

Docket Number: 3594

DEVORE CONSTRUCTION, INC.

Jason A. Copley, Esquire  
Lisa M. Wampler, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES

~~Gregory C. Santoro, Chief Counsel~~  
~~Peter M. Good, Assistant Counsel~~  
~~Trent Hargrove, Chief Counsel~~  
Nancy J. Kippenhan, Assistant Chief Counsel

VS.

**\*WEBER MURPHY FOX**

Ritchie T. Marsh, Esquire

**CLOSED**

**March 13, 2003**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$592,043.69+.

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**March 19, 2003**

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT 4/23/03.

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**March 25, 2003**

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General March 21, 2003.

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**March 27, 2003**

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 24, 2003.

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**April 17, 2003**

Letter received from Lynn Fleisher Estricher, Law Clerk advising that the parties agreed to an extension of time until May 19, 2003 for Defendant to file answers.

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**April 21, 2003**

Letter forwarded to attorney for Defendant granting an extension of time until May 19, 2003 to file and answer.

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**\*May 13, 2003**

Defendant filed Complaint to Join Additional Defendant.

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**May 14, 2003**

Board forwarded Complaint to Join Additional Defendant to Plaintiff, Weber Murphy Fox and Chief Deputy Attorney General. **Response due from Additional Defendant 6/18/03.**

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**May 20, 2003**

Acceptance of Service of Complaint to Join Additional Defendant received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General May 16, 2003.

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**May 19, 2003**

Defendant filed Answer and New Matter to Claimant=s Complaint. Copy forwarded to Plaintiff and Additional Defendant. **Response due from Plaintiff 6/13/03.**

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**May 27, 2003**

Acceptance of Service of Complaint to Join Additional Defendant filed by attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 22, 2003.

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**June 2, 2003**

Plaintiff filed Reply to New Matter. Copy forwarded to Defendant.

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**June 20, 2003**

Defendant filed Praecipe to enter appearance of Trent Hargrove, Chief Counsel on behalf of Defendant. Copy forwarded to Plaintiff.

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**June 20, 2003**

Defendant filed Praecipe to withdraw appearance of Peter M. Good, Chief Counsel on behalf of Defendant. Copy forwarded to Plaintiff.

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**July 3, 2003**

Additional Defendant filed a Praecipe to Enter Appearance of Ritchie T. Marsh, Esquire on behalf of Additional Defendant. Copy forwarded to Plaintiff and Defendant.

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**July 3, 2003**

Additional Defendant filed Answer and New Matter to Complaint to Join Additional Respondent. Copy forwarded to Plaintiff and Defendant. **Response due from Defendant 8/6/03.**

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**July 10, 2003**

Defendant filed a letter advising that Plaintiff has granted Defendant an extension of time until September 7, 2003, in which to file its reply to new matter. Copy forwarded to Plaintiff and Additional Defendant.

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**July 16, 2003**

Defendant filed Praecipe to withdraw appearance of Trent

Hargrove, Chief Counsel and enter appearance of Nancy J. Kippenhan, Assistant Chief Counsel on behalf of Defendant. Copy forwarded to Plaintiff and Additional Defendant.

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**August 4, 2003**

Defendant filed Notice of Service of Responses to Plaintiff's Requests for Production of Documents.

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**September 5, 2003**

Defendant filed Answer to New Matter of Additional Defendant. Copy forwarded to Plaintiff and Additional Defendant.

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**November 3, 2003**

Plaintiff filed Entry of Appearance of Lisa M. Wampler, Esquire, as co-counsel on behalf of Plaintiff. Copy forwarded to Defendant and Additional Defendant.

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**November 24, 2003**

Plaintiff filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22. Copy forwarded to Plaintiff and Additional Defendant.

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**December 11, 2003**

Plaintiff filed Claimant's Motion to Compel Respondent to Produce Documents Improperly Designated and Withheld as Privileged Work Product and Memorandum of Law in Support. Copy forwarded to Defendant and Additional Defendant.

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**January 8, 2004**

Defendant filed Respondent's Response in Opposition to Claimant's Motion to Compel Discovery and Brief in Support. Copy forwarded to Plaintiff.

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**February 17, 2004**

Plaintiff filed Notice of Service of Claimant's Objections and Responses to First Set of Interrogatories and Request for Production of Documents of Respondent.

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**February 25, 2004**

Plaintiff filed Motion to Enforce Subpoena as well as Brief in Support. Copy forwarded to Defendant.

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**March 5, 2004**

Plaintiff filed Certificate of Service of Motion to Enforce Subpoena upon attorney for Additional Defendant (Weber).

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**March 8, 2004**

Defendant filed Motion for Protective Order and Supporting Brief. Copy forwarded to Plaintiff and Additional Defendant (Weber).

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**March 26, 2004**

Defendant filed Response in Opposition to Plaintiff's Motion to Enforce Subpoena, Memorandum in Support and Proposed Order. Copy forwarded to Plaintiff and Additional Defendant.

