

Docket Number: 3680

WAYNE KNORR, INC.

R. James Reynolds, Jr., Esquire
C. William Groscup, Esquire (Pro Hac Vice)

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~Andrew S. Gordon, Chief Counsel~~
Christopher F. Wilson, Assistant Counsel

***December 5, 2003**

Plaintiff filed Claim and filing fee. Amount of Claim:
\$1,538,911.69.

December 8, 2003

Plaintiff filed Praecipe to Substitute Verification.

December 9, 2003

Board called Plaintiff advising of filing deficiency: need proof of mailing to Defendant. Faxed Notice to Plaintiff regarding change of filing requirements.

December 9, 2003

Plaintiff filed Proof of Mailing. **ACCEPTED FOR FURTHER PROCESSING.**

December 16, 2003

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

December 22, 2003

Chief Deputy Attorney General filed Acknowledgment of Service of Claim. Receipt of same acknowledged December 17, 2003.

January 7, 2004

Defendant filed letter advising that the parties have agreed to a thirty day extension for the filing of Defendant's responsive pleading.

January 8, 2004

Board forwarded letter granting Defendant's request for a thirty day extension of time in which to file a responsive pleading until February 5, 2004.

January 30, 2004

Defendant filed Answer and New Matter.

March 1, 2004

Plaintiff filed Reply to New Matter.

March 4, 2004

Board forwarded letter directing parties to commence with discovery.

May 26, 2004

Plaintiff filed Notice of Service of First Request for production of Documents to Defendant.

August 19, 2004

Defendant filed Notice of Service of First Request for Production of Documents.

December 2, 2004

Board forwarded letter to parties requesting status.

April 11, 2005

Plaintiff filed Notice of Service of Notices of Depositions of Sara Cunningham, Brian Heeter and Brian Steffy.

April 18, 2005

Plaintiff filed Motion for Special Admission Pro Hac Vice.

April 27, 2005

Plaintiff filed letter advising that Defendant does not have an objection to the Plaintiff's Motion for Special Admission Pro Hac Vice and further requests that the Board enter an Order approving the Motion without waiting for the expiration of the thirty day period directed in the Board's letter of April 19, 2005.

May 6, 2005

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 6th day of May, 2005, after review of Plaintiff's Motion for Special Admission of C. William Groscup, Esquire and Defendant's indication of no opposition to Plaintiff's Motion, it is hereby **ORDERED** that: 1. Effective upon the date of this Order, C. William Groscup, Esquire 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 the Plaintiff in this matter; 2. C. William Groscup, Esquire shall abide by all the rules of, and applicable to, practice before this Board, including all attorney disciplinary rules; and 3. C. William Groscup, 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." Copy forwarded to Plaintiff and Defendant.

May 10, 2005

Plaintiff filed Acceptance of Service of Opinion and Order dated May 6, 2005. Receipt of same acknowledged May 9, 2005.

May 16, 2005

Defendant filed Acceptance of Service of Opinion and Order dated May 6, 2005. Receipt of same acknowledged May 12, 2005.

November 7, 2005

Plaintiff filed Notice of Service of Notice of Depositions of Brian Heeter.

November 14, 2005

Defendant filed Notice of Service of Second Request for the Production of Documents.

November 18, 2005

Defendant filed Motion to Amend Pleading and Brief in Support.
[03A010506D]

November 22, 2005

Plaintiff filed Notice of Service of deposition of Sara Cunningham to Defendant.

December 16, 2005

Plaintiff filed letter requesting an extension of time until January 3, 2006 in which to respond to Defendant's Motion to Amend Pleading and Brief in Support.

December 19, 2005

Board forwarded letter granting Plaintiff's request for an extension of time until January 3, 2006 in which to respond to Defendant's Motion to Amend Pleading and Brief in Support.

December 30, 2005

Plaintiff filed Notice of Service of Deposition of Brian Heeter, Sarah Cunningham, David Schaffer and Eric Moore.

