Docket Number: 3617
CONSOLIDATED WITH 3674, 3552, 3683, 3669, 3676, 3670, 3675

OLDCASTLE PRECAST MODULAR GROUP

John A. Greenhall, Esquire
Jamie L. Sandman, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES

~~Trent Hargrove, Chief Counsel~~
~~Stephen Bustern, Assistant Counsel~~
*David L. Narkiewicz, Deputy General Counsel

CLOSED

April 9, 2003

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim:$718,514.97+

April 10, 2003

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. **ANSWER DUE FROM DEFENDANT MAY 10, 2003.**

April 17, 2003

Acceptance of Service of Claim received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 11, 2003.

April 17, 2003

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General April 9, 2003.

April 18, 2003

Praecipe to Substitute Verfication of Daniel Nyce for the Verification of John A. Greenhall filed by attorney for Plaintiff.

April 24, 2003

The Board rendered an Opinion and made the following Order: A**AND NOW**, this 24th day of April, 2003, upon receipt of a Praecipe of Claimant to Substitute Verification, it is **ORDERED** and **DECREED** that the verification filed on April 18, 2003, shall be substituted and added to the Statement of Claim with a copy forwarded to attorney for Defendant and Chief Deputy Attorney General.

April 30, 2003

Acceptance of Service of Opinion and Order dated April 24, 2003 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 28, 2003.

May 6, 2003

Acceptance of Service of Opinion and Order dated April 24, 2003 received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General April 30, 2003.

May 9, 2003

Defendant filed Acceptance of Service of Opinion and Order and verification. Receipt of same acknowledged by Defendant April 28, 2002.

May 14, 2003

Plaintiff filed letter advising that the Defendant has decided to hold a claim hearing in this matter and the parties jointly request that this matter be held in abeyance pending a decision.

May 29, 2003

Board issued letter granting Plaintiff=s request to hold case in abeyance. Status reports due every 60 days with first status report being due on/or before July 14, 2003.

August 5, 2003

Board forwarded letter to parties requesting status.

August 11, 2003

Plaintiff filed status letter advising that a hearing was conducted by the Department of General Services on July 10, 2003. Plaintiff indicated that Defendant would be issuing its decision in early September 2003 and Plaintiff would notify the Board of the outcome.

August 18, 2003

Defendant filed status letter advising that a hearing was conducted by the Department of General Services on July 10, 2003. Defendant indicates that its decision would be rendered in early September 2003 and Defendant would notify the Board of its intention to reactivate or withdraw its claim.

October 16, 2003

Plaintiff and Defendant filed Joint Stipulation to remove stay of this matter and further providing that Defendant shall answer Plaintiff=s Complaint within thirty (30) days of the filing of this Joint Stipulation.

October 21, 2003

Board rendered Opinion and Order. Order as follows: A**AND NOW**, this 21st day of October, 2003, upon receipt of a Joint Stipulation of the parties to remove the stay in this mattter, it is hereby **ORDERED** and **DECREED** that the stay in this matter is hereby lifted. Defendant shall answer Plaintiff=s Claim within thirty (30) days of the exit date of this Order.@ Copy forwarded to Plaintiff and Defendant.

November 19, 2003

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

November 21, 2003

Defendant filed Certificate of Service of Request for Production of Documents and Interrogatories, First Set unto Plaintiff.

December 1, 2003

Defendant filed Notice of Intent to Serve Subpoenas.

December 8, 2003

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

December 10, 2003

Board forwarded letter directing parties to commence with discovery.

January 6, 2003

Notice of Service of Defendant=s Subpoena to Lighthouse Electric.

January 6, 2003

Notice of Service of Defendant=s Subpoena to Watercontrol Engineering.

January 6, 2003

Notice of Service of Defendant=s Subpoena to Pro-Spec Painting.

