of Service Re: Notice of Deposition filed by attorney for Plaintiff.

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**October 22, 1998**

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

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**November 5, 1998**

**CLOSED**  
Motion to Compel Production of Documents Responsive to Subpoena Directed to Urban Engineers, Inc. as well as Brief in Support of Motion to Compel Production of Documents Responsive to Subpoena Directed to Urban Engineers, Inc., filed by attorneys for Plaintiff. Copy forwarded to attorney for Defendant by attorneys for Plaintiff.

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**November 12, 1998**

Plaintiff's Motion for Partial Summary Judgment and Memorandum in Support of Motion for Partial Summary Judgment filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**November 18, 1998**

Notice of Taking Deposition filed by attorneys for Plaintiff.

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**November 19, 1998**

Plaintiff's Motion to Enforce Subpoena and Memorandum in Support of Plaintiff's Motion to Enforce Subpoena filed by attorney for Plaintiffs. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**November 20, 1998**

Notice of Service Re: Deposition Notices filed by attorneys for Plaintiff.

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**December 2, 1998**

Non-Party Gannett Fleming's Motion in Opposition to Enforcement of Plaintiff's Subpoena Without Adequate Compensation and Memorandum of Gannett Fleming, Inc., to Plaintiff's Motion to Enforce Subpoena filed by Gannett Fleming, Inc.

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**December 3, 1998**

Notice of Cancellation of Deposition filed by attorneys for Plaintiff.

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**December 4, 1998**

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 4th day of December, 1998, it is **ORDERED** and **DECREED** that Plaintiff's Motion to Enforce Subpoena is hereby **GRANTED**. The designated deponent shall be paid the statutory witness fee extended to all lay witnesses; however, should the designated deponent be called upon at that deposition to give expert opinions, then Gannett Fleming, Inc. shall have the right to petition the Board to have the designated deponent paid as an expert witness." Copy forwarded to attorneys for Plaintiff, attorney for Defendant and counsel for Gannett Fleming, Inc.

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**December 4, 1998**

Plaintiff's Motion for Leave to File Reply filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**December 7, 1998**

Memorandum in Opposition to Plaintiff's Motion to Compel Production of Documents Responsive to a Subpoena Directed to Urban Engineers, Inc. filed by attorneys for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**December 7, 1998**

Amended Notice of Taking Deposition filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**December 8, 1998**

Acceptance of Service of Opinion and Order dated December 4, 1998 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff December 7, 1998.

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**December 8, 1998**

Motion to Compel Production of Documents Responsive to Plaintiff's First Request for Production as well as Memorandum in Support of Motion to Compel Production of Documents Responsive to Plaintiff's First Request for Production filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**December 14, 1998**

Plaintiff's Motion to Compel Defendant to Answer Interrogatories filed by attorney for Plaintiff. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**December 14, 1998**

Acceptance of Service of Opinion and Order dated December 4, 1998 received from attorneys for Plaintiff (Martin & Dillon). Receipt of same acknowledged by attorneys for Plaintiff December 9, 1998.

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**December 21, 1998**

Letter/Request for a thirty (30) day extension of time in which to respond to Plaintiff's Motion for Partial Summary Judgment received from attorney for Defendant, via facsimile.

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**December 22, 1998**

Letter forwarded to attorney for Defendant, with copy to attorney for Plaintiff granting Defendant's request for a 30-day extension of time to respond to Plaintiff's Motion for Partial Summary Judgment. DEFENDANT'S RESPONSE/BRIEF DUE ON OR BEFORE JANUARY 13, 1999.

