

Docket Number: 3636

PHELPS-TOINTON, INC., d/b/a SOUTHERN STEEL COMPANY

Robert A. Ruyle, Esquire (Pro Hac Vice)

John G. Milakovic, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES

~~Trent Hays, Jr., Chief Counsel~~
~~Elizabeth A. O'Reilly, Assistant Counsel~~
~~David L. Nardiewicz, Assistant Chief Counsel~~

May 27, 2003

Plaintiff filed Claim and filing fee. Amount of Claim:
\$26,153.54+

June 4, 2003

Board forwarded copies of Claim to Defendant and Chief Deputy Attorney General. **RESPONSE DUE FROM DEFENDANT JULY 14, 2003.**

June 12, 2003

Chief Deputy Attorney General filed Acceptance of Service of Claim dated June 4, 2003. Receipt of same acknowledged by Chief Deputy Attorney General June 9, 2003.

July 7, 2003

Defendant filed Acceptance of Service of Claim. Receipt of same acknowledged June 6, 2003.

July 14, 2003

Defendant filed Answer with New Matter and Counterclaim. Copy forwarded to Plaintiff. Response due 8/4/03.

August 4, 2003

Plaintiff filed Demurrer to Defendant's Counterclaim. Copy forwarded to Defendant.

August 5, 2003

Plaintiff filed Brief in Support of Plaintiff's Demurrer to Defendant's Counterclaim. Copy forwarded to Defendant.

September 8, 2003

Defendant filed Reply and Brief to Plaintiff's Demurrer to DGS's Counterclaim. Copy forwarded to Plaintiff.

October 1, 2003

Board rendered and Opinion and Order. Order as follows: **AND NOW**, this 1st day of October, 2003, it is **ORDERED** and **DECREED** that Plaintiff's demurrer in the form of preliminary objection to Defendant's Counterclaim is **DENIED** with leave to file an Answer within (20) days from the exit date of this Order.@ Copy forwarded to Plaintiff and Defendant.

October 10, 2003

Plaintiff filed Reply to Defendant's New Matter and Counterclaim.
Copy forwarded to Defendant.

October 14, 2003

Board forwarded letter directing parties to commence with discovery.

January 29, 2004

Board forwarded letter requesting status from parties.

May 12, 2004

Plaintiff's Motion to Compel Defendant to Produce Documents and Brief in Support. Copy forwarded to Defendant.

May 13, 2004

Board forwarded letter directing Defendant to file their Response and Brief.

June 7, 2004

Plaintiff filed Supplement to Plaintiff's May 12, 2004, Motion to Compel Defendant to Produce Documents. Copy forwarded to Defendant.

June 16, 2004

Defendant filed Response to Plaintiff's Motion to Compel Discovery. Copy forwarded to Plaintiff.

July 21, 2004

Board rendered the following Opinion and Order. Order rendered as follows: **AND NOW**, this 21st day of July, 2004, it is **ORDERED** and **DECREED** that, based on Plaintiff's Motion to Compel Defendant to Produce Documents, Defendant shall produce all documents it has stated it will produce, but has not already produced, to Plaintiff. To such extent Plaintiff's Motion is **GRANTED**. Defendant is further **ORDERED** to submit two (2) 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 will be redacted as Defendant

would propose it be provided to Plaintiff. Upon receipt, the Board will review the documents and enter an appropriate Order.@
Copy forwarded to Plaintiff and Defendant.

August 10, 2004

Defendant filed Acceptance of Service of Opinion and Order dated July 21, 2004. Receipt of same acknowledged July 26, 2004.

August 10, 2004

Defendant filed Privilege Log.

September 16, 2004

Board rendered Opinion and Order. Order as follows: "AND NOW, this 16th day of September, 2004, it is **ORDERED** and **DECREED** that Defendant shall forward to Plaintiff the redacted documents listed on Defendant's privilege log within twenty (20) days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

September 24, 2004

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

October 25, 2004

Defendant filed Response to Plaintiff's Motion for Sanctions and Brief in Opposition. Copy forwarded to Plaintiff.

December 20, 2004

Plaintiff's Reply to Defendants Response to Plaintiff's Motion for Sanctions. Copy forwarded to Defendant.