January 3, 2006

Plaintiff filed Response to Motion to Amend Pleading and Brief in Opposition.

January 5, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Grange Lime & Stone.

January 5, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Glenn O. Hawbaker, Inc.

January 5, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Clark Traffic Control, Inc.

January 5, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Milestone Crushed, Inc.

January 5, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Williams & Willman Line Painting, Inc.

January 5, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Interstate Enterprises, Inc.

January 26, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 26th of January, 2006, after review of the briefs of the parties, it is hereby **ORDERED** and **DECREED** that the motion of Defendant, Commonwealth of Pennsylvania, Department of Transportation, to amend its pleading for the purpose of introducing a counterclaim against Plaintiff is hereby **GRANTED**. An amended pleading shall be filed within twenty (20) days of the exit date of this Order, and Plaintiff shall be afforded thirty (30) days from said filing to respond thereto." Copy forwarded to Plaintiff and Defendant.

January 30, 2006

Defendant filed Acceptance of Service of Opinion and Order dated January 26, 2006. Receipt of same acknowledged January 27, 2006.

January 31, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated January 26, 2006. Receipt of same acknowledged January 30, 2006.

February 1, 2006

Plaintiff filed Notice of Deposition of Richard Hogg and John Frye.

February 16, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Thomas Timberland Enterprises Inc.

February 16, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on R.L. Johnson Construction Corp.

February 16, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Marie Turner Inc.

February 16, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Heaton Construction, Inc.

February 16, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Green Acres Contracting.

February 16, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Donegal Construction Corp.

March 7, 2006

Defendant filed Amended Answer, New Matter and Counter-Claim.

March 8, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Dixon Electric Inc.

March 8, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for subpoena to be served on Indian Contracting Co., Inc.

March 10, 2006

Defendant filed Motion to Compel Plaintiff's Production of Documents Pursuant to Pa. R.C.P. 4019 and Brief in Support. [05A041406D]

March 27, 2006

Wayne Knorr's Reply to PennDot's New Matter and Counterclaim with New Matter to Counterclaim via facsimilie.

March 31, 2006

Plaintiff filed (via U.S. Mail) Reply to Reply to PennDot's New Matter and Counterclaim with New Matter to Counterclaim.

April 10, 2006

Plaintiff filed (via facsimile) Response to Defendant's Motion to Compel.

April 12, 2006

Plaintiff filed (via U.S. Mail) Response to Defendant's Motion to Compel.

April 17, 2006

Defendant filed Reply to New Matter.

April 19, 2006

Defendant filed Notice of Service of Third Request for Production of Documents to Plaintiff.

April 19, 2006

Board forwarded letter directing parties to commence with discovery.

May 2, 2006

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 2nd day of May, 2006, after consideration of Defendant's Commonwealth of Pennsylvania, Department of Transportation, motion to compel Plaintiff's production of documents, it is hereby **ORDERED** and **DECREED** that the motion is hereby **GRANTED** in part and **DENIED** in part. It is **GRANTED** to the extend that the documents requested in Requests No.6 and No.7 shall be produced; responses to Requests Nos. 1, 2, 3 shall be supplemented with a list of privileged documents withheld; the response to Request No. 8 expanded as indicated; the 1999 tax return provided as per plaintiff's representation; and Requests Nos. 9 and 10 answered with copies of the relevant materials. Defendant shall bear reasonable copying costs. It is **DENIED** with respect to all other requests for production of documents. This Order shall be complied with within thirty days of the exit date. Copies forwarded to all parties of record.

May 5, 2006

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

May 5, 2006

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

May 18, 2006

Defendant filed letter as a follow up to the Board's Order dated May 2, 2006, wherein Plaintiff was directed to produce documents within thirty days.

May 25, 2006

Plaintiff filed letter addressed to Defendant outlining the discovery and further advising that Plaintiff believes that a status conference under Rule 899.501(a) would be appropriate to discuss outstanding discovery issues and establish deadlines for the completion of pretrial discover and a timeframe for the exchange of expert reports.

