

Docket Number: 2660

BARLOW DRYWALL

Peter C. Layman, Esquire
Nicholas R. Sabatine, Esquire (Co-Counsel)

VS.

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR & INDUSTRY,
STATE WORKERS' INSURANCE FUND

Matthew J. Wolfe, Chief Counsel
James D. Jordan, Assistant Counsel

and

~~* WALTER DURANTE, KENNETH FRY, KEITH KEIPER, PAUL BATTISTA,
BRIAN BURCH, JOHN BURCH, CHAD LIERO, GREG LUTZ, CHRIS MARTON, EDWARD
SERAFIN, KENNETH SHOEMAKER, KENNETH TITUS, BILL SASZ, SR., SCOTT
SAYLOR, LYLE METZGAR, KENNETH OLSWFSKI and DAVID YANKELITIS~~

March 12, 1998

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: (Requests that Plaintiff has no obligation to pay premiums in question)

March 18, 1998

Copies of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. **ANSWER DUE FROM DEFENDANT: April 17, 1998.**

March 24, 1998

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General March 19, 1998.

March 24, 1998

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 20, 1998.

April 27, 1998

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

May 27, 1998

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

June 8, 1998

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

March 16, 1999

Letter forwarded to parties requesting a Status Report. **Status Report due April 15, 1999.**

March 29, 1999

Letter/Status Report received from Defendant advising that oral depositions of witnesses and representatives of the parties are scheduled for April 22, 1999. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 1, 1999

Letter/Status Report received from attorney for Plaintiff advising that both parties have served Interrogatories on the other side and responses have been given and joint depositions are scheduled for April 22, 1999. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 12, 1999

Notices of Oral Depositions of Fred Sweeney and John Glenn filed by attorney for Plaintiff.

April 12, 1999

Notice of Depositions of Daniel Washburn, Kenneth L. Frey, John Burch and Kenneth Titus filed by Defendant.

August 9, 1999

Defendant's Petition for Joinder; Defendant's Brief in Support of Petition for Joinder and Wells Proposed Rule to Show Cause filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

August 30, 1999

Copy of letter directed to Defendant, from Plaintiff, received from Plaintiff, advising that they do not oppose the joinder, per Defendant's Motion.

September 30, 1999

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 30th day of September, 1999, upon consideration of Defendant's Petition of Joinder and Claimant's lack of opposition, it is **ORDERED, ADJUDGED AND DECREED**, that the Petition is **GRANTED** and Plaintiff, Barlow Drywall, is **ORDERED** to serve copies of its Claim/Petition on the following individuals, at the following addresses: 1. Walter Durante, Durante Custom Home Interiors, HC 1, Box 224 #22, Brodheadsville, PA 18322; 2. Kenneth L. Frey, 154 Brian Lane, Effort, PA 18330; 3. Keith Keiper, RD 2, Box 2353, Stroudsburg, PA 18360; 4. Paul Battista, 110 Valentine, Moosic, PA 18507; 5. Brian Burch, RR8, Box 8808A, East Stroudsburg, PA 18301; 6. John Burch, RD 2, Box 2186, Stroudsburg, PA 18360; 7. Chad Liero, RR3, Box 2186, Effort, PA 18330; 8. Greg Lutz, 601 Park Dr., Sun Valley, Effort, PA 18330; 9. Chris Marton, P.O. Box 835, Saylorsburg, PA 18353; 10. Edward Serafin, P.O. Box 104, Gilbert, PA 18331; 11. Kenneth Shoemaker, Box 2111B, Saylorsburg, PA 18353;

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September 30, 1999
(Continued)

12. Kenneth Titus, RR4, Box 4146, Saylorsburg, PA 18353; 13. Bill Sasz, Sr., RD 4, Box 4063, Saylorsburg, PA 18353; 14. Scott Saylor, Scott Saylor Drywall, 2349 Mountain Laurel Dr., Effort, PA 18330; 15. Lyle Metzgar, P.O. Box 129, Effort, PA 18330; 16. Kenneth Olszwski, P.O. Box 557, Brodheadsville, PA 18322; 17. David Yankelitis, 45 Stonecrest Road, Blakeslee, PA 18610." Copy forwarded to all parties of record.

October 7, 1999

Acceptance of Service of Opinion and Order dated September 30, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 4, 1999.

