

Docket Number: 3358
Consolidated with 3260, 3358, 3465

H. PLATT COMPANY

~~John R. Wingerter, Esquire~~
~~Mary P. Patterson, Esquire~~
**Paula J. McDermott, Esquire
Kenneth L. Sable, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

~~Gregory J. Santory, Chief Counsel~~
Elizabeth A. O'Reilly, Assistant Counsel
Michael C. Barrett, Senior Counsel

January 25, 2001

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$425,993.52.

January 31, 2001

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. **ANSWER DUE FROM DEFENDANT MARCH 2, 2001.**

February 13, 2001

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General February 1, 2001.

March 1, 2001

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

March 7, 2001

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

March 8, 2001

Letter forwarded to parties directing parties to commence with discovery.

March 27, 2001

Commonwealth of Pennsylvania, Department of General Services' filed Motion to Consolidate Docket Nos. 3258, 3260 & 3358. Copy forwarded to Plaintiff.

April 5, 2001

Consent to consolidate filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 17, 2001

The Board rendered an Order: "AND NOW, this 17th day of April 2001, upon consideration of defendant's motion pursuant to Pa. R.C.P. 213(a) to consolidate Docket Nos. 3258, 3260 and 3358 and plaintiff's consent to the motion, **IT IS ORDERED** that Docket Nos. 3258, 3260 and 3358 are hereby consolidated for discovery and trial." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

May 3, 2001

Acceptance of Service of Order dated April 17, 2001 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 18, 2001.

July 6, 2001

Plaintiff filed Certificate of Service of Answers to Commonwealth's Request for Production of Documents Addressed to H. Platt Company. Copy forwarded to Defendant.

July 9, 2001

H. Platt Company's Request for Production of Documents Addressed to Commonwealth of Pennsylvania, Department of General Services filed by attorney for Plaintiff. Copy forwarded to Defendant.

August 17, 2001

Copy of letter Plaintiff forwarded to Defendant requesting Defendant to file their response to Plaintiff's Requests for Production of Documents which are overdue.

February 7, 2002

Letter forwarded to parties requesting status. Response due from parties March 7, 2002.

February 14, 2002

Letter received from attorney for Plaintiff advising that the parties are still conducting discovery.

May 1, 2002

Defendant filed Commonwealth of Pennsylvania, Department of General Services' Motion to Consolidate 3465 with docket nos. 3258, 3260 and 3358 which were previously consolidated by Order dated April 17, 2001. Copy forwarded to Plaintiff.

May 22, 2002

The Board rendered the following Order: **AND NOW**, this 22nd day of May, 2002, upon consideration of defendant's motion pursuant to Pa.R.C.P. 213(a) to consolidate Docket No. 3465 with Docket Nos. 3258, 3260, and 3358 and plaintiff's consent to the motion, **IT IS ORDERED** that Docket Nos. 3258, 3260, 3358, and 3465 are hereby consolidated for discovery and trial. Copy forwarded to attorney for Plaintiff and attorney for Defendant.

August 16, 2002

Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 as well as Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21 filed by attorney for Defendant.

November 26, 2002

Letter forwarded to parties requesting status. Response due from parties December 26, 2002.

December 6, 2002

Status Report filed by attorney for Plaintiff advising that the Defendant is in discovery and the Plaintiff is in the process of preparing a pre-trial narrative as soon as the Defendant completes discovery.

December 23, 2002

Status letter received from attorney for Defendant advising that the parties are in discovery.

****June 24, 2003**

Plaintiff filed Withdrawal of Appearance of John R. Wingerter, Esquire and Entry of Appearance of Paula J. McDermott, Esquire, and Kenneth L. Sable, Esquire on behalf of Plaintiff. Copy forwarded to Defendant.

August 5, 2003

Board forwarded letter to parties requesting status.

September 17, 2003

Plaintiff filed status letter advising that the parties are in the process of completing discovery and that there has been ongoing settlement negotiations.

February 9, 2004

Plaintiff filed Praecipe for Withdrawal/Entry of Appearance. Withdrawal of appearance of Mary P. Patterson, Esquire and Entry of Appearance of Paula J. McDermott, Esquire. Copy forwarded to Defendant.

March 25, 2004

Board forwarded letter to parties requesting status.

March 31, 2004

Plaintiff filed a letter advising that parties are completing written discovery.

January 21, 2005

Plaintiff filed letter advising that they are conducting depositions in an effort to get this case ready for trial.

March 24, 2005

Plaintiff filed Proposed Order and Motion to Amend Claim (Amended Complaint). Copy forwarded to Defendant.

