

Docket Number: 3369

**ABLE-HESS ASSOCIATES, INC.**

Christopher R. Opalinski, Esquire  
Cornelius J. O'Brien, Esquire

VS.

**CLOSED**

COMMONWEALTH OF PENNSYLVANIA  
STATE SYSTEM OF HIGHER EDUCATION, SLIPPER ROCK UNIVERSITY

Robert A. Mülle, Chief Counsel  
Wayne S. Melnick, Legal Counsel

**February 21, 2001**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$\$217,540.33+.

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**February 23, 2001**

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. **ANSWER DUE FROM DEFENDANT March 26, 2001.**

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**March 8, 2001**

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 28, 2001.

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**CLOSED**

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**March 29, 2001**

Answer to Plaintiff's Complaint filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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Original signed Verification for the Answer filed March 29, 2001 filed by attorney for Defendant.

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**June 14, 2001**

Notice of Service of Claimant's First Request for Production of Documents filed by attorney for Plaintiff.

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**July 9, 2001**

Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22, Certificate of Compliance Pursuant to Rule 4009.23, Notice of Intent to Serve Subpoena on IKM and Notice of Intent to Serve Subpoena on O'Brien Kreitzberg filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**September 28, 2001**

Letter forwarded to parties requesting a status report. Status report due on or before 10/29/01.

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**October 9, 2001**

Certificate of Compliance Pursuant to Rule 4009.23 advising that all documents or things required to be produced pursuant to Plaintiff's Subpoena issued on June 12, 2001, have been served filed by attorney for IKM. Copy forwarded to attorney for Plaintiff by attorney for IKM.

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**October 29, 2001**

Status letter received(via fax)from attorney for Plaintiff advising that the parties are in discovery and that discovery should be completed by December, therefore, they are will be ready to try this case anytime after January 1, 2002.

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**October 29, 2001**

Motion to Compel Compliance with Request for Production of Documents filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff. **Response due from Defendant 11/26/01.**

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**October 31, 2001**

Status letter received(via U.S. Mail)from attorney for Plaintiff advising that the parties are in discovery and that discovery should be completed by December, therefore, they are will be ready to try this case anytime after January 1, 2002.

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**November 1, 2001**

Notice of Deposition of Andrew Wilson, Wayne Proud, Christopher Niemann, and Jeffrey Brown filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 13, 2001**

Notice of Service of Subpoena to Christopher Niemann c/o John W. Rakow III, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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**December 18, 2001**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 18th day of December, 2001, after review of Plaintiff's, Able-Hess Associates, Inc., Motion to Compel Compliance with Request for Production of Documents and Defendant's, Commonwealth of Pennsylvania, State System of Higher Education, Slippery Rock University, lack of response thereto, it is hereby **ORDERED** and **DECREED** that Defendant is to comply with Plaintiff's Request for Production of Documents as set forth in Exhibit B to their Motion, within thirty (30) days of the exit date of this Order or suffer appropriate sanctions upon application to this Board." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**December 31, 2001**

Acceptance of Service of Opinion and Order dated December 18, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff December 27, 2001.

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**January 3, 2002**

Acceptance of Service of Opinion and Order dated December 18, 2001 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December 19, 2001.

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**January 28, 2002**

Letter forwarded to parties requesting a Status Report. Status Report due on or before February 27, 2002.

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**February 28, 2002**

Letter received (via fax) from attorney for Plaintiff advising that document discovery is complete and that even though they are still attempting to take depositions, Plaintiff would like to request that a hearing be scheduled.

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**March 1, 2002**

Letter received (via U.S. Mail) from attorney for Plaintiff advising that document discovery is complete and that even though they are still attempting to take depositions, Plaintiff would like to request that a hearing be scheduled.

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**July 24, 2002**

Letter received (via fax) from attorney for Plaintiff advising that both parties are available for a hearing during the week of August 26-30.

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**July 25, 2002**

Letter forwarded to attorney for Plaintiff with copy to attorney for Defendant requesting dates in November for a hearing.

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**July 26, 2002**

Letter received (via U.S. Mail) from attorney for Plaintiff advising that both parties are available for a hearing during the week of August 26-30.