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**January 7, 1999**

Notice of Service of Defendant's Third Request for Production of Documents filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**January 7, 1999**

Defendant's Motion to Compel Answers to Interrogatories Pursuant to Pa. R.C.P. 4019 and Brief in Support thereof filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**January 14, 1999**

Defendant's Memorandum of Law in Opposition to Motion for Partial Summary Judgement filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**January 22, 1999**

Plaintiff's Motion for Leave to File Reply and Motion to Strike filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**\* January 26, 1999**

Hearing scheduled for October 4, 5, 6, 7 & 8, 1999 as well as October 12, 13, 14 & 15, 1999 in Board's Courtroom No. 1, Suite 600, Fulton Building, Harrisburg, Pa, commencing at 9:30 a.m.

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**January 26, 1999**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 26th day of January, 1999, it is **ORDERED** and **DECREED** that the Defendant, Commonwealth of Pennsylvania, Department of Transportation, shall file its answers to Interrogatories on or before January 27, 1999. It is further **ORDERED** and **DECREED** that the Plaintiff's Motion to Compel is hereby **DISMISSED** as being MOOT.

It is further **ORDERED** and **DECREED** that all parties shall complete all discovery no later than sixty (60) days before the start of the trial on October 4, 1999. Copy forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**January 29, 1999**

The Board made the following Order: "On November 12, 1998, Plaintiff filed a Motion for Partial Summary Judgment, along with its supporting memorandum. Defendant filed its Memorandum of Law in Opposition to the Motion on January 14, 1999. Plaintiff now files a Motion for Leave to File a Reply and Motion to Strike. Without going into much detail, and in order to move this matter along to a point where all outstanding motions are resolved, the Board will consider the Motion for Leave to File a Reply as additional material to support its original Motion for Partial Summary Judgment. Accordingly, Defendant may again respond to the matters therein set forth within twenty (20) days from receipt of this Order. Plaintiff's Motion to Strike is hereby dismissed; however, the allegations set forth will be considered after Defendant responds to the additional material and at the time the Board files its Opinion on the Motion for Partial Summary Judgment." Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**January 28, 1999**

Acceptance of Service of Opinion and Order dated January 26, 1999 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff January 27, 1999.

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**January 29, 1999**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 29th day of January, 1999, it is **ORDERED** that Defendant produce the disputed items withheld, to the Board, within thirty (30) days from the date of this Order to determine if such items are privileged under Pa. R.C.P. 4403.3." Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**February 2, 1999**

Acceptance of Service of two Opinion and Orders dated January 29, 1999 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff February 1, 1999.

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**February 4, 1999**

Acceptance of Service of Opinion and Order dated January 26, 1999 received from attorneys for Plaintiff (Dillon & Martin). Receipt of same acknowledged by attorneys for Plaintiff February 1, 1999.

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**February 4, 1999**

Notice of Service Re: Response to Defendant's Third Request for Production of Documents filed by attorney for Plaintiff.

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**February 8, 1999**

Acceptance of Service of two Opinion and Orders dated January 29, 1999 received from attorneys for Plaintiff (Dillon & Martin). Receipt of same acknowledged by attorneys for Plaintiff February 4, 1999.

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**February 8, 1999**

Plaintiff's Memorandum in Opposition to Defendant's 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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**February 11, 1999**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 11th day of February, 1999, upon review of Plaintiff's Motion to Compel Production of Documents Responsive to Plaintiff's First Request for Production, docketed with the Board of Claims under date of December 8, 1998, as well as a letter from Defendant, dated February 1, 1999, advising that "The Department hereby withdraws its objections to producing whatever documents it has in its possession, custody and control which are responsive to paragraphs 32 and 36 through 39 of the Plaintiff's First Request for Production of Documents" it is hereby **ORDERED** and **DECREED** that the Motion to Compel Production of Documents Responsive to Plaintiff's First Request for Production is hereby **GRANTED** by agreement of the parties." Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

**February 16, 1999**

Acceptance of Service of Order dated February 11, 1999 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff February 12, 1999.

**February 22, 1999**

Acceptance of Service of Order dated February 11, 1999 received from attorneys for Plaintiff (Martin & Dillon). Receipt of same acknowledged by attorneys for Plaintiff February 18, 1999.