May 26, 2006

Board forwarded letter to parties requesting scheduling information.

June 5, 2006

Defendant filed letter addressed to Plaintiff responding to Plaintiff's letter of May 16, 2006, and advising that prior to scheduling any status conference, Defendant would like to resolve the outstanding discovery issues.

June 5, 2006

Plaintiff filed letter outlining the outstanding discovery requirements prior to scheduling a status conference.

June 6, 2006

Defendant filed letter outlining discovery and other related issues.

June 8, 2006

Plaintiff filed Position Statement Regarding the Upcoming Status Conference.

June 9, 2006

Board rendered Order. Order as follows: "**AND NOW**, this 9th day of June, 2006, pursuant to the request of the Plaintiff for a conference, it is **ORDERED** that a status conference shall be held on June 22, 2006 at 200 North Third Street, Suite 700, Harrisburg, Pennsylvania 17101 commencing 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 (7) days prior to the conference and places the teleconference call as the Board directs." Copy forwarded to Plaintiff and Defendant.

June 12, 2006

Plaintiff filed Motion to Compel Production of Documents and Complete Interrogatory Responses and Brief in Support.

June 13, 2006

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

June 13, 2006

Defendant filed letter outlining their position on this matter.

June 13, 2006

Defendant filed Interrogatories Directed to Plaintiff (Third Set).

June 13, 2006

Defendant filed Motion to Compel Plaintiff's Production of Documents Pursuant to Pa. R.C.P. 4019.

June 14, 2006

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

June 14, 2006

Defendant filed Notice of Service of Defendant's Third Set of Interrogatories.

June 14, 2006

Defendant filed Notice of Service of Defendant's First Set of Requests for Admissions.

June 15, 2006

Plaintiff filed a letter advising that in Plaintiff's Motion to Compel had a typographical error in the "wherefore" clause, the reference to the rule should read Pa. R. Civ. P. 4019 not Pa. R. Civ. P. 4018.

June 15, 2006

Plaintiff filed a letter in response to Defendant's letter outlining its position on this matter.

June 15, 2006

Defendant filed copy of letter forwarding joint stipulation to Plaintiff for signature.

June 19, 2006

Plaintiff filed Response to Defendant's Motion to Compel (with respect to Defendant's Third Request for Production of Documents).

June 19, 2006

Defendant filed Response to Plaintiff's Brief in Support.

June 19, 2006

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

June 19, 2006

Defendant filed Response to Plaintiff's Motion To Compel.

June 19, 2006

Defendant filed Motion to Compel Plaintiff's Production of Bid Documents (Related to Paragraph 10 of Document Request Number 1) Pursuant to PA. R.C.P. 4019.

June 19, 2006

Defendant filed Motion for Sanctions and Brief in Support.

June 21, 2006

Plaintiff filed Notice of Service of Notices of Deposition for Brian Heeter and David Schaffer.

June 22, 2006

Board status conference held at 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 1:00 PM.

June 23, 2006

AND NOW, this 23rd day of June, 2006, as a result of a status conference held between the parties at the Board of Claims on June 22, 2006, it is hereby **ORDERED** and **DECREED** as follows: 1. Plaintiff is **GRANTED** leave to amend its complaint within 20 days of the exit date of this Order for the purpose of revising and reducing its damage claim contained therein; 2. In light of the concern expressed by both parties that several outstanding discovery requests have not received full and complete responses, the Board, by this Order, directs the attorney for each party to exert his best efforts to assure that each discovery response is full and complete after a diligent investigation conducted in good faith by his client. This requirement is imposed with respect to materials copied and delivered to the opposing party and for materials which the opposing party is invited to review on site; 3. If either party once had documents responsive to any of the discovery items addressed below, which documents are no longer available or in the party's possession, the party's response shall identify these documents and provide explanation as to why they are no longer available. If the documents or materials never existed, the response shall so state; 4. Both parties are reminded of their continuing obligation to update each and every discovery response if, and as, additional materials are discovered as the case proceeds; 5. Plaintiff shall provide to Defendant supplemental responses as directed above to the following outstanding discovery items: a. Copies of all correspondence sent by Wayne Knorr, Inc., its surety bond holder or any other representative of Wayne Knorr, Inc. to PennDOT between May 2001 and February 2003; b. Plaintiff will advise if there are any additional materials to be sent with respect to two lawsuits already identified and will also advise and