May 19, 2005

Board rendered the following Opinion and Order. Order as follows: "**AND NOW**, this 19th day of May, 2005, Plaintiff's Motion to Amend Claim is **GRANTED**. Plaintiff shall file its Amended Claim within twenty (20) days from the exit date of this Order. Thereafter, Defendant will be given twenty (20) days from the date of service to file a responsive pleading to the Amended Claim." Copy forwarded to Plaintiff and Defendant.

***June 6, 2005**

Plaintiff filed Amended Claim and certificate of service. Amount

of Claim: \$60,901.73. Copy forwarded to Defendant.

June 14, 2005

Board issued Acknowledgment letter and forwarded copy of Amended Claim to Attorney General.

June 27, 2005

Defendant filed Answer to Plaintiff's Amended Claim. Copy forwarded to Plaintiff.

June 28, 2005

Board forwarded letter directing the parties to commence with discovery.

July 27, 2005

Plaintiff filed Proposed Order, Letter Rogatory and Application for Letter Rogatory. Copy forwarded to Defendant.

August 31, 2005

Letter Rogatory issued by Board of Claims as follows: "The above-captioned actions were filed with the Pennsylvania Board of Claims on 06/13/00, 07/11/00, 01/25/01, and 03/12/02 respectively. The four actions were consolidated on 05/22/02. Claimant H. Platt Company is entitled to take appropriate action in the pursuit of this matter pursuant to Pennsylvania law. Counsel for Plaintiff has been advised that John Bender, a former Commonwealth of Pennsylvania, Department of General Services employee who worked on the project which is the subject of this lawsuit has retired to Arizona. Were Mr. Bender still living in Pennsylvania he would be deposed under the appropriate Pennsylvania Rules of Civil Procedure. On the basis of the above, the Board requests that you, by the proper and usual process of your Court, authorize the issuance and service of a subpoena for the taking of an oral deposition to be videotaped in Arizona with the Pennsylvania attorneys participating via telephone." Copies forwarded to all parties of record.

August 31, 2005

Board rendered the following Order: **"AND NOW**, this 31st day of August, 2005, the clerk of the Board of Claims is hereby directed

to issue a Letter Rogatory to the Superior Court, County of Cochise, 100 Colonia de Salud, Suite 202, Sierra Vista, AZ 85635 requesting that a subpoena for the videotaped deposition of John Bender, 2843 Del Mar Drive, Sierra Vista, AZ 85635 to take place on September 22, 2005, beginning at 11:00 a.m. (Arizona time) or at some other time agreeable to the parties in this action on all matters discoverable for use during discovery and/or trial purposes be issued." Copy forwarded to Plaintiff and Defendant.

March 23, 2006

Plaintiff filed a letter advising that the parties have agreed the matter is ripe for trial. Copy forwarded to all parties of record.

March 29, 2006

Board issued letter to parties directing them to submit a proposed scheduling order.

April 13, 2006

Defendant filed letter with proposed scheduling order. Copy forwarded to Plaintiff.

April 14, 2006

Plaintiff filed letter with proposed scheduling order. Copy forwarded to Defendant.

April 27, 2006

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 27th day of April, 2006, it is hereby **ORDERED** and **DECREED** as follows: The last day for plaintiff's expert report, if any, to be provided to defendant is June 1, 2006; The last day for defendant's expert report, if any, to be provided to plaintiff is July 3, 2006; All discovery, including exchange of expert rebuttal reports shall be completed by July 28, 2006*; The last day for filing pre-trial motions is August 14, 2006*; Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than September 1, 2006 (Please note BOC R.P. 501(b) and (c)(3)); A pre-trial conference is scheduled for Thursday, September 28, 2006, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; and This matter is set for hearing beginning on Monday, January 8,

2007, and running through Friday, January 12, 2007, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m. Copies forwarded to all parties of record.

May 2, 2006

Defendant filed Acceptance of Service of Scheduling Order dated April 27, 2006. Receipt of same acknowledged by Defendant May 1, 2006.

May 2, 2006

Plaintiff filed Acceptance of Service of Scheduling Order dated April 27, 2006. Receipt of same acknowledged by Plaintiff May 1, 2006.

June 8, 2006

Plaintiff filed letter advising of both parties availability for trial the week of November 6-10, 2006, inclusive. Copy forwarded to Defendant.

June 14, 2006

Board issued an Amended Scheduling Order as follows: **AND NOW**, this 14th day of June, 2006, pursuant to the request of both parties, it is hereby **ORDERED** and **DECREED** that the scheduling order in this matter issued April 27, 2006, be amended to change the dates for hearing before the Board. This matter is now set for hearing beginning on Monday, November 6, 2006, through Thursday, November 9, 2006 and Monday, November 13, 2006, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building 6th Floor, Harrisburg, PA 17101, commencing at 9:30 a.m. Copies forwarded to all parties of record.