January 14, 2005

Board rendered Opinion and Order. Order as follows: "AND NOW, this 14th day of January, 2005, upon consideration of plaintiff's motion for sanctions, defendant's response to the motion and plaintiff's reply, **IT IS ORDERED** that the motion for sanctions is **DENIED**. **FURTHER, IT IS ORDERED** that defendant shall produce to plaintiff all documents and things within its possession, custody and control in the following categories that have not been previously produced: 2. All versions of schedules, including RECO electronic files; 3. Job site photos in electronic form; and 4. Bid set drawings for initial and rebids. **FINALLY, IT IS ORDERED** that defendant shall file an affidavit with Southern Steel and this Board as prescribed in this opinion. That affidavit shall be filed and the document production shall be completed within thirty (30) days of the exit date of this Order." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

January 28, 2005

Plaintiff filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22.

February 2, 2005

Plaintiff filed letter requesting subpoena.

February 14, 2005

Plaintiff filed Affidavit outlining Plaintiff's discovery.

April 1, 2005

Plaintiff filed Motion to Compel Harris Masonry, Inc. to Comply with Subpoena.

June 17, 2005

Defendant filed Withdrawal of Appearance of Elizabeth A. O'Reilly on behalf of Defendant and Entry of Appearance of David L. Narkiewicz on behalf of Defendant.

July 5, 2005

Defendant filed a letter requesting the Board to consolidate 18 cases before the Board regarding the Fayette SCI litigation.

July 18, 2005

Board rendered an Order. Order as follows: "**AND NOW**, this 18^h day of July, 2005, in order to expedite disposition of the multiple claims arising out of the construction of the Fayette State Correctional Institution, it is **ORDERED** that a status conference shall be held on July 27, 2005, at 200 North Third Street, Suite 700, Harrisburg, Pennsylvania 17101 commencing at 2:00 p.m. Any party may participate by teleconference provided that a party wishing so to participate contacts the Board at least five (5) days prior to the conference and places the teleconference call as the Board directs." Copy forwarded to Plaintiff and Defendant.

July 20, 2005

Defendant filed Acceptance of Service of Order dated July 18, 2005. Receipt of same acknowledged by Defendant July 19, 2005.

July 27, 2005

Board held status conference at 200 North Third Street, Suite 700, Harrisburg, Pennsylvania 17101 commencing at 2:00 p.m.

August 3, 2005

Board forwarded letter to parties requesting comments regarding case management and scheduling.

August 16, 2005

Defendant filed letter with Defendant's comments regarding case management and scheduling.

August 17, 2005

Plaintiff filed letter with Plaintiff's comments regarding case management and scheduling.

September 1, 2005

Plaintiff filed Notice of Service of Plaintiff's Second Set of Interrogatories to Defendant.

September 2, 2005

Plaintiff filed Motion for Special Admission of Co-Counsel on behalf of Phelps-Tointon, Inc. (Robert A. Ruyle, Esquire).

September 28, 2005

Defendant filed Notice of Service of Defendant's Answers to Plaintiff's Second Set of Interrogatories and Responses to Plaintiff's Second Set of Requests for Production of Documents.

October 7, 2005

Plaintiff filed Motion to Compel Defendant to Answer Plaintiff's Second Set of Interrogatories and to Produce Documents in Response to Plaintiff's Second Set of Requests for Production of Documents and Brief in Support. Copy forwarded to Defendant.

October 14, 2005

Board rendered an Opinion and made the following Order: **"AND NOW**, this 13th day of October, 2005, after review of Plaintiff's Motion for Special Admission of Counsel to Appear Pro Hac Vice, it is hereby **ORDERED** that: 1) Effective upon the date of this Order, Robert A. Ruyle, shall be **ADMITTED** pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301 for the limited purpose of serving as co-counsel on behalf of Plaintiff in this matter; 2) Robert A. Ruyle, Esquire shall abide by all the rules of, and applicable

to, practice before this Board, including all attorney disciplinary rules; and 3) Robert A. Ruyle, Esquire shall immediately notify this Board of any matter affecting his standing at the bar of any other court or jurisdiction where he may be admitted to practice.

October 19, 2005

Defendant filed Acceptance of Service of Opinion and Order dated October 13, 2005. Receipt of same acknowledged October 18, 2005.

November 1, 2005

Defendant filed letter advising that they forwarded a disk containing discovery to Plaintiff.