supply appropriate materials if there are any additional lawsuits where Wayne Knorr, Inc., or any related Knorr business was a party to such action dating from January 1, 1999 to the present (said response shall include confirmation that the lawsuits identified by Defendant in its motion for sanctions filed June 19, 2006, at Exhibits E and F are or are not responsive to the discovery requests); c. In response to Item No. 3 of Defendant's second request for production of documents, Plaintiff will identify the sale or disposal of any and all equipment used on the SR-28 Project for transactions occurring between 8/3/99 through 8/13/01 and provide invoices and any other documentation available on said transactions; d. Plaintiff will not be required to supply the computer files or programs for damage calculations done by an expert who will not be testifying at the Board hearing on this matter in response to Defendant's Request No. 10, Second Request for Production of Documents; e. Plaintiff shall provide Defendant with further response to the information sought in Paragraph 10 of Plaintiff's Request for Documents No. 1 (First Request for Production of Documents) respecting all documents, data, and materials used in formulating Plaintiff's bid on this project; f. Provide all financial statements for Wayne Knorr, Inc. and Knorr Used Equipment, Inc. and the successor to Wayne Knorr, Inc. for fiscal years ended in 1998 through 2002 (inclusive) and confirm no other Knorr affiliates had any involvement in the SR-28 Project; g. Provide the 1998 tax returns for Wayne Knorr, Inc. and for Knorr Used Equipment, Inc.; h. Provide response to Request No. 4 respecting documentation supporting the item "due from affiliates" identified on schedule of Wayne W. Knorr, Inc.'s 2000 U.S. income tax return; i. Respond to Request No. 5 respecting any notes payable, bonds and mortgages that were payable for any or all years 1998 through 2002 for Wayne Knorr, Inc. only; j. Make available for inspection all documents responsive to Defendant's Third Request for Production of Documents Request Nos. 6, 7, 8, 9 (providing an additional run of the job cost report for SR-28 complete through November 2003 and the job cost report system software if reasonably severable from Plaintiff's software system), 10, 11, 12 (including any documentation respecting Knorr's labor utilization and labor costs on the SR-28 Project whether or not titled "labor reports" or otherwise), 13, 14, 15 (including all available source documentation upon which the job cost report is based), 16, 17 (including subcontractor files for the period 1999 through 2003 for any subcontractors who worked on SR-28), 18 (but only for the entities Wayne Knorr, Inc. and Knorr Used Equipment, Inc.) and 19; 6. In response to Plaintiff's Motion to Compel Further Response to its Interrogatories and Production of Documents, Defendant shall supplement its responses to Plaintiff by providing revised