June 22, 2006

Defendant filed Acceptance of Amended Scheduling Order dated June 14, 2006. Receipt of same acknowledged by Defendant June 16, 2006.

June 22, 2006

Plaintiff filed Acceptance of Amended Scheduling Order dated June 14, 2006. Receipt of same acknowledged by Plaintiff June 19, 2006.

August 14, 2006

Plaintiff filed Proposed Order, Motion to Limit Defense Witnesses and Exclude Expert Testimony Presented by Defendant. Copy forwarded to Defendant.

August 30, 2006

Plaintiff filed Proposed Order and motion for enlargement of time until September 15, 2006 to file Pretrial Statements. Copy forwarded to Defendant.

September 1, 2006

Board issued letter to Plaintiff, with copy to Defendant granting an enlargement of time for Plaintiff to file Pretrial Statements.

September 15, 2006

Plaintiff filed Claimant's H. Platt Company's Pre-trial Memorandum. Copy forwarded to Defendant.

September 15, 2006

Defendant filed Commonwealth of Pennsylvania, Department of General Services' Pre-Trial Statement. Copy forwarded to Plaintiff.

September 15, 2006

Defendant filed Commonwealth's Response to Claimant's Motion to Limit Defense Witnesses and exclude Expert testimony presented by Defendant and Brief in Support. Copy forwarded to Plaintiff.

September 22, 2006

Board issued letter to parties rescheduling pre-trial conference to September 29, 2006, at 1:00 p.m. in judge's office.

September 29, 2006

Board pre-trial conference held at 200 North Third Street, Suite 700, Harrisburg, Pa 17101 commencing at 1:00 p.m.

October 5, 2006

Plaintiff filed Claimant's Motion Withdraw its Motion to limit defense witnesses and exclude expert testimony presented by defendant. Copy forwarded to Defendant.

October 10, 2006

Board issued letter to Plaintiff acknowledging receipt of Plaintiff's request to withdraw its Motion to Limit Defense Witnesses and exclude expert testimony. Copy forwarded to Defendant.

October 10, 2006

Plaintiff filed Motion to Amend Claim, Amended Claim and Brief in support of Motion to Amend Claim. Copy forwarded to Defendant.

October 11, 2006

Board issued letter to parties relative to advising board of arrangements for video conference.

October 18, 2006

Defendant filed Response to Motion to Amend Claim and Brief in Support. Copy forwarded to Plaintiff.

October 25, 2006

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 25th day of October, 2006, it is hereby **ORDERED** that Claimant's Motion to Amend Claim is **DENIED**. Copies forwarded to all parties of record.

November 3, 2006

Plaintiff filed Trial Brief of Claimant, H. Platt Company. Copy

forwarded to Defendant.

November 3, 2006

Non-party witness filed Motion Pursuant to Board of Claims rule 102 to Permit Non-Party Witness, Gregory S. Walker, to testify via video conference on November 8, 2006 and Proposed Order. Copy forwarded to all parties of record.

November 3, 2006

Board rendered an Order. Order as follows: "**AND NOW**, this 3rd day of November, 2006, it is hereby **ORDERED** and **DECREED** that the Motion to Permit Non-Party witness, Gregory S. Walker, to testify via videoconference on November 8, 2006 is **DENIED**." Copy forwarded to all parties.

November 6, 2006

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Building, Harrisburg, PA commencing at 4:30 p.m.

November 7, 2006

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Building, Harrisburg, PA commencing at 4:30 p.m.

November 8, 2006

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Building, Harrisburg, PA. Case continued.

November 8, 2006

Non-party witness filed Motion Pursuant to Board of Claims rule 102 to Permit Non-Party Witness, Gregory S. Walker, to testify via video conference on November 8, 2006 and Proposed Order. Copy forwarded to all parties of record.(U.S. Mail)

November 9, 2006

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Building, Harrisburg, PA. Case continued.

November 13, 2006

Plaintiff filed Acceptance of Service of Order dated November 3, 2006. Receipt of same acknowledged by Plaintiff November 8, 2006.

November 14, 2006

Board rendered an Order. Order as follows: **AND NOW**, this 14th day of November, 2006, it is hereby **ORDERED** and **DECREED** that the hearing in this matter that began on November 6, 2006 and ran through November 9, 2006 but was not completed, is continued to November 17, 2006. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101, Courtroom No. 1, beginning at 11:00 a.m. Copies forwarded to all parties of record.