October 8, 1999

Acceptance of Service of Opinion and Order dated September 30, 1999 received from John Burch. Receipt of same acknowledged by John Burch October 4, 1999.

October 12, 1999

Acceptance of Service of Opinion and Order dated September 30, 1999 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 4, 1999.

October 21, 1999

Acceptance of Service of Opinion and Order dated September 30, 1999 received from Edward Serafin. Receipt of same acknowledged by Edward Serafin October 10, 1999.

October 21, 1999

Acceptance of Service of Opinion and Order dated September 30, 1999 received from Kenneth Titus. Receipt of same acknowledged by Kenneth Titus October 3, 1999.

October 27, 1999

Acceptance of Service of Opinion and Order dated September 30, 1999 received from Chad Liero. Receipt of same acknowledged by Chad Liero October 12, 1999.

March 6, 2000

Certificate of Service of Defendant's Requests for Admission filed by attorney for Defendant.

March 31, 2000

Certificate of Service of Defendant's First Set of Interrogatories filed by attorney for Defendant.

April 7, 2000

Notice of Service of Plaintiff's Answers to Requests for Admission filed by attorney for Plaintiff.

April 20, 2000

Objections to Answers to Requests for Admission, Brief in Support of Objections to Answers to Requests for Admission and Proposed Order, filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

May 1, 2000

Copy of letter to Defendant, from Plaintiff, advising Defendant that Plaintiff will not object to Defendant's objections to Plaintiff's Request for Admissions #78, 79 and 80, filed by attorney for Plaintiff.

June 19, 2000

Notice of Service of Interrogatories filed by attorney for Defendant.

July 3, 2000

Motion to Compel Discovery Responses and Proposed Order filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and Additional Defendants, by attorney for Defendant.

July 13, 2000

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 13th day of July, 2000, upon consideration of Objections of the Defendant, State Workers' Insurance Fund, to Plaintiff's, Barlow Drywall's, Answers to Requests for Admission and Plaintiff's notice that it will not be filing answers to those Objections, it is hereby **ORDERED, ADJUDGED** and **DECREED** that the facts set forth in Requests for Admission numbers 78, 79 and 80 are held to be admitted by Barlow Drywall, for the purposes set forth in Pa. R.C.P. 4014(d)."

Copy forwarded to attorney for Plaintiff and attorney for Defendant.

July 19, 2000

Acceptance of Service of Opinion and Order dated July 13, 2000 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 17, 2000.

*** October 19, 2000**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 19th day of October, 2000, upon other and further consideration of the record, in the matter sub judice, it is **ORDERED** that the Board of Claims' Order dated September 30, 1999 is hereby **RESCINDED** and joinder of the Additional Defendants as parties in this case is **DENIED**; and further, the caption of this case shall hereinafter read as follows: **CARLO DRYALL** (Claimant) v. **COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF LABOR & INDUSTRY, STATE WORKERS' INSURANCE FUND** (respondent). Copy forwarded to attorney for Plaintiff and attorney for Defendant.

Acceptance of Service of Opinion and Order dated October 19, 2000 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 20, 2000.

October 26, 2000

Acceptance of Service of Opinion and Order dated October 19, 2000 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 23, 2000.

November 29, 2000

Notice of Service of Requests for Admission filed by attorney for Defendant.

December 27, 2000

Plaintiff's Answers to Second Requests for Admission filed by attorney for Plaintiff.

January 10, 2001

Objections to Responses to Requests for Admission and Brief in Support of Objections to Responses to Requests for Admission filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. **Plaintiff's Response/Brief due on or before January 9, 2001.**

February 1, 2001

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

February 13, 2001

Motion to Clarify Response Date and/or Extension of Time filed by attorney for Plaintiff, via facsimile. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

February 14, 2001

Motion to Clarify Response Date and/or Extension of Time filed by attorney for Plaintiff, via U.S. Mail. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

February 15, 2001

Letter forwarded to attorney for Plaintiff, with copy to attorney for Defendant, granting Plaintiff's request to which to file its Response to Defendant's Objections to Responses to Requests for Admission. Plaintiff's response due on or before **March 1, 2001**.