**February 26, 1999**

Notice of Filing of Section 110.03 of the Pa Dept of Transportation Publication 408 Specifications (1990 Edition) filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

**March 3, 1999**

Documents requested by Board's Opinion and Order dated January 29, 1999, from Defendant, for in camera review by the Board, received from attorney for Defendant.

**March 15, 1999**

Letter received from attorney for Plaintiff (Dillon) requesting 2 weeks (3/25/99) to analyze the information provided by Defendant in his March 3, 1999 letter with documents, to determine whether a response is necessary, and if so, to file said response.

**March 17, 1999**

Letter forwarded to Plaintiff (Dillon), with copy to attorneys for Defendant and attorney for Plaintiff (Rubendall), granting 2 weeks (**until 3/25/99**) to analyze the information provided by Defendant in his March 3, 1999 letter with documents, to determine whether a response is necessary, and if so, to file said response.

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**March 18, 1999**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 18th day of March, 1999, it is hereby **ORDERED** and **DECREED** that Plaintiff's Motion for Partial Summary Judgment is **DENIED**" Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**March 22, 1999**

Acceptance of Service of Opinion and Order dated March 18, 1999 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff March 25, 1999.

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**March 26, 1999**

Letter/Response to Defendant's March 3, 1999 letter relative to *in camera* submission of documents, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**April 1, 1999**

Acceptance of Service of Opinion and Order dated March 18, 1999 received from attorneys for Plaintiff (Dillon & Martin). Receipt of same acknowledged by attorneys for Plaintiff March 26, 1999.

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**April 7, 1999**

Notice of Cancellation of Deposition and Release from Subpoena Duces Tecum filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**June 3, 1999**

**AND NOW**, this 3rd day of June, 1999, upon Defendant's Motion to Compel Answers to Interrogatories, pursuant to Pennsylvania Rule of Civil Procedure No. 4019, it is hereby **ORDERED** and **DECREED** that the Plaintiff be compelled to file further answers to Interrogatory Nos. 6, and 8 through 12, within thirty (30) days from the exit date of this Order." Copy forwarded to attorneys for Plaintiff and attorney for Defendant.

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**June 7, 1999**

Acceptance of Service of Opinion and Order dated June 7, 1999 received from attorneys for Plaintiff (Runbendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff June 4, 1999.

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**June 8, 1999**

The Board rendered an Opinion and made the following Order: **"AND NOW,** this 8th day of June, 1999, pursuant to an "in camera" examination of documents submitted to this Board by the Defendant, Commonwealth of Pennsylvania, Department of Transportation, pursuant to the Order of January 29, 1999, it is **ORDERED** and **DECREED** that Defendant submit to Plaintiff the following documents:

1. All material under Item 1 Tab D & F of the within Opinion. 2. All material under Item 3 of the within Opinion. 3. All material under Item 4 of the within Opinion. 4. All items under Item 5 of the within Opinion except for those items with the Tabs A & B attached. Defendant shall retrieve all items forwarded to the Board within fifteen (15) days of receipt of this Order and shall comply with the terms of this Order within twenty (20) days thereafter." Copy forwarded to attorneys for Plaintiff and attorney for Defendant.

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**June 9, 1999**

Defendant's Motion to Compel Production of Plaintiff's Cost Documents as well as Brief for Defendant in Support of Motion to Compel Production of Plaintiff's Cost Documents filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**June 10, 1999**

Acceptance of Service of Opinion and Order dated June 8, 1999 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 9, 1999.

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**June 14, 1999**

Objection to Notice of Taking Deposition filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**June 16, 1999**

Acceptance of Service of Opinion and Order dated June 3, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 14, 1999.

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**June 16, 1999**

Acceptance of Service of Opinion and Order dated June 8, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 14, 1999.