November 14, 2006

Plaintiff filed Motion to Amend the Amended Claim and Proposed Order. Copy forwarded to Defendant.

November 17, 2006

Board hearing held in Courtroom No.1, Fulton Building, Harrisburg, PA. Case completed.

November 20, 2006

Defendant filed an Acceptance of Service of Order dated November 14, 2006. Receipt of same acknowledged by Defendant November 17, 2006.

November 27, 2006

Plaintiff filed Brief in Support of Claimant's Motion to Amend the Amended Claim. Copy forwarded to Defendant.

December 18, 2006

Testimony of Board hearing held November 6, 7, 8, 9 & 17, 2006 filed. Copy forwarded to attorney for Defendant. (Last day of

testimony)

December 26, 2006

Defendant filed Acceptance of Service of Testimony dated December 19, 2006. Receipt of same acknowledged by Defendant December 21, 2006.

January 3, 2007

Defendant filed Commonwealth's Response to Claimant's Motion to Amend the Amended Complaint and Brief in Support. Copy forwarded to Plaintiff.

February 2, 2007

Plaintiff filed Claimant H. Platt Company's Proposed Findings of Fact and Conclusions of Law. Copy forwarded to Defendant.

March 7, 2007

Defendant filed Findings of Fact, Conclusions of Law and Post trial Brief. Copy forwarded to Plaintiff.

March 22, 2007

Plaintiff filed Claimant H. Platt Company's Reply Brief. Copy forwarded to Defendant.

October 10, 2007

Board issued Opinion and Order. Order as follows: **AND NOW**, this 10th day of October, 2007, it is **ORDERED** and **DECREED** that judgment

be entered in favor of Plaintiff, H. Platt Company, and against Defendant, Commonwealth of Pennsylvania, Department of General Services, in the sum of \$666,598.42 for damages incurred and prejudgment interest thereon. In addition, Plaintiff is awarded post-judgment interest on the total outstanding judgment at the statutory rate for judgments (6% per annum) beginning on the date of this Order and continuing until the judgment is paid in full. Each party will bear its own costs and attorneys' fees. Copy forwarded to Plaintiff, Defendant and Attorney General.

October 12, 2007

Chief Deputy Attorney General filed Acceptance of Service of Opinion and Order dated October 10, 2007. Receipt of same acknowledged by Chief Deputy Attorney General October 11, 2007.

October 12, 2007

Defendant filed Acceptance of Service of Opinion and Order dated October 10, 2007. Receipt of same acknowledged by Defendant October 11, 2007.

October 15, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated October 10, 2007. Receipt of same acknowledged by Plaintiff October 11, 2007.

November 9, 2007

Defendant filed Petition for Review. Copy forwarded to all parties of record.

November 13, 2007

Commonwealth Court filed Notice of filing Petition for Review.
(No.: 2074 CD 2007)

November 20, 2007

Commonwealth Court filed Docketing Statement Petition for Review.
(No.: 2074 CD 2007)

November 26, 2007

Commonwealth Court filed Notice of Filing Petition for Review Agency with revised caption. (No.: 2074 CD 2007)

November 28, 2007

Board transmitted certified list comprising the record from the Board of Claims to Commonwealth Court.

August 25, 2008

Court of Common Pleas, Dauphin County, filed an Order. It is Ordered that said Motion to Set Aside Writs of Execution (Money Judgment) and Attachment is granted.

August 27, 2008

Court of Common Pleas filed an Order that the Court's Order of August 22, 2008 is vacated. Commonwealth's Brief in support of its Motion to set aside Writs of Execution is due on or before 9/26/08. Oral argument will be held only upon request of any party.

August 28, 2008

Motion to Vacate Order and Set Aside Certificate of Readiness filed in Court of Common Pleas of Dauphin County filed by Plaintiff.

September 2, 2008

Plaintiff's Answer to H. Platt's Motion to Set Aside Writ of Execution (Money Judgment) and attachment filed in Court of Common Pleas of Dauphin County.

September 9, 2008

Commonwealth Court issued Order. **AND NOW**, this 8th day of September, 2008, the order of the Board of Claims, dated October 10, 2007 at Nos. 3258, 3260, 3358 and 3465. is **AFFIRMED**.

September 26, 2008

Plaintiff filed letter, Proposed Order and Motion for Suspension of Briefing Schedule filed in Court of Common Pleas of Dauphin County.

September 29, 2008

Court of Common Pleas in Dauphin County, Pennsylvania filed Motion for Suspension of Briefing Schedule.