responses as directed in Paragraphs 2 - 4 above to: a. Interrogatories 2 through 5 which address the questions propounded as to identifying every individual who was involved in PennDOT's decision to seek an assessment of liquidated damages against Knorr concerning the SR-28 Project, describing the role of such persons in that decision, identifying the dates and participants of every meeting by PennDOT in which the subject of assessing liquidated damages against Knorr was discussed, identifying the date on which PennDOT decided to seek an assessment of liquidated damages against Knorr relating to SR-28 Project (without further reference to Section 108.07 or discussion thereof, which the Board has advised counsel for Defendant it deems nonresponsive to these interrogatories); b. Identify and separately attach every document which PennDOT provided to Knorr referencing or indicating that PennDOT was considering an assessment of liquidated damages against Knorr related to the SR-28 Project; c. Provide any and all documentation, notes or other materials relating to PennDOT's analysis of time extensions for Knorr respecting the SR-28 Project; d. Provide any and all PennDOT emails respecting SR-28; e. Provide any and all documentation and materials respecting any changes, modification or revisions to design documents for the SR-28 Project sent to Knorr (including any and all transmittal sheets which may have accompanied same); 7. All of the supplement responses identified above shall be provided to the opposing party within 30 days from the exit date of this Order; 8. Both parties shall provide to the Board within 15 days of the exit date of this Order legal briefs respecting the discoverability of the PennDOT employee evaluations sought by Plaintiff in this matter; 9. In light of the discussion at the aforementioned status conference, and representation of Defendant's counsel that he believes that many of his proposed depositions will be brief, the Board will not, at this time, impose a limitation on the number of depositions to be taken in this case. The Board will allow either party to request such a limitation should depositions become too numerous or overly burdensome as the case proceeds; 10. The following schedule is hereby established for this case: a. The last day for Plaintiff's expert report, if any, to be provided to Defendant is October 15, 2006; b. The last day for Defendant's expert report, if any, to be provided to Plaintiff is November 20, 2006; c. All discovery, and the exchange of any expert rebuttal reports shall be completed by December 31, 2006*; d. The last day for filing pre-trial motions is January 12, 2007*; e. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than January 31, 2007 (Please note BOC R.P. 501(b) and (c)(3)); f. A pre-trial conference is scheduled for Friday, February 16, 2007, at 1:00 p.m. Said conference shall be held at 200 North Third Street,

Fulton Building, 7th Floor, Harrisburg, PA 17101; and g. This matter is set for hearing beginning on March 19, 2007 and running through March 30, 2007, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101, commencing at 9:30 a.m. 11. In light of the foregoing, Defendant, Department of Transportation's motion for sanctions filed with this Board June 19, 2006; Defendant's motion to compel Plaintiff's production of bid documents (related to Paragraph 10 of Document Request No. 1) pursuant to Pa. R.C.P. 4019 filed with this Board June 19, 2006; Defendant's motion to compel documents concerning its third request for production of documents filed with this Board June 12, 2006; and Plaintiff's motion to compel production of documents and complete interrogatory responses filed with this Board June 12, 2006, are hereby **DENIED** as **MOOT.**" Copy forwarded to Plaintiff and Defendant.

June 28, 2006

Plaintiff filed Acceptance of Service of Order dated June 23, 2006. Receipt of same acknowledged June 27, 2006.

June 28, 2006

Defendant filed Acceptance of Service of Order dated June 23, 2006. Receipt of same acknowledged June 27, 2006.

***July 10, 2006**

Plaintiff filed Amended Complaint and proof of mailing. Amount of Claim: \$1,224,858.00+.

July 10, 2006

Plaintiff filed Supplemental Brief in Support of its Motion to Compel Production of PennDOT Employee Evaluations.

July 10, 2006

Defendant filed Brief for Defendant in Opposition to the Production of Employee Evaluations.

July 11, 2006

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

July 14, 2006

Plaintiff filed Notice of Service of Plaintiff's Answers and Objections to Defendant's First Set of Interrogatories.

July 17, 2006

Plaintiff filed Notice of Service of Plaintiff's Response to Defendant's Request for Admissions.

July 20, 2006

Plaintiff filed Notice of Service of Plaintiff's Answers and Objections to Defendant's Third Set of Interrogatories.

July 20, 2006

Attorney General filed Acknowledgment of Amended Claim form. Receipt of same acknowledged July 19, 2006.

August 4, 2006

Defendant filed letter requesting that the Board incorporate Defendant's prior filing (Answer, New Matter and Counterclaim) into the current filing (Plaintiff's Amended Complaint) as well as Plaintiff's previous filing (Response to New Matter & Counterclaim).