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**April 1, 2004**

Board rendered an Opinion and Order. Order as follows: **AND NOW**, this 1st day of April, 2004, it is **ORDERED** and **DECREED** that the Plaintiff's Motion to Compel Defendant to Produce Documents Improperly Designated and Withheld as Privileged Work Product is **GRANTED**. The Board further **ORDERS** and **DECREEs** that the Commonwealth of Pennsylvania, Department of General shall have twenty (20) days from the exit date of this Order to provide access to those items set forth on the privilege log.® Copy forwarded to all parties of record.

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**April 7, 2004**

Additional Defendant filed Acceptance of Service of Opinion and order dated April 1, 2004. Receipt of same acknowledged April 5, 2004.

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**April 7, 2004**

Additional Defendant filed a letter requesting a copy of the Privilege Log and copies of all the supporting documents the Board's Order addressed.

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**April 7, 2004**

Plaintiff filed Response in Opposition to Defendant's Motion for Protective Order and Memorandum of Law. Copy forwarded to Defendant and Additional Defendant.

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**April 9, 2004**

Defendant filed Acceptance of Service of Opinion and Order dated April 1, 2004. Receipt of same acknowledged April 5, 2004.

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**April 27, 2004**

Defendant filed Notice of Appeal from Board Order of April 1, 2004. Copy forwarded to all parties of record.

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**April 27, 2004**

Defendant filed Application to Amend Order to Include Statement Specified in 42 PA. C.S. '702(b). Copy forwarded to all parties of record.

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**April 28, 2004**

Defendant filed a letter advising that Defendant will not file a Motion for Protective Order at this time, but reserves the right to do so depending on the course of its appeal.

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**May 7, 2004**

Plaintiff filed Notice of Service of Plaintiff's First Set of Interrogatories.

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**May 10, 2004**

Plaintiff filed Response in Opposition to Defendant's Application to Amend Order to Include Statement Specified in 42 Pa. C.S. '702(b).

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**May 18, 2004**

Board rendered an Opinion and Order. Order as follows: **AND NOW**, this 18th day of May, 2004, it is **ORDERED** and **DECREED** that, based on Defendant's Motion for a Protective Order, that Defendant submit two sets of copies of the documents for which it claims privileged protection to the Board within twenty (20) days of the exit date of this Order for in camera inspection. Defendant shall submit one complete set of such documents and one set shall be redacted as Defendant would propose it be provided to Plaintiff. Copy forwarded to all parties of record.

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**May 21, 2004**

Defendant filed Acceptance of Service of Opinion and Order dated May 18, 2004. Receipt of same acknowledged May 20, 2004.

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**May 24, 2004**

Weber Murphy Fox filed Acceptance of Service of Opinion and Order dated May 18, 2004. Receipt of same acknowledged May 21, 2004.

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**May 24, 2004**

Plaintiff filed Acceptance of Service of Opinion and Order dated May 18, 2004. Receipt of same acknowledged May 20, 2004.

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**June 2, 2004**

Board rendered an Opinion and Order. Order as follows: ~~A~~AND NOW, this 2nd day of June, 2004, it is **ORDERED** and **DECREED** that all documents requested except those claimed as privileged shall be produced within twenty (20) days from the exit date of this Order, and Defendant is **DIRECTED** to produce two (2) sets of copies of those documents claimed as privileged within fifteen (15) days of the exit date of this Order for in camera inspection by the Board. One set shall be complete and one set shall be redacted as Defendant would propose it be provided to Plaintiff.@ Copy forwarded to all parties of record.

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**June 7, 2004**

Plaintiff filed Acceptance of Service of Opinion and Order dated June 2, 2004. Receipt of same acknowledged June 4, 2004.

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**June 7, 2004**

Defendant filed Acceptance of Service of Opinion and Order dated June 2, 2004. Receipt of same acknowledged June 4, 2004.

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**June 8, 2004**

Defendant filed 2 sets of documents, one set full and one set redacted, for in camera inspection, per Board's Order of May 18, 2004.

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**June 9, 2004**

Weber Murphy Fox filed Acceptance of Service of Opinion and Order dated June 2, 2004. Receipt of same acknowledged June 7, 2004.

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**June 16, 2004**

Plaintiff filed Notice of Service of Notices of Deposition for Martin Barkey, Robert Wagner and Kimberly Palmer. Copy forwarded to all parties of record.

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**June 16, 2004**

Defendant filed 2 sets of documents, one set full and one set redacted, for in camera inspection, per Board's Order of June 2, 2004.

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**June 16, 2004**

Defendant filed a letter requesting the Board to forward this case to the Commonwealth Court, pursuant to PA Rule of Appellate Procedure 905(b). Copy forwarded to all parties of record.

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**June 28, 2004**

Board forwarded file to Commonwealth Court.

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**June 29, 2004**

Defendant filed a Motion to Transfer Notice of Appeal to Commonwealth Court. Copy forwarded to all parties of record.