March 2, 2001

Plaintiff's Answer to Defendant's Objections to Plaintiff's Responses to Second Requests for Admission and Plaintiff's Brief in Support of its Answer to Defendant's Objections to Plaintiff's Responses to Second Requests for Admission filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

March 12, 2001

Reply Brief in Support of Objections to Responses to Requests for Admission filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

July 11, 2001

The Board rendered an Opinion and made the following Order: **"AND NOW**, this 11th day of July, 2001, upon consideration of Defendant's Objections to Answers to Interrogatories and Plaintiff's Response thereto, the Board rules as follows: **Section I. Responses to Answers to Requests for Admission 2, 5, 8, 11, 14, 17, 20, 23, 26, 29, 32, 35, 38, 41, 44, 47, 50 and 53:** With the inclusion of the stipulation provided by the Plaintiff in its response, the Board finds that Plaintiff's answers do comply with the requirements of Pa. R.C.P. 4014 and overrules the Defendant's objections.

Section II. Responses to Answers to Requests for Admission 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25, 27, 28, 30, 31, 33, 34, 36, 37, 39, 40, 42, 43, 45, 46, 48, 49, 51, 52, 54 and 55: Plaintiff's answers sufficiently address the substance of these interrogatories and the subject certificates themselves speak to the period of coverage of each. Defendant's objections are overruled. **Section III. Response to Answer to Request for Admission 56:** The Board finds that the Defendant has characterized the content of the referenced document as stating certain facts, and Plaintiff's denial to this characterization is sufficient. Defendant's objection is overruled. **Section IV. Responses to Requests for Admission 60, 61, 63 and 64:** The Board finds that, even though both parties engaged in "obscurantism" in their Requests for Admission, answers, objections and responses thereto, Plaintiff's answers, including its stipulation regarding Request for Admission No. 64, do comply with the requirements of Pennsylvania Rule of Civil Procedure 1014, and the Board overrules the Defendant's objections." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

July 18, 2001

Acceptance of Service of Opinion and Order dated July 11, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff July 16, 2001.

July 26, 2001

Acceptance of Service of Opinion and Order dated July 11, 2001 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 23, 2001.

October 29, 2001

Certificate of Readiness filed by Plaintiff, advising that all discovery is complete and the case is ready for hearing.

November 20, 2001

The Board made the following Order: "**AND NOW**, this 20th day of November, 2001, it is **ORDERED** and **DECREED** that this matter is set for a hearing before the Board's Panel, composed of Richard B. Swartz, Esquire, Panel Attorney, and Charles A. Kline, P.E., Engineer Member, beginning on January 15, 16 and 17, 2002. Said hearing shall be held in Courtroom No. 2, 6th 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.

November 30, 2001

Acceptance of Service of Order dated November 20, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff November 21, 2001.

December 7, 2001

Notice of Service of Notices to Daniel B. Washburn and Colleen M. Washburn to attend the trial filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 17, 2001

Pre-Trial Statement of State Workers' Insurance Fund filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 31, 2001

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

December 31, 2001

Amended Pre-Trial Statement of State Workers' Insurance Fund filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 2, 2002

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

January 7, 2002

Certificate of Service reflecting service of two notices to attend hearing to Colleen Washburn and Daniel Washburn filed by Defendant.

January 10, 2002

Letter-type Entry of Appearance for Attorney Nicholas Sabatine as co-counsel on behalf of Plaintiff, filed by attorney for Plaintiff.

January 14, 2002

Amended PreTrial Statement of State Workers' Insurance Fund filed by attorney for Defendant, via fax. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 14, 2002

Amended PreTrial Statement filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 15, 2002

Panel Hearing (Swartz/Kline) held this date in Board's Courtroom No. 2, 6th Floor, Fulton Building, Harrisburg, PA, commencing at 9:30 a.m.

January 16, 2002

Panel Hearing (Swartz/Kline) held this date in Board's Courtroom No. 2, 6th Floor, Fulton Building, Harrisburg, PA, commencing at 9:30 a.m. Case Completed.

January 22, 2002

Two Exhibits (SWIF 33 and 34) which were inadvertently omitted from the record at the time of their admission by the panel, filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 4, 2002

Motion to Enlarge Record and Brief in Support of Motion to Enlarge Record filed by attorney for Defendant. Response due from Plaintiff on or before March 6, 2002.

February 6, 2002

Testimony of panel hearing held January 15 and 16, 2002 filed.

