

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

KIRBY ELECTRIC, INC.

~~John A. Greenhall, Esquire~~
~~Douglas E. Burry, Esquire~~
*Charles W. Robinson, Esquire (Co-Counsel)
170 Thorn Hill Road
Warrendale, PA 15086

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE SERVICES

~~Trent Hargreaves, Chief Counsel~~
~~Stephen A. Buserman, Assistant Counsel~~
~~Alice Miller, Assistant Counsel~~
David L. Narkowicz, Assistant Chief Counsel

(W.G. Tomko - Pass-through claim only)

~~James Colbert, Esquire (not to be served)~~

November 7, 2003

Plaintiff filed Claim, filing fee and proof of mailing. Amount of Claim: \$3,472,900.44. **ACCEPTED FOR FURTHER PROCESSING.**

November 4, 2003

Board issued Acknowledgment letter and forwarded copy of Claim to Attorney General.

November 19, 2003

Chief Deputy Attorney General filed Acceptance of Service of Claim. Receipt of same acknowledged by Chief Deputy Attorney General November 17, 2003.

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 9, 2003

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

January 6, 2003

Notice of Service of Defendant's Subpoena to W.G. Tomko.

January 6, 2003

Notice of Service of Defendant's Subpoena to W.G. Tomko, Inc.

January 6, 2003

Notice of Service of Defendant's Subpoena to Cutler-Hammer Engineering.

January 12, 2004

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

***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.

February 12, 2004

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

February 17, 2004

Board forwarded letter directing the parties to commence with discovery.

March 8, 2004

Plaintiff filed Motion of W.G. Tomko, Inc. For An Expedited Review and Brief in Support. Copy forwarded to 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

Defendant filed Reply to the Motion for an Expedited Review and Supporting Brief. 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: **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 facsimile 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 15, 2004

Board rendered Opinion and Order. Order as follows: **AND NOW**, this 15th day of April, 2004, a status conference shall be held at 1:00 p.m. on Wednesday, May 5, 2004, at 200 North Third Street, 7th Floor, Harrisburg, Pennsylvania. Plaintiff's Motion for Expedited Review at docket numbers 2552, 3670, 3674 and 3683 will be addressed at that time.@ Copy forwarded to Plaintiff and 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.

April 27, 2004

Defendant filed Acceptance of Service of Opinion and Order dated April 15, 2004. Receipt of same acknowledged April 26, 2004.

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: ~~A~~Plaintiff'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, March 21, 2005, and running 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.® Copy forwarded to Plaintiff and Defendant.

May 14, 2004

Board rendered the following Opinion and Order. Order as follows: **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: **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 to one 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 24, 2004

Defendant filed Answer of Respondent to New Matter of Claimant to Motion for Consolidation. Copy forwarded to Plaintiff.

June 28, 2004

Board rendered Opinion and Order. Order as follows: **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 **Old 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

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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 (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 served 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.;

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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), 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

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: **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 forwarded to Plaintiff and Defendant.

August 16, 2004

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

September 2, 2004

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 parties.

September 8, 2004

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

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

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

***January 5, 2005**

Plaintiff filed withdrawal of appearance of John A. Greenhall, Esquire and Douglas E. Burry, Esquire and entry of appearance of Charles W. Robinson, Esquire.

January 5, 2005

Plaintiff filed Discovery Agreement executed by Plaintiff and Defendant.

January 6, 2005

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

January 7, 2005

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

January 10, 2005

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

January 11, 2005

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 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 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 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 14, 2005

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 16, 2005

Plaintiff filed via facsimile copy of Duggan & Rhodes expert report.

February 15, 2005

Defendant filed Expert Witness Reports in Kirby case.

February 16, 2005

Plaintiff filed Preliminary Objections and Brief to Defendant's Motion for Interpleader. Copy forwarded to all parties of record.

February 16, 2005

Plaintiff filed Brief in Opposition to Commonwealth's Motion for Partial Summary Judgment on Damages. Copy forwarded to all parties of record.