August 7, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW** this 7th day of August, 2006, after consideration of Plaintiff's, Wayne Knorr, Inc.'s, Motion to Compel Production of PennDOT employee evaluations, and defendant Commonwealth of Pennsylvania, Department of Transportation's opposition thereto, it is hereby **ORDERED** that Plaintiff's motion is **GRANTED** subject to the following restrictions and procedures: The said employee evaluations shall be used solely for the purposes of this litigation captioned as Wayne Knorr, Inc. v. Commonwealth of Pennsylvania, Department of Transportation, Docket No. 3680, currently pending before the Board of Claims, and shall be disclosed only to the following persons: 1. Counsel for any party engaged in this litigation and professional, clerical and other support personnel of said counsel; 2. Specifically named parties to this litigation; 3. Experts retained to assist counsel for any party to this litigation; 4.

Witnesses in the course of deposition or at trial to the extent that counsel, acting in good faith, determines that examination of the witness with respect to the employee evaluations is necessary for legitimate discovery or evidentiary purposes; 5. Those parties exposed to same through presentation of evidence before the Board at hearing, unless confidential treatment is requested and granted by the Board at hearing. Prior to the disclosure of the employee evaluations to any person described above, counsel shall provide such person with a copy of this Order and shall advise that person that the disclosure of employee evaluations is subject to these terms. The employee evaluations and any copy thereof shall be clearly marked "confidential". Defendants shall produce the employee evaluations described herein within 30 days from the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

August 10, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated August 7, 2006. Receipt of same acknowledged August 9, 2006.

August 11, 2006

Board rendered an Order. Order as follows: "**AND NOW**, this 11th day of August, 2006, pursuant to request of counsel, Defendant's Answer, New Matter and Counterclaim filed March 7, 2006, shall be considered its response to Plaintiff's Second Amended Claim filed July 10, 2006. The parties' subsequent responsive pleadings shall also remain effective. The Board now considers the pleadings closed." Copy forwarded to Plaintiff and Defendant.

August 15, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated August 11, 2006. Receipt of same acknowledged August 14, 2006.

August 16, 2006

Defendant filed Acceptance of Service of Opinion and Order dated August 11, 2006. Receipt of same acknowledged August 15, 2006.

August 17, 2006

Defendant filed Notice of Service of Defendant's Response to Plaintiff's Interrogatories and Request for Production of Documents.

September 20, 2006

Plaintiff filed Notice of Service of Response to Defendant's Second Request for Admissions.

September 20, 2006

Plaintiff filed Objections to Proposed Subpoena of Defendant Directed to Zurich North America Pursuant to Pa. R.C.P. No. 4009.21.

September 20, 2006

Plaintiff filed Objections to Proposed Subpoena of Defendant Directed to the Mountbatten Surety Company Pursuant to Pa. R.C.P. No. 4009.21.

September 21, 2006

Board forwarded letter to Defendant, with copy to Plaintiff, requesting a response to Defendant's Objections to Proposed Subpoenas of Defendant.

September 21, 2006

Plaintiff filed Notice of Service of Plaintiff's Responses to Defendant's Third Request for Admissions.

September 22, 2006

Defendant filed Notice of Service, Defendant's Third Set of Interrogatories Directed to Plaintiff.

October 4, 2006

Defendant filed letter responding to Plaintiff's objections to subpoenas issued to Zurich Surety and Mountbatten Surety advising that Defendant would not require that any arguably privileged correspondence or memos be produced.

October 30, 2006

Plaintiff filed Notice of Service of Notice of Depositions of John Frye, David Schaffer, Brian Steffy and the Commonwealth of Pennsylvania/Department of Transportation Agency designee.

November 1, 2006

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

November 2, 2006

Plaintiff filed Notice of Service of Notice of Deposition of Brian Heeter.

November 13, 2006

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

November 20, 2006

Defendant filed Expert Report prepared by Rubino & McGeehin Consulting Group, Inc.

November 20, 2006

Defendant filed Expert Report prepared by Michael Baker, Jr., Inc.

November 21, 2006

Defendant filed letter (via fax) clarifying that the expert reports should be filed at the Board of Claims.

November 21, 2006

Defendant filed Waiver of 20 day period before subpoena may be served on Intercargo Insurance Company signed by Plaintiff.