February 7, 2002

Copy of testimony of panel hearing held January 15 and 16, 2002 forwarded to attorney for Defendant. **Plaintiff's Findings of Fact, Conclusions of Law and Brief due on or before March 11, 2002.**

February 13, 2002

Acceptance of Service of testimony of panel hearing held January 15 and 16, 2002 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 11, 2002.

March 6, 2002

Plaintiff's Objections to Defendant's Motion to Enlarge Record and Plaintiff's New Matter, as well as Plaintiff's Motion for Attorney's Fees; and Plaintiff's Brief in Opposition to Defendant's Motion to Enlarge Record and in Support of Plaintiff's Motion for Attorney's Fees filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

March 5, 2002

Letter received from Plaintiff, via facsimile, requesting an extension of time to file Plaintiff's Findings of Fact, Conclusions of Law and Brief in Support thereof, until 30 days after the Board's decision relative to Defendant's Motion to Enlarge Record. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

March 8, 2002

Letter forwarded to attorney for Plaintiff granting its request for an extension of time to file its Findings of Fact, Conclusions of Law and Brief in Support thereof, until thirty (30) days after the exit date of the Board's Opinion and Order relative to Defendant's Motion to Enlarge Record. Copy forwarded to attorney for Plaintiff as well as attorney for Defendant.

March 8, 2002

SWIF's Reply to Barlow's New Matter in Opposition to Motion to Enlarge Record, SWIF's Answer to Barlow's Motion for Attorneys' Fees as well as Reply Brief in Support of SWIF's Motion to Enlarge Record and in Opposition to Barlow's Motion for Attorneys' Fees filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 8, 2002

Letter-type Supplemental Brief relative to Plaintiff's Motion for Attorneys' Fees filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

April 11, 2002

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 11th day of April, 2002, upon consideration of the defendant's motion to enlarge the record and the plaintiff's motion for attorney's fees, and the oppositions filed to both motions, **IT IS ORDERED** that the defendant's motion to enlarge the record is **DENIED** and the plaintiff's motion for attorney's fees is also **DENIED**. It is further **ORDERED** that Plaintiff herein file its Findings of Fact, Conclusions of Law and Brief in Support thereof within thirty (30) days from the exit date of this Order and serve a copy of same on Defendant. Thereafter, Defendant shall have thirty (30) days in which to file its Findings of Fact, Conclusions of Law and Brief in Support thereof and serve a copy of same on Plaintiff." Copy forwarded to attorneys for Plaintiff and attorney for Defendant.

April 23, 2002

Acceptance of Service of Opinion and Order dated April 11, 2002 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 12, 2002.

May 13, 2002

Plaintiff's Proposed Findings of Fact, Conclusions of Law and Brief in Support thereof, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff. **Defendant's Findings, etc. due June 12, 2002.**

June 7, 2002

Defendant's Brief (Findings of Fact, etc.) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 12, 2002

Stipulation on Measures of Damages, executed by attorney for Defendant only, filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 28, 2002

Stipulation on Measures of Damages, executed by both parties, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

September 5, 2002

Panel Report (Swartz/Kline) filed.

November 22, 2002

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 12th day of November, 2002, after hearing by a panel and submission to the Board, it is **ORDERED** and **DECREED** that judgment is entered in favor of the Claimant, Barlow Drywall, and against Respondent, Commonwealth of Pennsylvania, Department of Labor & Industry, State Workers' Insurance Fund, in the sum of Twelve Thousand Three Hundred Eighty-Six Dollars (\$12,386.00), plus interest from March 12, 1998. Each party to bear its own costs and attorney fees."

Copy forwarded to attorneys for Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

December 2, 2002

Acceptance of Service of Opinion and Order dated November 22, 2002 received from attorney for Plaintiff (Layman). Receipt of same acknowledged by attorney for Plaintiff November 25, 2002.

December 10, 2002

Acceptance of Service of Final Opinion and Order dated November 22, 2002 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General December 4, 2002.

January 6, 2003

Praecipe for Satisfaction of Award, executed by attorney for Plaintiff filed by attorney for Defendant.

February 5, 2003

The Board rendered an opinion and made the following Order: "And NOW, this 5th day of February, 2003, it is **ORDERED** and **DECREED** that this action be marked as 'satisfied'." Copy forwarded to attorneys for Plaintiff and attorney for Defendant.

February 10, 2003

Acceptance of Service of Opinion and Order dated February 5, 2003 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 6, 2003.