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**June 30, 2004**

Board rendered an Opinion and Order. Order as follows: **AAND NOW**, this 30th day of June, 2004, Defendant=s Motion for Protective Order is **GRANTED** as limited in accordance with the terms of the Opinion herein set forth. Defendant is **ORDERED** to forward the documentation number 1 through 14 to Plaintiff in redacted form as indicated by the Board within ten (10) days from the exit date of this Order.@ Copy forwarded to all parties of record.

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**June 30, 2004**

Commonwealth Court returned file.

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**July 1, 2004**

Board rendered an Opinion and Order. Order as follows: **AAND NOW**, this 1st day of July, 2004, Plaintiff=s Motion to Enforce Subpoena is **GRANTED** in accordance with the Opinion herein set forth. Defendant is **ORDERED** to forward documentation requested, except to the extent determined by this Opinion to be privileged, to Plaintiff within ten (10) days from the exit date of this Order.@ Copy forwarded to all parties of record.

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**July 6, 2004**

Defendant filed Acceptance of Service of Opinion and Order dated June 30, 2004. Receipt of same acknowledged July 2, 2004.

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**July 8, 2004**

Defendant filed a courtesy copy of a letter addressed to Plaintiff turning over the documents ordered to be produced by the Board.

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**July 8, 2004**

Plaintiff filed Acceptance of Service of Opinion and Order dated June 30, 2004. Receipt of same acknowledged July 6, 2004.

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**July 8, 2004**

Plaintiff filed Acceptance of Service of Opinion and Order dated July 1, 2004. Receipt of same acknowledged July 6, 2004.

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**July 15, 2004**

Defendant filed Acceptance of Service of Opinion and Order dated July 1, 2004. Receipt of same acknowledged July 6, 2004.

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**July 19, 2004**

Weber Murphy Fox filed Acceptance of Service of Opinion and Order dated July 1, 2004. Receipt of same acknowledged July 15, 2004.

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**July 28, 2004**

Weber Murphy Fox filed Acceptance of Service of Opinion and Order dated June 30, 2004. Receipt of same acknowledged July 26, 2004.

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**August 9, 2004**

Board rendered an Opinion and Order. Order as follows: **AND NOW**, this 9th day of August, 2004, pursuant to Pennsylvania Rule of Appellate Procedure 313(a) the Board hereby transfers Defendant, Commonwealth of Pennsylvania, Department of General Services= April 27, 2004 Notice of Appeal to the Commonwealth Court for the Courts consideration.@ Copy forwarded to all parties of record.

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**August 13, 2004**

Plaintiff filed Acceptance of service of Opinion and Order dated August 9, 2004. Receipt of same acknowledged August 11, 2004.

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**August 18, 2004**

Defendant filed Acceptance of Service of Opinion and Order dated August 9, 2004. Receipt of same acknowledged August 17, 2004.

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**August 18, 2004**

Board forwarded file to Commonwealth Court.

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**September 23, 2004**

Plaintiff filed letter advising that the parties have reached a settlement and are in the process of finalizing documents.

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**October 4, 2004**

Commonwealth Court issued an Opinion and Order. Order as follows:

"AND NOW, September 30, 2004, following argument on the appealability and finality of the trial court's order in the above-captioned appeal, the Court having concluded that the particular order in question is interlocutory and does not presently qualify as a collateral order pursuant to Pa. R.A.P. 313,<sup>1</sup> the appeal is QUASHED as interlocutory. (<sup>1</sup> - To use the words of counsel for the Department of General Services, we do not concur that the particular facts of this case support counsel's contention that the discovery "barn door is open," nor that the right to appeal will be irretrievably lost if the appeal is not allowed, given that the material has already been produced and appellant could pursue this issue following issuance of a final order in this matter.)"

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**November 18, 2004**

Commonwealth Court returned file.

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**January 31, 2005**

Plaintiff filed Praecipe to Mark Case Settled, Discontinued and Ended.

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**February 7, 2005**

Additional Defendant filed letter advising that on behalf of Additional Defendant, they would want the matter to be discontinued and settled with prejudice.

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**February 7, 2005**

Plaintiff filed letter advising that Plaintiff intended the Praecipe filed would dismiss the action with prejudice.

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**February 9, 2005**

Board rendered an Order. Order as follows: "**AND NOW**, this 9<sup>th</sup> day of February, 2005, upon receipt of a Praecipe to Mark Case Settled, Discontinued and Ended, executed by Lisa M. Wampler, Esquire, attorney for Plaintiff, and docketed with this Board under date of January 31, 2005, and a subsequent letter of February 4, 2005, clarifying the intent of the praecipe, it is **ORDERED** and **DIRECTED** that said case be marked 'settled, discontinued and ended with prejudice'." Copy forwarded to all parties of record.

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**February 15, 2005**

Defendant filed Acceptance of Service of Order dated February 9, 2005. Receipt of same acknowledged February 11, 2005.

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**February 17, 2005**

Additional Defendant filed Acceptance of Service of Order dated February 9, 2005. Receipt of same acknowledged February 14, 2005.

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