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**August 20, 2002**

Letter received (via fax) from attorney for Plaintiff advising that both parties are available November 11 - 13 & November 18 - 21, 2002 for a hearing.

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**August 21, 2002**

Letter received (via U.S. Mail) from attorney for Plaintiff advising that both parties are available November 11 - 13 & November 18 - 21, 2002 for a hearing.

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**September 26, 2002**

The Board rendered the following Order: "AND NOW, this 26th day of September 2002, it is ORDERED and DECREED that this matter is set for a hearing before the Board's Panel composed of Daniel J. Bekavac, Esquire, Panel Attorney, and A.T. Dougherty, Jr., P.E., Panel Engineer, beginning on November 18, 2002 through November 20, 2002, if necessary. Said hearing shall be held at St. Joseph's Center, 2900 Seminary Drive, Greensburg, Pennsylvania, commencing at 9:30 a.m." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

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**October 2, 2002**

Letter forwarded to parties (as well as panel members) advising that the hearing originally scheduled for November 18, 19 & 20, 2002 has been rescheduled to November 20, 21 & 22, 2002.

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**October 2, 2002**

Acceptance of Service of Order dated September 26, 2002 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant September 27, 2002.

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**October 4, 2002**

Acceptance of Service of Order dated September 26, 2002 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 1, 2002.

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**October 21, 2002**

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

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**October 22, 2002**

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

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**November 20, 2002**

Panel Hearing (Bekavac/McLaughlin) held ,at St. Joseph's Center, 2900 Seminary Drive, Greensburg, Pennsylvania, commencing at 9:30 a.m.

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**November 21, 2002**

Panel Hearing (Bekavac/McLaughlin) held ,at St. Joseph's Center, 2900 Seminary Drive, Greensburg, Pennsylvania, commencing at 9:30 a.m. Case completed.

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**December 19, 2002**

Testimony for panel hearing held November 20 and 21, 2002 filed

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**December 21, 2002**

Copy of testimony of panel hearing held November 20 and 21, 2002 forwarded to attorney for Plaintiff. **Plaintiff's Findings of Fact, etc. due 1/22/03.**

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**January 22, 2003**

Claimant Able-Hess Associates, Inc.'s Proposed Findings of Fact and Conclusions of Law and Brief in Support filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff. **Defendant's Findings of Fact, etc. due 3/24/03.**

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**March 26, 2003**

Respondent's Proposed Findings of Fact and Conclusions of Law and Discussion filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

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**June 2, 2003**

Panel Members Bekavac and McLaughlin filed Panel Report.

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**October 27, 2003**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 27th day of October, 2003, the Board of Claims hereby finds in favor of the Plaintiff, Able-Hess Associates, Inc. and against the Defendant, Commonwealth of Pennsylvania, State System of Higher Education, Slippery Rock University, in an amount of \$600,155.60, with interest at the statutory rate as follows:

upon \$127,671.68 from July 12, 2000

upon \$73,483.92 from May 17, 2001

upon \$399,000.00 from May 17, 2001"

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

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**CLOSED**

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November 3, 2003  
Plaintiff filed Acceptance of Service of Opinion and Order dated October 27, 2003. Receipt of same acknowledged October 31, 2003.  
November 3, 2003

Chief Deputy Attorney General filed Acceptance of Service of Opinion and Order dated October 27, 2003. Receipt of same acknowledged October 30, 2003.

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**December 1, 2003**

Defendant filed copy of Petition for Review as filed in Commonwealth Court.

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**December 3, 2003**

Commonwealth Court issued Petition for Review. (No. 2590 CD 2003)

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**December 31, 2003**

Board transmitted file to Commonwealth Court.

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**May 17, 2004**

Commonwealth Court issued Opinion and Order. Order as follows: "**AND NOW**, this 14th day of May, 2004, it is hereby ordered that the October 27, 2003 order of the Pennsylvania Board of Claims is affirmed in part and reversed in part. That portion of the Board's order awarding Able-Hess Associates, Inc. damages in the amount of \$526,671.68 is **AFFIRMED**. That portion of the Board's order awarding Able-Hess excess compensation damages in the amount of \$73,483.92 is **REVERSED**."

July 12, 2004

Commonwealth Court returned filed.

# CLOSED