

Docket Number: 3548

JAMES D. MORRISSEY, INC.

Mason Avrigian, Jr., Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~Andrew S. Gordon, Chief Counsel~~
~~Stephen S. Stokwitz, Assistant Counsel~~
~~Gerald R. Schulz, Assistant Counsel~~

January 6, 2004

Defendant filed letter advising that it is the Defendant's position that a response to Plaintiff's Motion to Compel is not necessary in that Defendant has complied with all discovery requests and is willing to produce the documents requested by Plaintiff. Defendant further advises that Plaintiff's Motion was unsupported and accordingly, should be dismissed.

January 20, 2004

Defendant filed Notice of Service of Defendant's Reply to Morrissey's First Request for the Production of Documents and Things.

March 11, 2004

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 11th day of March 2004, based upon consideration of the Plaintiff's Motion to Compel, Defendant's letter response to the Motion and Defendant's subsequent reply to Plaintiff's first request for production of documents and things addressed to Defendant, the Motion to Compel Discovery will be deemed **MOOT**. It is further **ORDERED** and **DECREED** that all attorneys representing the Plaintiff in this case enter their appearance with this Board within ten (10) days of the exit date of this Order. Copy forwarded to Plaintiff and Defendant.

April 21, 2005

Board issued letter to parties requesting a status report.

May 23, 2005

Plaintiff transmitted a letter via fax advising that within the next 30 to 60 days depositions will be taken in this matter. Thereafter, this matter will be ready for a hearing before the Board.

May 24, 2005

Plaintiff filed a letter advising that within the next 30 to 60 days depositions will be taken in this matter. Thereafter, this matter will be ready for a hearing before the Board.

May 27, 2005

Defendant filed a letter advising that this case has been dormant for a considerable amount of time. Therefore, the case is not ready for trial as stated by Plaintiff in their letter of May 23, 2005.

May 3, 2006

Board issued Status letter to parties.

June 5, 2006

Plaintiff filed Motion for scheduling order and proposed order.

June 8, 2006

Board forwarded letter to Plaintiff and Defendant requesting hearing information.

June 27, 2006

Plaintiff transmitted via fax a proposed scheduling order as requested by the Board.

June 29, 2006

Plaintiff filed a proposed scheduling order as requested by the Board.

July 6, 2006

Defendant filed letter in response to Board's letter requesting scheduling information.

July 13, 2006

Board rendered a scheduling order. Order as follows: "**AND NOW**, this 13 day of July, 2006, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant is January 5, 2007; 2. The last day for defendant's expert report, if any, to be provided to plaintiff is February 5, 2007; 3. All discovery, including exchange of expert rebuttal reports shall be completed by March 14, 2007*; 4. The last day for filing pre-trial motions is March 28, 2007*; 5. Pre-trial statements of both parties shall be filed with the Board and

served upon one another no later than April 27, 2007 Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, May 3, 2007 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Monday, June 4, 2007 and running through Wednesday, June 6, 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. *All discovery motions shall be filed at least 30 days in advance of the close of discovery to allow for a 15 day response period and decision by the Board prior to the close of discovery." Copy forwarded to Plaintiff and Defendant.

August 11, 2006

Plaintiff filed Acceptance of Service of Scheduling Order dated July 13, 2006. Receipt of same acknowledged on July 17, 2006.

April 24, 2007

Plaintiff transmitted via fax a letter requesting an extension of time of 10 days to 2 weeks to file pre-trial statements.

April 26, 2007

Plaintiff filed a letter requesting an extension of time of 10 days to 2 weeks to file pre-trial statements.

April 26, 2007

Board issued letter to Plaintiff extending the date of the pre-trial conference until May 10, 2007 at which time the pre-trial statements will be due. Faxed and mailed letter to Plaintiff and forwarded copy to Defendant.

May 9, 2007

Board issued order. Order as follows: **"AND NOW**, this 9th day of May, 2007, it is hereby **ORDERED** that the pre-trial conference scheduled for tomorrow, Thursday, May 10, 2007, at 1:00 p.m. and the hearing scheduled for Monday, June 4 through Wednesday, June 6, 2007 in this matter are postponed. An order rescheduling the pre-trial conference and hearing will be issued by the Board." Copies faxed and mailed to parties.

May 15, 2007

Board issued a letter to panel members advising them of the delayed hearing and to return all files as soon as possible.

May 16, 2007

Plaintiff filed Acceptance of Service of Order dated May 9, 2007. Receipt of same acknowledged on May 14, 2007.

August 10, 2007

Defendant filed Withdraw of Appearance of Stephen S. Stokwitz, Assistant Counsel.

August 16, 2007

Plaintiff filed a Motion for Amended Scheduling Order.

August 22, 2007

Defendant filed Praecipe for Entry of Appearance of Gerald R. Schultz, Assistant Counsel.

August 29, 2007

Board forwarded letter to Plaintiff and Defendant requesting hearing information.

September 7, 2007

Plaintiff transmitted via fax a proposed scheduling order as requested by the Board.

September 10, 2007

Plaintiff filed a proposed scheduling order as requested by the Board.

September 12, 2007

Defendant transmitted via fax a proposed scheduling order as requested by the Board.

September 13, 2007

Defendant filed a proposed scheduling order as requested by the Board.