February 16, 2005

Plaintiff filed Answer to Commonwealth's Motion to Exclude Claims. Copy forwarded to all parties of record.

February 18, 2005

Plaintiff filed Answer to Commonwealth's Motion for Partial Summary Judgment on Damages. Copy forwarded to Defendant.

February 18, 2005

Plaintiff filed Motion in Limine to Exclude Commonwealth's Defenses and Counterclaims and/or its Expert Reports and/or for an Order Allowing Kirby to Introduce Evidence and Cross Examine McDonough Bolyard Peck relative to mediation and incorporated Brief. 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

Plaintiff filed Supplement to Plaintiff Kirby Electric's Motion in Limine to Exclude Commonwealth's Defenses and Counterclaims, and/or Its Expert Reports and/or for an Order Allowing Kirby to Introduce Evidence and Cross Examine McDonough Bolyard Peck Relative to Mediation. Copy forwarded to all parties of record.

February 22, 2005

Plaintiff filed letter advising that Attorney Robinson would be happy to meet with the Board to discuss how to proceed with these cases.

February 24, 2005

Plaintiff (Robinson) filed Acceptance of Service of Opinion and Order dated February 18, 2005 filed. Receipt of same acknowledged by Plaintiff February 22, 2005.

February 25, 2005

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

February 28, 2005

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

Defendant filed Notice of change of address and change of job title.

March 1, 2005

Plaintiff's Response to Commonwealth's Motion for Reconsideration or Motions in the Alternative.

March 3, 2005

Plaintiff filed letter-type Supplemental Letter Brief.

March 3, 2005

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 3, 2005

Board rendered the following Opinion and Order. Order as follows: "**AND NOW**, this 3rd day of March, 2005, it is hereby **ORDERED** and **DECREED** that Defendant's Motion to Strike Plaintiff Kirby's Expert Report; Kirby's Supplemental Pre-Hearing Memorandum; and for Summary Judgment against Plaintiff Kirby is hereby **DENIED**." Copy forwarded to Plaintiffs and Defendant.

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 16, 2005

Plaintiff filed Second Supplemental Pre-Hearing Memorandum.

March 17, 2005

Plaintiff filed Third Supplemental Pre-Hearing Memorandum.

March 18, 2005

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, 2005 and Briefs in Opposition shall be filed within thirty days of service of the briefs in support thereof.

March 23, 2005

Plaintiff filed Hearing Brief.

March 28, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 9:00 a.m.

March 29, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 8:00 a.m.

March 30, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 9:00 a.m.

March 31, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 9:00 a.m.

April 1, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 8:00 a.m. Additional dates to be scheduled.

May 5, 2005

(OLD DOCKET NO. 3674) Board rendered the following Opinion and Supplemental Scheduling Order. Order as follows: **"AND NOW**, this 5th day of May, 2004, it is hereby **ORDERED** and **DECREED** as follows: The hearing continued in this matter shall occur on Wednesday, May 18, 2005 and running through Thursday, May 19, 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 6, 2005

Testimony of hearing held March 28, 2005 filed. Copy forwarded to attorney for Defendant.

May 11, 2005

Plaintiff filed Acceptance of Service of Opinion and Supplemental Scheduling Order dated May 5, 2005. Receipt of same acknowledged by Plaintiff May 9, 2005.

May 12, 2005

Defendant filed Acceptance of Service of Opinion and Supplemental Scheduling Order dated May 5, 2005. Receipt of same acknowledged by Defendant May 9, 2005.

May 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.

May 19, 2005

Hearing held in Board's Courtroom No. 1, 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 8:30 a.m. **CASE COMPLETED.**

May 23, 2005

Plaintiff filed letter via facsimile advising that he would like to attend the post-hearing conference by telephone.

August 19, 2005

(OLD DOCKET NO. 3675) Testimony of hearing held May 9-11, 2005
filed.

August 22, 2005

(OLD DOCKET NO. 3675) Testimony of hearing held May 9-11, 2005
forwarded to Defendant.