

**\*(CONSOLIDATED INTO DOCKET NO. 3464)**

**Docket Number: 3643**

**PRO-SPEC PAINTING, INC.**

~~Robert D. Ardizzi, Esquire~~  
David S. Makara, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES**

~~Trent Hargrove, Chief Counsel~~  
~~Elizabeth A. O'Reilly, Assistant Counsel~~  
David Narkiewicz, Assistant Chief Counsel

VS.

**~~\*PHELPS TOINTON, INC., d/b/a SOUTHERN STEEL COMPANY~~**

~~Thomas A. Beckley, Esquire~~  
~~John G. Milakovic, Esquire~~

**June 6, 2003**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$187,000.00+

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**June 16, 2003**

Plaintiff filed Praecipe to Substitute Affidavit filed.

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**June 18, 2003**

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT JULY 18, 2003.

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**June 25, 2003**

Chief Deputy Attorney General filed Acceptance of Service of Claim dated June 18, 2003. Receipt of same acknowledged by Chief Deputy Attorney General June 19, 2003.

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**July 8, 2003**

Board issued Opinion and Order. Order as follows: **AAND NOW**, this 8th day of July, 2003, upon receipt of a Praecipe to Substitute Affidavit, it is **ORDERED** and **DECREED** that the verification filed on June 16, 2003, shall be substituted and added to the Statement of Claim with a copy forwarded to attorney for Defendant and Chief Deputy Attorney General by the Board of Claims.≡ Copy forwarded to Plaintiff and Defendant.

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**July 7, 2003**

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

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**July 14, 2003**

Defendant filed Acceptance of Service of Opinion and Order dated July 8, 2003. Receipt of same acknowledged July 9, 2003.

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**July 14, 2003**

Plaintiff filed Acceptance of Service of Opinion and Order dated July 8, 2003. Receipt of same acknowledged July 10, 2003.

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**July 18, 2003**

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

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**\*July 31, 2003**

Defendant filed Complaint Against Additional Defendant Phelps-Tointon.

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**August 5, 2003**

Plaintiff filed Reply to New Matter and Answer to Counterclaim with New Matter. Copy forwarded to Defendant.

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**August 27, 2003**

Additional Defendant (Phelps-Tointon) filed Preliminary Objections and Brief in Support of Joinder Complaint of Defendant (DGS). Copy forwarded to Plaintiff and Defendant (DGS).

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**September 2, 2003**

Defendant (DGS) filed Reply to Plaintiff=s New Matter to DGS= Counterclaim.

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**April 30, 2004**

Board rendered the following Opinion and Order. Order as follows: **AAND NOW**, this 30th day of April, 2004, upon consideration of the preliminary objections and supporting brief of Phelps-Tointon, Inc., d/b/a Southern Steel Company, it is **ORDERED** and **DECREED** that the preliminary objections are **OVERRULED**. Southern Steel shall have twenty (20) days from the exit date of this Order to file its response to DGS= Complaint Against Additional Defendant.≡ Copy forwarded to Plaintiff and Defendant.

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**May 4, 2004**

Defendant filed Acceptance of Service of Opinion and Order dated April 30, 2004. Receipt of same acknowledged May 3, 2004.

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**May 17, 2004**

Additional Defendant (Phelps Tointon d/b/a Southern Steel) filed Answer to DGS= Joinder Complaint with New Matter and Counterclaim. Copy forwarded to Plaintiff and Defendant.

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**June 17, 2004**

Defendant filed Reply to Additional Defendant=s (Phelps-Tointon d/b/a Southern Steel)New Matter and Counterclaim to Defendants= Third Party Complaint. Copy forwarded to Plaintiff and Additional Defendant (Phelps-Tointon).

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**June 24, 2004**

Board forwarded letter directing parties to commence with discovery.

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**October 8, 2004**

Board forwarded letter requesting status from parties.

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**December 22, 2004**

Additional Defendant filed Notice of Service of First Set of Requests for Production of Documents.

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**April 1, 2005**

Additional Defendant filed Motion to Compel Plaintiff to Answer Interrogatories and to Produce Documents. Copy forwarded to Plaintiff and Defendant.