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**June 24, 1999**

Acceptance of Service of Opinion and Order dated June 8, 1999 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 21, 1999.

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**June 24, 1999**

Acceptance of Service of Opinion and Order dated June 3, 1999 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff June 21, 1999.

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**July 13, 1999**

Notice of Service Re Amended Response to Defendant's First Interrogatories filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**July 13, 1999**

Plaintiff's Motion for Protective Order filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**July 13, 1999**

Plaintiff's Memorandum in Opposition to Defendant's Motion to Compel Production and Memorandum in Support of Plaintiff's Motion for Protective Order filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**July 14, 1999**

Praecipe, to substitute the original Affidavit of Raymond W. Jaynes for the facsimile version which was attached to Plaintiff's Motion for Protective Order, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**July 19, 1999**

Notice of Intent to Serve Subpoena Duces Tecum to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**July 19, 1999**

Notice of Taking Deposition of Corporate Representative(s) for Robert W. Hunt Company filed by attorneys for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**July 20, 1999**

Reply Memorandum in Support of Defendant's Motion to Compel Production of Cost Documents and Memorandum in Opposition to Motion for Protective Order filed by attorneys for Defendant. Copy forwarded to attorneys for Plaintiff by attorneys for Defendant.

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**August 6, 1999**

**CLOSED**

The Board entered an Opinion and made the following order: **AND NOW**, this 6th day of August, 1999, upon consideration of defendant's motion to compel production of cost documents and plaintiff's response thereto, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the motion is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff is **ORDERED** to produce its cost reports for the requested time period in each of the following categories: 1. All portions which identify the labor and material costs for the activities plaintiff claims were pushed into winter; 2. All portions which identify the costs incurred for extra work plaintiff performed relating to temporary road 13-R; 3. All portions which identify actual costs plaintiff incurred for the site office overhead during the six-month period in which the differing site condition was discovered and blasting was suspended; and 4. All portions relating to the calculating of extended equipment costs for external equipment. Production of all of these documents shall be made within fourteen (14) days from the exit date of this order. Production shall be predicated upon the immediate negotiation and execution of a reasonable confidentiality stipulation and order. The motion by defendant for production of plaintiff's cost documents is **DENIED** in all other respects. The motion by plaintiff for a protective order is **DENIED**." Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**August 6, 1999**

Notice of Service Re: Second Amended Response to Defendant's First Interrogatories filed by attorneys for Plaintiff.

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**August 10, 1999**

Notice of Intent to Serve Subpoena Duces Tecum to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 filed by attorneys for Defendant.

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**August 10, 1999**

Notice of Cancellation of Deposition of the Corporate Representative(s) for Robert W. Hunt Company filed by attorneys for Plaintiff.

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**August 11, 1999**

Affidavit of Louis J. Rubino, Jr., CPA, to further support Defendant's Motion to Compel Production of Cost Documents, filed by attorney for Defendant.

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**August 11, 1999**

Acceptance of Service of Opinion and Order dated August 6, 1999 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff August 10, 1999.

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**August 13, 1999**

Plaintiff's Objection to Defendant's Notice of Intent to Serve Subpoena Duces Tecum filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**August 13, 1999**

Acceptance of Service of Opinion and Order dated August 6, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 12, 1999.

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**August 16, 1999**

Acceptance of Service of Opinion and Order dated August 6, 1999 received from attorneys for Plaintiff (Martin and Dillon). Receipt of same acknowledged by attorneys for Plaintiff August 12, 1999.

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**August 18, 1999**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 18th day of August, 1999, it is **ORDERED** and **DECREED** that Plaintiff's Objection to Defendant's Notice of Intent to Serve Subpoena Duces Tecum is hereby **SUSTAINED**. It is further **ORDERED** and **DECREED** that the Notice of Intent to Serve Subpoena Duces Tecum to conduct discovery is hereby **QUASHED**." Copy forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**August 20, 1999**

Acceptance of Service of Opinion and Order dated August 18, 1999 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff August 19, 1999.