September 17, 2007

Board rendered Order. Order as follows: **"AND NOW**, this 17th day of September, 2007, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant is October 1, 2007¹; 2. The last day for defendant's expert report, if any, to be provided to plaintiff is November 1, 2007¹; 3. All discovery, including exchange of expert rebuttal reports, shall be completed by December 15, 2007²; 4. The last day for filing pre-trial motions is December 31, 2007²; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than January 31, 2008, 2007 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, February 7, 2008 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Monday, March 17, 2008 and running through Wednesday, March 19, 2008, or 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." Copy forwarded to Plaintiff and Defendant.

September 26, 2007

Plaintiff filed Acceptance of Service of Scheduling Order dated September 17, 2007. Receipt of same acknowledged on September 24, 2007.

November 7, 2007

Defendant filed Notice of Service of Notices of Deposition.

November 7, 2007

Defendant filed Notice of Service of the Request for Production of Documents.

November 9, 2007

Defendant filed Notice of Service of the Department's Interrogatories to Plaintiff.

November 16, 2007

Defendant filed corrected Notice of Service of Notices of Deposition for Mr. Gaughan and Mr. Greer.

January 24, 2008

Board issued Order. Order as follows: **"AND NOW**, this 24th day of January, 2008, it is hereby **ORDERED** that the Board's Scheduling Order of September 17, 2007, is amended insofar as the pre-trial conference previously scheduled for Thursday, February 7, 2008, shall be rescheduled for Friday, February 8, 2008 at 1:00 PM. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101. In all other respects, the Scheduling Order of September 17, 2007 remains the same." Copy forwarded to Plaintiff and Defendant.

January 31, 2008

Board rendered Order. Order as follows: **"AND NOW**, this 31st day of January, 2008, it is hereby **ORDERED** that the Board's Scheduling Order of September 17, 2007 is **AMENDED** insofar as the pre-trial conference, previously scheduled for Thursday, February 7, 2008 and rescheduled for Friday, February 8, 2008, shall be rescheduled for Monday, February 11, 2008 at 2:00 PM. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101. In all other respects, the Scheduling Order of September 17, 2007 remains the same." Copy forwarded Plaintiff and Defendant.

January 31, 2008

Plaintiff filed Pre-trial Memorandum.

January 31, 2008

Defendant filed Pre-trial Memorandum.

February 4, 2008

Plaintiff filed Acceptance of Service of Amended Scheduling Order dated January 24, 2008. Receipt of same acknowledged on January 30, 2008.

February 8, 2008

Plaintiff filed Acceptance of Service of Amended Scheduling Order dated January 31, 2008. Receipt of same acknowledged on February 6, 2008.

February 11, 2008

Board held Pre-Trial Conference at 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 2:00 PM.

February 19, 2008

Plaintiff transmitted via facsimile a letter stating that a non-party witness, Joseph Szucsik, has agreed to appear and testify at the hearing.

February 20, 2008

Defendant filed letter stating that they are taking every available action to ensure the appearance of Mr. Joseph Szucsik as a witness at the hearing.

February 22, 2008

Plaintiff filed a letter stating that a non-party witness, Joseph Szucsik, has agreed to appear and testify at the hearing.

March 7, 2008

Defendant filed demonstrative exhibits for the hearing scheduled for March 17-19, 2008.

March 10, 2008

Plaintiff filed Praecipe to File Subpoena on a non-party witness, Wim Lindeboom.

March 17, 2008

Panel Hearing held at 200 N. Third Street, 6th Floor, Harrisburg, Pa commencing at 9:30 AM.

March 17, 2008

Panel Hearing held at 200 N. Third Street, 6th Floor, Harrisburg, Pa commencing at 9:30 AM. Case completed.

April 18, 2008

Testimony of panel hearing held March 17 & 18, 2008, filed.

April 25, 2008

Board forwarded copy of testimony of panel hearing held March 17 & 18, 2008, to Defendant.

June 9, 2008

Plaintiff transmitted via facsimile a letter requesting a one day extension to file its F.O.F., Conclusions of Law and Memorandum of Law due to problems in communicating with their messenger service. Defendant has agreed to the extension.

June 9, 2008

Plaintiff filed Proposed Findings of Fact, Conclusions of Law, Memorandum of Law in Support and attached Joint Exhibit A.

July 11, 2008

Defendant filed Proposed Findings of Fact, Conclusions of Law and Brief in Support.

July 15, 2008

Board forwarded letter to panel members requesting panel report.

July 25, 2008

Plaintiff filed Reply to Defendant's Findings of Fact, Conclusions of Law and Brief.

August 25, 2008

Panel Members filed Panel Report.

June 5, 2009

Board issued Opinion and Order. Order as follows: **"AND NOW**, this 5th day of June, 2009, it is **ORDERED** and **DECREED** that judgment be entered in favor of the Plaintiff, James D. Morrissey, Inc., and against Defendant, Commonwealth of Pennsylvania, Department of Transportation, in the sum of \$185,518.90. This sum consists of \$130,000.00, the amount owed to Plaintiff for damages incurred as a result of Defendant's breach of contract, and \$55,518.90 in prejudgment interest. 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 attorney fees." Copies forwarded to Plaintiff, Defendant and Chief Deputy Attorney General.

June 12, 2009

Plaintiff filed Acceptance of Service of Opinion and Order dated June 5, 2009. Receipt of same acknowledged on June 8, 2009.

June 12, 2009

Attorney General filed Acceptance of Service of Opinion and Order dated June 5, 2009. Receipt of same acknowledged on June 10, 2009.