***January 29, 2004**

Defendant filed Praecipe to Withdraw Stephen J. Busterna, Assistant Counsel and to Enter Appearance of David L. Narkiewics, Deputy General Counsel on behalf of Defendant.

March 15, 2004

Defendant filed Motion to Disqualify the Law Firm of Cohen Seglias Pallas Greenhall & Furman, PC, Brief in Support and Proposed Order. Copy forwarded to Plaintiff.

March 22, 2004

Plaintiff filed Opposition to the Defendants= Request for Stay of Proceedings. Copy forwarded to Defendant.

March 23, 2004

Board issued Opinion and Order. Order as follows: A**AND NOW**, this 23rd day of March, 2004, it is hereby **ORDERED** and **DECREED** that Defendant=s Request for an immediate Stay of Proceedings is **DENIED**.@ Copy forwarded to Plaintiff and Defendant by facsmile and U.S. Mail.

March 30, 2004

Defendant filed Acceptance of Service of Opinion and Order dated March 23, 2004. Receipt of same acknowledged March 24, 2004.

April 9, 2004

Plaintiff filed Motion to Compel the Production of Documents of Respondent the Department of General Services. Copy forwarded to Defendant.

April 19, 2004

Plaintiff filed Response to Defendant=s Motion to Disqualify and Brief. Copy forwarded to Defendant.

May 6, 2004

Defendant filed letter requesting the Board deny the Motion to Compel as the issue will be more properly addressed in the Board=s scheduling Order and is therefore moot.

May 10, 2004

Defendant filed Motion for Consolidation and Brief in Support. Copy forwarded to Plaintiff.

May 10, 2004

Defendant filed Motion for Severance (Bifurcation) of Liability and Damages. Copy forwarded to Plaintiff.

May 12, 2004

Board rendered the following Opinion and Order. Order as follows: APlaintiff=s Motion for Expedited Review is **GRANTED**. The parties shall adhere strictly to the following schedule: **AND NOW**, this 12th day of May, 2004, it is hereby **ORDERED** and **DECREED** as follows: 1. All document production shall be completed by July 20, 2004; 2. All expert reports intended for presentation at hearing shall be provided to the opposing party by September 15, 2004; All depositions shall be completed by November 30, 2004; 4. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than December 30, 2004; 5. A pre-trial conference is scheduled for Monday, January 10, 2005, at 10:00 a.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 6. The last day for filing pre-trial motions is Monday, January 17, 2005; and 7. This matter is set for hearing beginning on Monday, April 25, 2005, and running through Friday, April 29, 2005, 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.

May 14, 2004

Board rendered the following Opinion and Order. Order as follows: A**AND NOW**, this 14th day of May, 2004, upon consideration of Plaintiff=s Motion to Compel Discovery directed to Defendant, it is hereby **ORDERED** and **DECREED** that said Motion is **GRANTED**. Defendant shall produce all documents in response to Plaintiff=s Request for Production of Documents within thirty (30) days of the exit date of this Order.@ Copy forwarded to Plaintiff and Defendant.

June 4, 2004

Plaintiff filed letter sent to Defendant outlining the remaining discovery which needs completed.

June 11, 2004

Plaintiff filed Response to Defendant=s Motion for Severance (Bifurcation) and Brief in Support. Copy forwarded to Defendant.

June 11, 2004

Plaintiff filed Response to Defendant=s Motion for Consolidation. Copy forwarded to Defendant.