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**August 26, 1999**

Acceptance of Service of Opinion and Order dated August 18, 1999 received from attorneys for Plaintiff (Martin and Dillon). Receipt of same acknowledged by attorneys for Plaintiff August 23, 1999.

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**September 7, 1999**

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

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**September 8, 1999**

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

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**September 17, 1999**

Plaintiff's Motion to Exclude Testimony from Defendant's Expert, Mr. Louis Rubino and Motion to Strike Portions of Defendant's Exhibit List as well as Plaintiff's Memorandum in Support of its Motion to Exclude Testimony from Defendant's Expert, Louis Rubino and Motion to Strike Portions of Defendant's Exhibit List filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**September 20, 1999**

Plaintiff's Notice to Produce, directed to Defendant, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**September 22, 1999**

Notice of Service of Subpoenas to Raymond W. Jaynes and Andrew Dixon filed by attorney for Defendant.

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**September 22, 1999**

Notice to Attend to Raymond W. Jaynes and Andrew Dixon and Notice to Produce to Balfour Beatty Construction filed by attorney for Defendant.

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**September 28, 1999**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 28th day of September, 1999, upon due consideration of Plaintiff's Motion to Exclude Testimony From Defendant's Expert, Louis Rubino and Motion to Strike Portions of Defendant's Exhibit List, it is hereby **ORDERED** that Plaintiff's Motion is **GRANTED** in part and **DENIED** in part. The Defendant's named expert witness shall not be allowed to testify in that capacity at the trial of this case.

Exhibit No. 24 of Defendant's proposed Exhibit List is deleted from that list. Further, Item No. 25 on Defendant's Exhibit List is limited in its use, at trial, to such documents as may have been included with the Defendant's Pre-Trial Statement. All other items on Exhibit List shall remain as stated. **IT IS SO ORDERED.** Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

**September 29, 1999**

Department's Motion to Quash Plaintiff's Notice to Produce and Brief for Defendant in Support of Motion to Quash Plaintiff's Notice to Produce filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorneys for Defendant.

**September 29, 1999**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 29th day of September, 1999, it is **ORDERED** and **DECREED** that Defendant's Motion to Quash Plaintiff's Notice to Produce is hereby **GRANTED**." Copies forwarded to attorneys for Plaintiff and attorneys for Defendant.

**\* September 29, 1999**

Hearing original scheduled for October 4, 5, 6, 7, 8, 1999 as well as October 12, 13, 14, & 15, 1999; **rescheduled as follows**: October 7 and 8, 1999 as well as October 12, 13, 14 and 15, 1999. The week of October 18, 1999 will be reserved as additional days if hearing is not completed by October 15, 1999.

**September 29, 1999**

Acceptance of Service of Opinion and Order dated September 29, 1999 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff September 30, 1999.

**September 30, 1999**

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

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**October 1, 1999**

Defendant's Motion for Reconsideration and Brief for Defendant in Support of its Motion for Reconsideration filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**October 5, 1999**

The Board rendered an Opinion and made the following Order: **"AND NOW, this 5th day of October, 1999, it is ORDERED and DECREED that the Defendant's Motion for Reconsideration is GRANTED. It is further ORDERED and DECREED that the Board of Claims shall permit Lewis J. Romano, Jr., C.A., to testify as an expert at the trial in this matter provided he is a properly qualified and an expert witness. Copies forwarded to attorneys for Plaintiff and attorneys for Defendant, via facsimile and U.S. Mail.**

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**October 5, 1999**

The Board rendered an Opinion and made the following Order: **"AND NOW, this 5th day of October, 1999, it is ORDERED and DECREED that the Plaintiff's, Balfour Beatty Construction, Inc., Motion for Clarification and/or Reconsideration, is hereby GRANTED. It is further ORDERED and DECREED that the Plaintiff shall produce monthly cost reports as requested by the Defendant, Commonwealth of Pennsylvania, Department of Transportation. These items shall be presented to the Defendant within thirty (30) days from the exit date of this Order and shall be the object of a mutually agreed upon confidentiality agreement. It is further ORDERED and DECREED that the trial of this case shall be continued without date. When all of the attorneys agree that the matter is ripe for trial, they are directed to contact Senior Counsel to the Board of Claims for appropriate dates."** Copies forwarded to attorneys for Plaintiff and attorneys for Defendant, via facsimile.