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**May 25, 2005**

Board rendered the following Opinion and Order. Order as follows: "AND NOW, this 25th day of May, 2005, after review of the Additional Defendant's, Phelps-Tointon, Inc., d/b/a Southern Steel Company, motion to compel plaintiff to Answer interrogatories and produce documents, and upon Plaintiff's, Pro-Spec Painting, Inc., failure to respond to the interrogatories and request for production of documents, as well as their failure to respond to the motion to compel, it is hereby **ORDERED** and **DECREED** that the Plaintiff is to comply with the Additional Defendant's interrogatories and request for production of documents within thirty (30) days of the date of this Order or suffer appropriate sanctions upon application to this Board." Copy forwarded to Plaintiff, Defendant and Additional Defendant.

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**June 17, 2005**

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

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**July 5, 2005**

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

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**July 11, 2005**

Board forwarded letter to parties advising that the Board wishes to schedule a conference.

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**July 18, 2005**

Board rendered an Order. Order as follows: "**AND NOW**, this 18<sup>h</sup> 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.

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**July 20, 2005**

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

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**July 22, 2005**

Plaintiff filed letter advising that Plaintiff will participate in the status conference scheduled for July 27, 2005 by telephone and will be calling in with the conference call set up by David Raves, Esquire.

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**July 25, 2005**

Plaintiff filed Acceptance of Service of Order dated July 18, 2005. Receipt of same acknowledged July 20, 2005.

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**July 27, 2005**

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

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**August 3, 2005**

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

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**August 16, 2005**

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

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**November 16, 2005**

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 16<sup>th</sup> 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.

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**November 21, 2005**

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

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**November 28, 2005**

Plaintiff filed Acceptance of Service of Opinion and Order dated November 16, 2005. Receipt of same acknowledged November 21, 2005.

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**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.

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**May 2, 2006**

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 2<sup>nd</sup> 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.

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**May 8, 2006**

Plaintiff filed Acceptance of Service of Opinion and Order dated May 2, 2006 filed. Receipt of same acknowledged May 5, 2006.

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**May 9, 2006**

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

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**May 24, 2006**

Plaintiff filed Acceptance of Service of Opinion and Order dated May 2, 2006. Receipt of same acknowledged May 22, 2006.

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**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 all parties of record.

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**August 3, 2006**

Plaintiff filed Acceptance of Service of Opinion and Order dated July 25, 2006. Receipt of same acknowledged July 31, 2006.

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**August 3, 2006**

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

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**August 4, 2006**

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

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**August 11, 2006**

Plaintiff filed Acceptance of Service of Opinion and order dated August 3, 2006. Receipt of same acknowledged August 9, 2006.

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**October 30, 2006**

Plaintiff filed Plaintiff's Expert Report.

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**November 3, 2006**

Plaintiff filed (via fax) Certificate of Service of Plaintiff's Expert Report.

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**November 6, 2006**

Plaintiff filed (via U.S. Mail) Certificate of Service of Plaintiff's Expert Report.

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**December 13, 2006**

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

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**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.

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**December 18, 2006**

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

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**December 20, 2006**

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

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**December 22, 2006**

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

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**February 15, 2007**

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

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**February 16, 2007**

Board rendered Amended Order. Order as follows: **"AND NOW**, this 16<sup>th</sup> 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.

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**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.

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**March 1, 2007**

(ALL) Pro-Spec filed Acceptance of Service of Order dated February 20, 2007. Receipt of same acknowledged February 23, 2007.

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**March 12, 2007**

Board rendered Order. Order as follows: **"AND NOW**, this 12<sup>th</sup> 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.

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**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.

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**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.

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**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.

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**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.

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**April 30, 2007**

Board rendered an Order. Order as follows: "**AND NOW**, this 30<sup>th</sup> 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.

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**May 2, 2007**

Plaintiff filed (via facsimile) Report Schedule and Labor Inefficiencies of Frank W. Versaw dated October 13, 2006. Copy forwarded to all parties of record.

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**May 7, 2007**

Plaintiff filed (via U.S. Mail) Report Schedule and Labor Inefficiencies of Frank W. Versaw dated October 13, 2006. Copy forwarded to all parties of record.

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**June 7, 2007**

Defendant filed Praeipce to Mark Settled and Discontinued against Phelps-Tointon, Inc. d/b/a Southern Steel Company and DGS only. Copy forwarded to Additional Defendant.