June 23, 2004

Board rendered Opinion and Order. Order as follows: A**AND NOW**, this 23rd day of June, 2004, it is **DIRECTED** that claimant=s attorney provide to claimant the following items for review: 1) Respondent=s Brief in Support of its Motion to Disqualify, and 2) this Opinion and Order. Claimant=s attorney is also **DIRECTED** to discuss with claimant potential conflicts that may arise in the context of settlement possibilities, including the possibility that settlement offers may be made to claimant or other claimants represented by claimant=s attorney in exchange for acts or omissions that may be advantageous toone and adverse to another. Such discussion should include identification of possible settlement scenarios, their ramifications and possible resolutions. Should claimant still wish to waive the conflicts in this matter following such additional disclosure, it shall file with this Board, within twenty (20) days of the exit day of this Order, an affidavit and waiver similar to the one initially filed, supplemented with confirmation that claimant has read the materials ordered to be provided to it and engaged in the additional discussion required by this Order. Upon receipt of same, or the expiration of the twenty (20) day period, this Board will then issue its decision on Respondent=s motion to disqualify. Copy forwarded to Plaintiff and Defendant.

June 28, 2004

Board rendered Opinion and Order. Order as follows: A**AND NOW,** this 28th day of June, 2004, in the interests of case management and judicial economy, the cases originally docketed at 3552, 3617, 3675, 3683, 3674, 3669, 3670 and 3676 shall be consolidated for the purposes of discovery and decision under docket number 3552, C & M Contracting vs. Commonwealth of Pennsylvania, Department of General Services. The respective pleadings in the individual actions consolidated hereby shall remain as the respective pleadings in the consolidated action and separate findings shall be entered with regard to each original docketed action, (hereinafter referred to as AOld Docket No.@), provided, however that a single unified judgment shall be entered for the consolidated case as a whole. Additionally, for the sake of case management, a separate hearing shall be held for each old docket number. For the purposes of clarity, the parties shall observe the following conventions: 1) All subsequent filing shall utilize the consolidated Case Caption and Docket Number; 2) All subsequent filings that relate only to activities in one or more (but not all) of the originally separate actions shall, in addition, display in parentheses in the caption a reference to the old docket number(s) and Plaintiff=s name in the original action(s), e.g. (Old Docket No. 3617 **B** Old Castle), or

June 28, 2004 (CONTINUED PAGE TWO)

(Old Docket No. 3676 **B** Tomko), as the case may be; and 3) All subsequent filings that relate to activities in all of the originally separate cases shall, in addition, display in the caption the parenthetical notation A(ALL)@. Defendant=s Motion for Severance of Liability and Damages in docket number 3552, 3573, 3679, 3638, 3617, 3675, 3683, 3674, 3669, 3670 and 3676 is hereby **DENIED**. The eight (8) consolidated cases shall proceed on an expedited basis pursuant to the following schedule: 1.All document production shall be completed by July 30, 2004; 2. All expert reports intended for presentation at hearing shall be provided to the opposing party by September 15, 2004; 3. All depositions shall be completed by November 30, 2004; 4. Pre-trial statements of both parties shall be filed with the Board and servced upon one another no later than December 30, 2004; 5. A pre-trial conference is scheduled for Monday, January 10, 2004, at 10:00 a.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 6. The last day for filing pre-trial motions is Monday, January 17, 2005; 7. Hearings: Lighthouse Electric Company, Inc. (Old docket No. 3670), is set for hearing beginning on Monday, March 7 through Friday, March 18, 2005, 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.; Kirby Electric, Inc. (Old docket No. 3674), is set for hearing beginning on Monday, March 21 through Friday, March 25, 2005, 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.; C&M Contracting (Old docket No. 3552), is set for hearing beginning on Monday, March 28 through Friday, April 2, 2005, 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.; W.G. Tomko, Incorporated (Old docket No. 3683), is set for hearing beginning on Monday, April 4 through Friday, April 8, 2005, 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.; W.G. Tomko, Incorporated (Old docket No. 3669), is set for hearing beginning on Monday, April 11 through Friday, April 15, 2005, 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.; W.G. Tomko, Incorporated (Old docket No. 3676), is set for hearing beginning on Monday, April 18 through Friday, April 22, 2005, 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.; Oldcastle Precast Modular Group (Old docket No. 3617),

June 28, 2004 (CONTINUED PAGE THREE)

is set for hearing beginning on Monday, April 25 through Friday, April 29, 2005, 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.; W.G. Tomko, Incorporated (Old docket No. 3675), is set for hearing beginning on Monday, May 2 through Friday,May 6, 2005, 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. Docket numbers 3679 - Miller, 3673 - Pro Spec, and 3638 - Tomko, shall proceed as individual, separate cases and Defendant=s Motion to Consolidate with respect to these cases, is hereby **DENIED**. Defendant=s Motion for Severance in these cases is also hereby **DENIED**.@ Copy forwarded to Plaintiff and Defendant.