November 3, 2005

Defendant filed copy of letter addressed to Plaintiff forwarding amended answers to interrogatory 1 of Plaintiff's second set of interrogatories and requesting the Plaintiff to withdraw its motion to compel because the information and documentation addressed in the motion to compel have been provided.

November 3, 2005

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 3rd day of November, 2005, it is **ORDERED** and **DECREED** that Phelps-Tointon, Inc., d/b/a Southern Steel Company's Motion to Compel Defendant to answer Plaintiff's Second Set of Interrogatories (identifying individuals whenever possible) and to Produce Documents in response to Plaintiff's Second Set of Request for Production of Documents No. 3 is **GRANTED**. The Board further **ORDERS** and **DECREES** that the Commonwealth of Pennsylvania, Department of General Services, shall have twenty (20) days from the exit date of this Order to comply." Copy forwarded to Plaintiff and Defendant.

November 7, 2005

Defendant filed Acceptance of Service of Opinion and Order dated November 3, 2005. Receipt of same acknowledged November 4,

2005.

November 10, 2005

Defendant filed letter-type certificate of mailing of Defendant's amended answers to interrogatories I.a, b, and d of Plaintiff's second set of interrogatories.

November 16, 2005

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 16th day of November, 2005, for the reasons stated above, the current consolidation of cases under Docket No. 3464 will stand as is, and the Board will not consolidate further the above-captioned cases either for the purpose of discovery or hearing, nor will it bifurcate hearings for the purpose of liability and damages. We will reserve the decision on whether or not to further consolidate one or more of these cases for the purpose of judgment for the reasons stated, and may reconsider same at a later date upon motion of one or more of the parties.

Finally, it is **ORDERED** and **DECREED** that the following unified discovery schedule and status conference is set for each of the above-captioned cases: Last day for plaintiffs to provide expert reports to defendant and to file same with the Board - June 30, 2006; Last day for defendant to provide its expert reports to plaintiffs and additional defendants and to file same with the Board - August 15, 2006; Last day for any/all expert rebuttal reports by any party to be exchanged and filed with the Board - September 15, 2006; Completion of all depositions and other discovery - October 15, 2006; Status conference for all cases in Board of Claims' Courtroom No. 1 beginning at 1:00 p.m. - October 25, 2006." Copy forwarded to all parties of record.

November 21, 2005

Defendant filed Acceptance of Service of Opinion and Order dated November 16, 2005. Receipt of same acknowledged November 18, 2005.

December 21, 2005

Plaintiff filed Motion for Sanctions and Brief in Support. Copy forwarded to Defendant. [07A012406D]

January 20, 2006

Defendant filed Response to Plaintiff's Motion for Sanctions. Copy forwarded to Plaintiff.

February 14, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 14th day of February, 2006, upon consideration of Plaintiff's motion for sanctions and Defendant's response to the motion, **IT IS ORDERED** that the motion for sanctions is **DENIED**. **FURTHER, IT IS ORDERED** that defendant shall produce any and all outstanding documents and file an affidavit with Southern Steel and this Board as prescribed in this Opinion. That affidavit shall be filed within 10 days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

February 17, 2006

Defendant filed Acceptance of Service of Opinion and Order dated February 14, 2006. Receipt of same acknowledged February 15, 2006.

February 22, 2006

Defendant filed Affidavit of Counsel in Response to the Order of the Board of February 14, 2006.

February 27, 2006

Plaintiff's Response to Affidavit of DGS filed on February 22, 2006. Copy forwarded to Defendant.

March 9, 2006

Defendant filed courtesy copy of letter addressed to all Plaintiff counsel in the Fayette County cases regarding the requests for electronic files.

March 10, 2006

Plaintiff filed Motion for Issuance of Commission to Conduct Deposition of Material Witness who resides in Virginia, Brief in

Support and proposed Commission. Copy forwarded to Defendant.

March 21, 2006

Defendant filed Answer in Opposition to Motion for Issuance of Commission to Take the Deposition of Material Out-of-State Witness, Brief in Opposition and Proposed Order. Copy forwarded to Plaintiff.

March 22, 2006

Board forwarded letter to parties requesting the parties try to come to an agreement about the deposition of the out-of-state witness and advising that the Board will hold off on ruling on the outstanding must for a reasonable period of time to allow the parties an opportunity to reach an agreement.