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**June 8, 2007**

Board forwarded letter to Phelps-Tointon requesting it advises Board as to whether it intends to dismiss claim again DGS. Copy forwarded to all parties of record.

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**June 13, 2007**

Phelps-Tointon filed Praeipce to mark the counterclaim filed by Phelps-Tointon against Defendant settled and discontinued. Copy forwarded to all parties of record.

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**June 18, 2007**

Board rendered Order. Order as follows: "**AND NOW**, this 18<sup>th</sup> day of June, 2007, upon receipt of a praecipe executed by David L. Narkiewicz, Assistant Counsel, on behalf of Defendant, Commonwealth of Pennsylvania, Department of General Services, requesting that the Board kindly mark the above-captioned docket settled and discontinued as to Phelps-Tointon, Inc. d/b/a Southern Steel Company and DGS only, pursuant to BOC R.P. 702 docketed with this Board under date of June 7, 2007, and receipt of a praecipe from counsel for Phelps-Tointon, Inc. d/b/a Southern Steel Company confirming the dismissal by Phelps-Tointon, Inc. d/b/a Southern Steel Company of its counterclaim against DGS, it is **ORDERED** and

**DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice regarding the claim of DGS against Phelps-Tointon, Inc. d/b/a Southern Steel Company and the counterclaim of Phelps-Tointon, Inc. d/b/a Southern Steel Company against DGS only. The action by Pro-Spec Painting, Inc. against DGS will continue in the above docket." Copy forwarded to all parties of record.

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**June 20, 2007**

Phelps-Tointon filed Acceptance of Service of Order dated June 18, 2007. Receipt of same acknowledged June 20, 2007.

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**June 20, 2007**

Defendant filed Acceptance of Service of Order dated June 18, 2007. Receipt of same acknowledged June 19, 2007.

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**June 20, 2007**

Board held status conference at 200 North Third Street, Suite 700, Harrisburg, Pennsylvania 17101 commencing at 1:00 p.m.

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**June 28, 2007**

(ALL) Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 28<sup>th</sup> day of June, 2007, it is hereby **ORDERED** and **DECREED** that the Remaining Cases are hereby consolidated for all purposes, including discovery, hearing and decision, under Docket No. 3464; that the parties to the Remaining Cases are directed to observe the filing conventions set forth in this opinion; that counsel for those claims identified above as pending settlement are directed to file appropriate requests to close these cases or to inform the Board of the need to join said case to this consolidated matter within 45 days of the exit date of this order; and that the Remaining Cases shall proceed according to the following schedule: 1. All discovery shall be completed by October 31, 2007<sup>2</sup>; 2. The last day for filing pre-trial motions is November 30, 2007<sup>2</sup>; 3. Pre-trial statements of all parties shall be filed with the Board and served upon one another no later than December 31, 2007 (See BOC R.P. 501(b) and (c)); 4. A pre-trial conference will be held on January 17, 2008, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7<sup>th</sup> Floor, Harrisburg, PA 17101; 5. Hearing dates for the consolidated case will be as follows: Part I March 3, 2008 - March 14, 2008 Part II March 24,

2008 - March 28, 2008 Part III A April 7, 2008 - April 18, 2008 Part III B April 28, 2008 - May 9, 2008 Part IV May 19, 2008 - May 23, 2008 Part V May 27, 2008 - May 30, 2008 Part VI June 9, 2008 - June 13, 2008 6. All testimony, documents, exhibits or other materials admitted into evidence during any portion of the hearings shall be considered as the evidential record for each and all of the claims remaining in this consolidated case. However, in order to maximize the efficiency of these hearings, the Board directs the parties to focus on the specific topics identified below during the following segments of the hearing: Part I PEC claims against DGS and DGS defense of same Part II Tomko claims against DGS and DGS defense of same Part III A&B DGS claims against PEC and PEC defense of same Part IV DGS claims against Penn Transportation and Penn Transportation's defense of same Part V Pro-Spec's claims against DGS and DGS defense of same Part VI Limbach's claims against DGS and DGS defense of same." Copy forwarded to all parties of record.

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**\*SEVERED TO 3910\***