June 28, 2004

Plaintiff filed Acceptance of Service of Opinion and Order dated June 23, 2004. Receipt of same acknowledged by Plaintiff June 24, 2004.

June 28, 2004

Defendant filed Acceptance of Service of Opinion and Order dated June 23, 2004. Receipt of same acknowledged by Defendant June 28, 2004.

July 13, 2004

(ALL) Plaintiff filed waivers signed by their client with regard to potential conflicts that could arise in the context of settlement in accordance with Board=s Order of June 23, 2004.

July 21, 2004

Board rendered Opinion and Order. Order as follows: A**AND NOW**, this 21st day of July, 2004, Defendant=s Motion of March 15, 2004, to Disqualify the law firm of Cohen, Seglias, Greenhall and Furman as counsel for Plaintiffs C&M Contracting, Inc. (Consolidated Docket No. 3552), Kirby Electric, Inc. (Old Docket No. 3674), Lighthouse Electric Company, Inc. (Old Docket No. 3670), W.G. Tomko, Inc. (Old Docket Nos. 3676, 3669, 3683) and Oldcastle Precast Modular Group (Old Docket No. 3617) is hereby **DENIED**.@ Copy forwaded to Plaintiff and Defendant.

August 16, 2004

Plaintiff filed Notice of Service of three (3) subpoenas. Copy forwarded to Defendant.

September 2, 2004

(ALL) Defendant filed letter requesting an extension of time until October 30, 2004, for all parties, in which to file expert reports. Copy forwarded to all parti

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September 8, 2004

(ALL) Plaintiff filed letter, via facsimile, objecting to Defendant's letter/request for an extension of time until October 30, 2004 for all parties to file their expert reports. Copy forwarded to all parties.

September 10, 2004

(ALL) Board rendered the following Opinion and Amended Scheduling Order. Order as follows: "**AND NOW**, this 10th day of September, 2004, it is **ORDERED** and **DECREED** that numbered paragraph 2 of the Scheduling Order entered by the Board on June 28, 2004, in this matter shall be amended as follows: the date of September 15, 2004, shall be deleted and October 1, 2004, inserted in its place." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

December 20, 2004

Plaintiff filed Motion to Compel Discovery and Brief in Support. Copy forwarded to all parties of record.

December 30, 2004

Plaintiff filed Pre-trial statement. Copy forwarded to Defendant.

December 30, 2004

Defendant filed Pre-trial statement. Copy forwarded to Plaintiff.

January 7, 2005

Plaintiff's filed letter-type Motion for Sanctions. Copy forwarded to Defendant.