March 23, 2006

Plaintiff filed Reply to DGS' Response to Request for Issuance of a Commission. Copy forwarded to Defendant.

March 24, 2006

Plaintiff filed letter forwarded to Defendant outlining the cost of the deposition for Mr. Erbschloe.

March 29, 2006

Defendant filed letter outlining discovery issues and requests. Copy forwarded to Plaintiff.

April 3, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 3rd day of April, 2006, the attached Commission to Conduct Deposition of Mr. Frank Erbschloe shall be **ISSUED** and returned to Plaintiff for transmittal." Copy forwarded to Plaintiff and Defendant.

May 2, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 2nd day of May, 2006, it is **ORDERED** and **DECREED** that the following modified unified discovery schedule and status conference is set for each of the above-captioned cases: Last day for plaintiffs to provide expert reports to defendant and to file same with the Board - July 31, 2006; Last day for defendant to provide its expert reports to plaintiffs and additional defendants and to file same with the Board - September 15, 2006; Last day for any/all expert rebuttal reports by any party to be exchanged and filed with the Board - October 15, 2006; Completion of all depositions and other discovery - October 15, 2006; Status conference for all cases in Board of Claims' Courtroom No. 1 beginning at 1:00 p.m. - October 25, 2006." Copy forwarded to all parties of record.

May 9, 2006

Defendant filed Acceptance of Service of Opinion and Order dated May 2, 2006. Receipt of same acknowledged May 3, 2006.

July 21, 2006

Airport Industrial Park filed Motion for Additional Time to Obtain, Serve and File Expert's Report. Copy forwarded to all parties of record.

July 25, 2006

Board rendered opinion and order. Order as follows: **"AND NOW,** this 25th day of July, 2006, it is **ORDERED** and **DECREED** that the following modified unified discovery schedule and status conference is set for each of the above-captioned cases: Last day for plaintiffs to provide expert reports to defendant and to file same with the Board October 15, 2006 Last day for defendant to provide its expert reports to plaintiffs and additional defendants and to file same with the Board December 15, 2006 Last day for any/all expert rebuttal reports by any party to be exchanged and filed with the Board January 15, 2007 Completion of all depositions and other discovery January 15, 2007 Status conference for all cases in Board of Claims' Courtroom No. 1 beginning at 10:00 a.m. January 25, 2007." Copy forwarded to plaintiff and defendant.

August 3, 2006

Board issued Opinion and Order. Order as follows: **"AND NOW,** this 3rd day of August, 2006, the motions for reconsideration and/or severance are **DENIED."** Copy forwarded to all parties of record.

August 4, 2006

Defendant filed Acceptance of Service of Opinion and Order dated July 25, 2006. Receipt of same acknowledged July 27, 2006.

October 13, 2006

Plaintiff filed Expert Report. Copy forwarded to Defendant.

December 13, 2006

(ALL) Defendant filed (via fax) letter requesting the Board stay the Fayette county matters for sixty days.

December 14, 2006

Board rendered an Order. Order as follows: **"AND NOW,** this 14th day of December, 2006, it is **ORDERED** and **DECREED** that pursuant to Defendant's letter request dated December 13, 2006, an immediate stay is entered in all captioned cases as of today for sixty days. All current case deadlines are extended sixty days and the status conference will be rescheduled. The new deadlines are as follows:

Last day for defendant to provide its expert reports to plaintiffs and additional defendants and to file same with the Board February 12, 2007; Last day for any/all expert rebuttal reports by any party to be exchanged and filed with the Board March 12, 2007; Completion of all depositions and other discovery March 12, 2007." Copy forwarded to all parties of record.

December 18, 2006

Defendant filed Acceptance of Service of Order dated December 14, 2006. Receipt of same acknowledged December 15, 2006.

December 20, 2006

Defendant filed Acceptance of Service of Order dated December 14, 2006. Receipt of same acknowledged December 19, 2006.

February 15, 2007

Plaintiff filed letter advising that the parties have settled and requesting that they do not receive any further communication regarding all Fayette county cases.

February 15, 2007

Defendant filed letter requesting that the Board extend the discovery deadline until May 11, 2007.