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**October 5, 1999**

The Board rendered an Amended Opinion and made the following Order: **"AND NOW, this 5th day of October, 1999, it is ORDERED and DECREED that the matter is now ready for trial and same will begin on October 7, 1999, at 9:30 a.m. at 200 North Third Street, Suite 600, Harrisburg, PA 17101."**

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**October 6, 1999**

Copy of Amended Opinion and Order dated October 5, 1999, faxed and mailed (via U.S. Mail) to attorneys for Plaintiff and attorneys for Defendant.

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**October 7, 1999**

Acceptance of Service of Opinion and Order dated September 28, 1999 received from attorneys for Plaintiff (Dillon & Martin). Receipt of same acknowledged by attorneys for Plaintiff October 1, 1999.

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**October 7, 1999**

Acceptance of Service of Opinion and Order dated October 5, 1999 received from attorney for Plaintiff (Lewis). Receipt of same acknowledged by attorney for Plaintiff October 6, 1999.

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**October 7, 1999**

Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, PA commencing at 9:30 a.m.

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**October 8, 1999**

Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, PA commencing at 9:30 a.m.

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**October 8, 1999**

Acceptance of Service of Amended Opinion and Order dated October 6, 1999 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff October 7, 1999.

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**October 12, 1999**

Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, PA commencing at 9:30 a.m.

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**October 13, 1999**

Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, PA commencing at 9:30 a.m.

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**October 14, 1999**

Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, PA commencing at 9:30 a.m.

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**October 15, 1999**

Hearing held in Board's Courtroom No. 2, 6th Floor, Fulton Bank Building, Harrisburg, PA commencing at 9:30 a.m. Case Completed.

**October 25, 1999**

Acceptance of Service of Opinion and Order dated October 5, 1999 received from attorney for Plaintiff (Martin). Receipt of same acknowledged by attorney for Plaintiff October 19, 1999.

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**October 25, 1999**

Acceptance of Service of Opinion and Order dated September 29, 1999 received from attorneys for Plaintiff (Martin & Dillon). Receipt of same acknowledged by attorneys for Plaintiff October 19, 1999.

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**October 25, 1999**

Acceptance of Service of Amended Opinion and Order dated October 6, 1999 received from attorneys for Plaintiff (Martin & Dillon). Receipt of same acknowledged by attorneys for Plaintiff October 19, 1999.

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**October 25, 1999**

Acceptance of Service of Opinion and Order dated October 5, 1999 received from attorney for Plaintiff (Dillon). Receipt of same acknowledged by attorney for Plaintiff October 19, 1999.

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**November 5, 1999**

Testimony of hearing held October 7, 8, 12, 13, 14 and 15, 1999 filed.

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**November 8, 1999**

Balfour Beatty's Revised Exhibit List filed by attorneys for Plaintiff. Copy forwarded to attorney for Defendant by attorneys for Plaintiff.