January 11, 2005

(ALL) Board issued Opinion and Order. Order as follows: "AND NOW, this 11th day of January, 2005, it is hereby ORDERED and DECREED that the Scheduling Order previously issued in this matter shall be amended and additional matters addressed as follows: 1. All outstanding discovery shall be completed and delivered to the respective parties by January 20, 2005; 2. All depositions of Merle Ryan and any newly discovered witnesses shall be held and completed by January 28, 2005; 3. Amended pre-trial statements, if necessary, shall be filed with the Board by February 4, 2005. Amendments to pre-trial statements previously submitted should include all matters discussed and agreed to by counsel for the parties at the pre-trial conference, including final expert reports and specific identification of witnesses and exhibits; 4. The last day for filing pre-trial motions with the Board shall be February 9, 2005; 5. The last day to respond to pre-trial motions shall be February 16, 2005; 6. Joint stipulations of the parties shall be filed at least seven (7) days prior to the beginning of the respective hearing; 7. Notwithstanding the above, the expert reports in the Kirby case (Old Docket No. 3674) shall be exchanged and filed with the Board by February 15, 2005; 8. Defendant is hereby ordered to produce any and all minutes or notes of Messrs. Oberlander, Corbit, Raymond, Ryan and Wood, taken or possessed by any of them regarding the monthly meetings with Mr. Ryan, or in the alternative, produce a sworn statement confirming that none were ever taken or explaining why such minutes/notes no longer exist by January 20, 2005; 9. Each Plaintiff represented by the Cohen law firm shall produce the handwritten logs of its project foremen for this project and any and all photos of the project that exist beyond those previously produced or, in the alternative, produce a sworn statement from each of the foremen that no such logs ever existed, or explaining why such logs no longer exist and a similar sworn statement regarding (photos by January 20, 2005; 10. Plaintiffs shall produce to Defendant, in addition to Plaintiffs' expert reports, the original material that formed the basis for the report and the interim calculations leading to the final report by January 20, 2005; and 11. Defendant shall produce to the Board for in camera inspection the originals and proposed redacted versions of Derek Oberlander's notes from the claim hearings in which he

participated and his written responses to Plaintiffs' claims by

January 11, 2005 (continued)

Friday, January 14, 2005. It is so ORDERED." Copy forwarded to all parties via facsimile and U.S. Mail.

January 19, 2005

Defendant filed in-camera originals.

January 20, 2005

Defendant filed verification.

January 24, 2005

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 24th day of January, 2005, Defendant having produced to the Board for in camera inspection, originals and copies of Derek Oberlander's notes according to paragraph 11 of the Order of the Board dated January 11, 2005, it is **ORDERED** and **DECREED** that Defendant forward all such documentation to Plaintiff except as determined by this Opinion to be privileged on or before January 26, 2005." Copy forwarded to Plaintiff and Defendant.

January 31, 2005

Plaintiff (Robinson) filed Acceptance of Service of Opinion and Order dated January 24, 2005. Receipt of same acknowledged by Plaintiff January 27, 2005.

February 1, 2005

Board rendered the following Amended Scheduling Order: **"AND NOW**, this 1st day of February, 2005, the Board's Scheduling Order of June 28, 2004, is hereby modified in part as follows: Kirby Electric, Inc., (Old docket No. 3674), is set for hearing beginning on Monday, March 28 through Friday, April 1, 2005, 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.; C&M Contracting, (Old docket No. 3552), is set for hearing beginning on Monday, April 4 through Friday, April 8, 2005, 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.; W.G. Tomko, Inc., (Old docket No. 3683), is set for hearing

beginning on Monday, April 11 through Friday, April 15, 2005, as

February 1, 2005 (continued)

necessary. Said hearing shall be held at 200 North third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101, commencing at 9:30 a.m.; W.G. Tomko, Inc., (Old docket No. 3669), is set for hearing beginning on Monday, April 18 through Friday, April 22, 2005, 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.; W.G. Tomko, Inc., (Old docket No. 3676), is set for hearing beginning on Monday, April 25 through Friday, April 29, 2005, 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.; Oldcastle Precast Modular Group, (Old docket No. 3617), is set for hearing beginning on Monday, May 2 through Friday, May 6, 2005, 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.; and McGregor Industries, Inc., (Old docket No. 3675), is set for hearing beginning on Monday, May 9 through Friday, May 13, 2005, 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 all parties of record.

February 2, 2005

Plaintiff filed Affidavits of Daniel M. Nyce and James Peli.

February 4, 2005

Plaintiff filed Pre-Hearing Memorandum. Copy forwarded to Defendant.

February 4, 2005

Defendant filed Amended Consolidated Pre-Trial Statement.