February 16, 2007

Board rendered Amended Order. Order as follows: "**AND NOW**, this 16th day of February, 2007, it is **ORDERED** and **DECREED** that pursuant to letter requests dated February 12, 2007, from Amthor Steel and February 15, 2007, from DGS and Airport Industrial Park, all current case deadlines are extended as outlined below. This is the last discovery extension that will be granted by this Board. The final revised deadlines are as follows: Last day for defendant to provide its expert reports to plaintiffs and additional defendants and to file same with the Board, March 12, 2007; Last day for any/all expert rebuttal reports by any party to be exchanged and filed with the Board, April 30, 2007; Completion of all depositions and other discovery, May 11, 2007; Additionally, counsel for the remaining parties are to advise the Board in writing of any days or times they cannot be available for a status conference during the week of June 18-22, 2007, within 10 days of the exit date of this Order." Copy forwarded to all parties of record.

February 20, 2007

Plaintiff filed letter advising that they join Amthor Steel's

request for an extension of the discovery and rebuttal reports deadline. Copy forwarded to all parties of record.

March 12, 2007

Board rendered Order. Order as follows: "AND NOW, this 12th day of March, 2007, it is **ORDERED** and **DECREED** that a status conference to discuss a timetable for hearings and case management issues will be held at 200 North Third Street, Suite 700, Harrisburg, Pennsylvania 17101 on June 20, 2007 at 1:00 p.m. Any party may participate by teleconference provided that a party wishing to do so contacts the Board for instructions at least seven days prior to the conference and places the teleconference call as the Board directs." Copy forwarded to all parties of record.

April 27, 2007

Airport filed (via fax) Emergency Motion to Allow Counsel for All Parties to Attend and Participate in Deposition of DGS's Expert, Or, Alternatively, to Quash Deposition. Copy forwarded to all parties of record.

April 30, 2007

Defendant filed (via fax) Response to Emergency Motion to Allow Counsel for All Parties to Attend and Participate in Deposition of DGS's Expert, Or, Alternatively, to Quash Deposition. Copy forwarded to all parties of record.

April 30, 2007

Defendant filed (via U.S. mail) Response to Emergency Motion to Allow Counsel for All Parties to Attend and Participate in Deposition of DGS's Expert, Or, Alternatively, to Quash Deposition. Copy forwarded to all parties of record.

April 30, 2007

Airport filed (via U.S. mail) Emergency Motion to Allow Counsel for All Parties to Attend and Participate in Deposition of DGS's Expert, Or, Alternatively, to Quash Deposition. Copy forwarded to all parties of record.

April 30, 2007

Board rendered an Order. Order as follows: "**AND NOW**, this 30th day of April, 2007, the emergency motion of Airport Industrial Park, Inc., d/b/a PEC Contracting Engineers, to allow counsel for all parties to attend and participate in deposition of DGS's expert on the morning of April 30, 2007, or alternatively, to quash deposition, is hereby **DENIED**. The motion is not properly filed and is also **MOOT**. This Order is issued without prejudice to a subsequent motion of any party seeking deposition of another's expert for cause shown pursuant to the Pennsylvania Rules of Civil Procedure." Copy forwarded to all parties of record.

May 11, 2007

Defendant filed letter advising parties have reached a settlement agreement and are awaiting payment. Copy forwarded to all parties of record.

May 24, 2007

Plaintiff filed Stipulation to Mark Action Discontinued with Prejudice. Copy forwarded to Defendant.

May 29, 2007

Board rendered Praecipe Order. Order as follows: "**AND NOW**, this 29th day of May, 2007, upon receipt of a praecipe executed by John G. Milakovic, Esquire, on behalf of Plaintiff, Phelps-Tointon, Inc., d/b/a Southern Steel Company and David L. Narkiewicz, Esquire, on behalf of Defendant, Commonwealth of Pennsylvania, Department of General Services, requesting that the Board please mark the above-captioned action, including all of Plaintiff's claims against the Defendant and all of Defendant's counterclaims against Plaintiff, settled, discontinued, and ended, with prejudice docketed with this Board under date of May 24, 2007, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended, with prejudice." Copy forwarded to Plaintiff and Defendant.

June 1, 2007

Defendant filed Acceptance of Service of Order dated May 29, 2007. Receipt of same acknowledged May 31, 2007.

June 5, 2007

Plaintiff filed Acceptance of Service of Order dated May 29, 2007. Receipt of same acknowledged June 4, 2007.