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**November 9, 1999**

Copy of testimony of hearing held October 7, 8, 12, 13, 14 and 15, 1999 forwarded to attorney for Defendant. **Plaintiff's Findings of Fact, Conclusions of Law and Brief due December 9, 1999.**

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**December 6, 1999**

Letter received from attorney for Plaintiff advising of the parties agreement for an extension of time for Plaintiff to file its Findings of Fact, Conclusions of Law and Brief. **Plaintiff's Findings of Fact, Conclusions of Law and Brief now due December 23, 1999.**

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**December 23, 1999**

Letter received from attorney for Plaintiff advising of the parties agreement for an extension of time for Plaintiff to file its Findings of Fact, Conclusions of Law and Brief. **Plaintiff's Findings of Fact, Conclusions of Law and Brief now due January 7, 2000.**

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**January 10, 2000**

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

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**February 8, 2000**

Letter/Request for an extension of time of thirty (30) days for Defendant to file its Proposed Findings of Fact, Conclusions of Law and Brief filed by Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**February 11, 2000**

Letter forwarded to attorney for Defendant, with copy to attorneys for Plaintiff, granting Defendant's request for an extension of time of thirty (30) days in which to file Defendant's Proposed Findings of Fact, Conclusions of Law and Brief. Defendant's Findings, etc. now due on or before **March 9, 2000.**

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**March 9, 2000**

Proposed Findings of Fact, Conclusions of Law and Memorandum of Law in Support Thereof, filed by attorney for Defendant. Copy forwarded to attorneys for Plaintiff by attorney for Defendant.

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**March 21, 2000**

Plaintiff's Motion for Leave to Reply to Defendant's Post-Trial Submissions filed by attorney for Plaintiff. Copy forwarded to attorneys for Defendant by attorneys for Plaintiff.

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**March 30, 2000**

Defendant's Response to Plaintiff's Motion for Leave to Reply to Defendant's Post-Trial Submissions filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**April 6, 2000**

Reply to the Department's Memorandum in Response to Plaintiff's Motion for Leave to Reply filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**April 13, 2000**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 13th day of April, 2000, Plaintiff's Motion for Leave to Reply to Defendant's Post-Trial Submissions is **DENIED**. The Board notes that it has reviewed Plaintiff's Motion and Defendant's Reply thereto and finds that further Post-Trial Submissions are unnecessary." Copy forwarded to attorneys for Plaintiff and attorneys for Defendant.

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**April 18, 2000**

Acceptance of Service of Opinion and Order dated April 13, 2000 received from attorneys for Plaintiff (Martin & Dillon). Receipt of same acknowledged by attorney for Plaintiff April 17, 2000.

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**April 20, 2000**

Acceptance of Service of Opinion and Order dated April 13, 2000 received from attorneys for Defendant. Receipt of same acknowledged by attorneys for Defendant April 19, 2000.

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**April 24, 2000**

Acceptance of Service of Opinion and Order dated April 13, 2000 received from attorneys for Plaintiff (Rubendall & Lewis). Receipt of same acknowledged by attorneys for Plaintiff April 18, 2000.

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**September 21, 2000**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 21st day of September, 2000, based on Plaintiff's claim in this matter, the responses thereto, and after hearing the testimony presented by the parties, it is **ORDERED** and **DECREED** that Plaintiff is entitled to an award in the sum of Four Hundred Eighteen Thousand Five Hundred Ninety-Eight Dollars and Fourteen Cents (\$418,598.14), with interest at the statutory rate of six percent (6%) per annum from September 17, 1997. Upon receipt of said award, Plaintiff shall forthwith file with the Board of Claims a Praecipe requesting that this matter be marked "closed, discontinued and ended with prejudice". Each party to bear their own costs and attorneys' fees." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**September 26, 2000**

Acceptance of Service of Opinion and Order dated September 21, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 25, 2000.

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**September 27, 2000**

Acceptance of Service of Opinion and Order dated September 21, 2000 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General September 21, 2000.

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**September 29, 2000**

Acceptance of Service of Opinion and Order dated September 21, 2000 received from attorneys for Defendant. Receipt of same acknowledged by attorneys for Defendant September 27, 2000.

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**January 26, 2001**

Letter received from attorney for Plaintiff advising that the award rendered by the Board, plus accrued interest, has been paid by Defendant.

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**CLOSED**