February 4, 2005

Plaintiff filed Revised Pre-Trial Memorandum.

February 9, 2005

(Old Docket No. 3617 – Oldcastle) Plaintiff filed Motion in Limine to Preclude the Expert Opinion of McDonough Bolyard Peck, Memorandum in Support of Motion in Limine, as well as Proposed Order. Copy forwarded to all parties.

February 9, 2005

(Docket No. 3552 – C&M) Plaintiff filed Motion in Limine to Preclude the Introduction of Expert Testimony Regarding Defendant's Counterclaim and the Expert Opinion of McDonough Bolyard Peck as well as Plaintiff's Motion for Summary Judgment on Counts II and III of Defendant's Counterclaim, Memorandum of Law in Support thereof, and Proposed Order. Copy forwarded to all parties.

February 9, 2005

(Old Docket No. 3683 – Tomko) Plaintiff filed Motions in Limine to Preclude the Introduction of Expert Testimony Regarding Defendant's Counterclaim and the Expert Opinion of McDonough Bolyard Peck, Memorandum of Law in Support thereof, and Proposed Order. Copy forwarded to all parties.

February 9, 2005

(Old Docket No. 3669 – Tomko) Plaintiff filed Motions in Limine to Preclude the Introduction of Expert Testimony Regarding Defendant's Counterclaim and the Expert Opinion of McDounough Bolyard Peck, Memorandum in Support thereof, and Proposed Order. Copy forwarded to all parties.

February 14, 2005

(ALL) Verifications of Derek Oberlander, Richard Corbett and Robert Raymond, relative to minutes or notes taken or possessed with regard to monthly meetings with Mr. Ryan, filed by Defendant.

February 15, 2005

(ALL) Defendant filed Expert Witness Reports in Kirby case.

February 16, 2005

Defendant filed Answer to Plaintiff's Motion in Limine. Copy forwarded to Plaintiff.

February 16, 2005

Plaintiff's Response to Defendant's Petition for Interpleader. Copy forwarded to Defendant.

February 16, 2005

Plaintiff's Motion in Response to Defendant's Motion for Partial Summary Judgment on Damages. Copy forwarded to Defendant.

February 16, 2005

Claimant's Response to Defendant's Motion to Exclude Claims. Copy forwarded to Defendant.

February 18, 2005

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 18th day of February, 2005, the motion for partial summary judgment for damages, the motion to exclude claims and the petition for interpleader, all filed by the defendant herein, Department of General Services, on February 10, 2005, respecting the eight matters to be heard in this consolidated case are hereby **DENIED** as untimely filed." Copy forwarded to Plaintiffs and Defendant.

February 22, 2005

(3552 (Old Docket Nos. 3670, 3683, 3669, 3676, 3617) Plaintiff filed letter advising that Plaintiff does not feel a meeting is necessary at this time.

February 25, 2005

(ALL) Defendant filed Motion for Reconsideration or Motions in the Alternative. Copy forwarded to Plaintiffs.

February 28, 2005

(OLD DOCKET NOS. 3552, 3617, 3669, 3670, 3683) Board rendered the following Opinion and Order. Order as follows: **"AND NOW,** this 28th day of February, 2005, it is hereby **ORDERED** and **DECREED** that Plaintiffs' Motion in Limine in Old Docket Nos. 3552, 3617, 3669, 3670 and 3683, seeking to exclude Defendant's expert testimony with respect to Defendant's counterclaims is hereby **GRANTED**. Plaintiff's Motion for Partial Summary Judgment on Defendant's Counterclaims for lack of expert testimony to support such claims in Old Docket Nos. 3552 and 3670 is hereby **DENIED**. Plaintiff's Motion in Limine in Old Docket Nos. 3552, 3617, 3670, 3669 and 3683 seeking to exclude expert testimony of Defendant with respect to Plaintiffs' claims is hereby **DENIED**." Copy forwarded to all parties of record.

February 28, 2005

(OLD DOCKET NO. 3674) Board rendered the following Opinion and Order. Order as follows: **"AND NOW,** this 28th day of February, 2005, it is hereby **ORDERED** and **DECREED** that Plaintiff, Kirby Electric, Inc.'s Answer to the Commonwealth's Motion for Partial Summary Judgment on damages shall not be considered by the Board. The Plaintiffs' Motions referred to in this Opinion are hereby **DENIED** as untimely." Copy forwarded to all parties of record.

February 28, 2005

(ALL) Defendant filed Notice of change of address and change of job title.

March 2, 2005

(OLD DOCKET NO. 3617) Plaintiff filed letter requesting to reschedule the hearing in this matter due a conflict.

March 3, 2005

(ALL) Claimant's Supplemental Response and Opposition to Commonwealth's Motion to Strike Kirby's Expert Report, Motion to Strike Kirby's Motion in Limine and For Summary Judgment Against Kirby for Failure to Prosecute.

March 11, 2005

Board filed copy of Preliminary Objections to Defendant's Petition for Review in the Nature of a Complaint for Declaratory Judgment filed in Commonwealth Court.

March 18, 2005

(OLD DOCKET NO. 3674) Plaintiff filed Praecipe to Correct Certificate of Service of Defendant, Kirby Electric's Preliminary Objections to Petition for Review filed in Commonwealth Court.

March 21, 2005

Commonwealth Court filed letter advising that an argument on the preliminary objections will be hearing during the week of June 6, 2005 in Philadelphia as well as Briefs in Support shall be filed on/or before April 18,2 005 and Briefs in Opposition shall be filed within thirty days of service of the briefs in support thereof.

March 21, 2005

(OLD DOCKET NO. 3670, 3552, 3683, 3669, 3676, 3617) Plaintiff filed Preliminary Objections and Brief in Support as filed in Commonwealth Court to Defendant's Petition for Review.

March 25, 2005

(OLD DOCKET NOS. 3617, 3669, 3676)Plaintiff filed letter outlining a change of order for the hearings as noted: Oldcastle #3617 originally scheduled for May 2-6, 2005 will be changed to April 18-22, 2005; Tomko #3669 originally scheduled for April 18-22, 2005 will be changed to April 25-29, 2005; and Tomko #3676 originally scheduled for April 25-29, 2005 will be changed to May 2-6, 2005.

March 29, 2005

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 29th day of March, 2005, it is hereby **ORDERED** and **DECREED** that the Scheduling Order previously issued by the Board on January 11, 2005, and amended on February 1, 2005, shall be further amended as follows: Oldcastle Precast Modular Group hearing (old docket no. 3617) previously scheduled to begin on Monday, May 2, 2005 shall

now be scheduled to commence at 9:30 a.m. on Monday, April 18 through Friday, April 22, 2005, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101; W.G. Tomko, Inc. hearing (old docket no. 3669) previously scheduled for April 18-22, 2005 is set for hearing beginning on Monday, April 25 through Friday, April 29, 2005, 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. and W.G. Tomko, Inc. (old docket no. 3676) previously scheduled for April 25-29, 2005 is set for hearing beginning on Monday, May 2, 2005 through Friday, May 6, 2005, 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 other matters as ordered in the Board's Order of February 1, 2005, shall remain unchanged." Copy forwarded to all parties of record.

April 18, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 9:30 a.m.

April 19, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 9:30 a.m.

April 20, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 9:30 a.m.

April 21, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 9:30 a.m. **CASE COMPLETED.**

June 8, 2005

(OLD DOCKET NO. 3670, 3683, 3669, 3676, 3617) Plaintiff filed (via fax) letter advising that they believe Plaintiff can file their Findings of Fact and Conclusions of Law by August 31, 2005, provided that the court reporters get final copies of all transcripts to them no later than July 31, 2005.