November 21, 2006

Defendant filed Waiver of 20 day period before subpoena may be served on Continental Casualty Company signed by Plaintiff.

December 6, 2006

Plaintiff filed expert report of October 13, 2006 prepared by The Duggan Rhodes Group.

December 11, 2006

Plaintiff filed Notice of Service of Defendant-Designee Pursuant to Pa. R.C.P. 4007.1(e).

December 29, 2006

Plaintiff filed Notice of Service of Plaintiff's Response to Defendant's Fourth Request for Production of Documents.

January 2, 2007

Defendant filed supplemental/rebuttal expert reports prepared by Michael Baker, Jr., Inc.

January 26, 2007

Board rendered an Order. Order as follows: "**AND NOW**, this 26th day of January, 2007, with agreement of the parties, the pre-trial conference scheduled in this matter to take place on Friday, February 16, 2007, at 1:00 p.m. is rescheduled for Thursday, February 8, 2007, beginning at 1:00 p.m. This conference will be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101." Copy forwarded to Plaintiff and Defendant.

January 29, 2007

Plaintiff filed Acceptance of Service of Order dated January 26, 2007. Receipt of same acknowledged January 26, 2007.

January 31, 2007

Plaintiff filed Pre-Trial Statement.

January 31, 2007

Defendant filed Pre-Trial Statement.

February 8, 2007

Board pre-trial conference held at 200 North Third Street, Suite 700, Harrisburg, PA 17101 commencing at 1:00 p.m.

February 16, 2007

Plaintiff filed pre-hearing brief.

February 16, 2007

Defendant filed trial brief.

March 9, 2007

Plaintiff filed letter providing copies of 1) Plaintiff's Demonstrative Exhibits, 2) Plaintiff's Final Exhibit List, 3) parties' agreed stipulations and 4) Plaintiff's proposed stipulations, as directed by the Board.

March 13, 2007

Defendant filed Defendant's Exhibit List and potential demonstrative exhibits.

March 13, 2007

Defendant filed letter regarding some concerns Defendant has regarding stipulations and demonstrative exhibits being received by Defendant late.

March 15, 2007

Defendant filed letter regarding a notice to attend that Plaintiff is planning to serve on Defendant.

March 16, 2007

Defendant filed (via fax) letter regarding new evidence.

March 19, 2007

Defendant filed (via U.S. mail) letter regarding new evidence.

March 19, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 10:30 a.m.

March 20, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m.

March 21, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m.

March 22, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m.

March 23, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m.

March 26, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m.

March 27, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 9:00 a.m.

March 28, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 10:00 a.m.

March 29, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 8:30 a.m.

March 30, 2007

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa commencing at 10:00 a.m. Case completed.

April 13, 2007

Plaintiff filed a copy of the Payment Applications (a/k/a Contractor Payment Estimates) as requested by the Board.

May 1, 2007

Testimony of hearing held March 19, 20, 21, 22, 23 and 26, 2007 filed.

May 2, 2007

Board forwarded copy of testimony of hearing held March 19, 20, 21, 22, 23 and 26, 2007 to Defendant.

May 8, 2007

Defendant filed Acceptance of Service of testimony of hearing held March 19, 20, 21, 22, 23 and 26, 2007. Receipt of same acknowledged May 7, 2007.

May 8, 2007

Testimony of hearing held March 27, 28, 29 and 30, 2007 filed. Last day.

May 9, 2007

Board forwarded copy of testimony of hearing held March 27, 28, 29 and 30, 2007 to Defendant.

June 6, 2007

Plaintiff filed Motion for Extension of Posthearing Filing Deadlines and Proposed Order.

June 25, 2007

Plaintiff filed Proposed Order and Motion to Admit Additional Exhibits into Evidence.

June 27, 2007

Plaintiff filed Proposed Order and Supplement to Plaintiff's Motion to Admit Additional Exhibits into Evidence.

June 29, 2007

Board rendered an Order. Order as follows: "**AND NOW**, this 29th day of June, 2007, it is hereby **ORDERED** and **DECREED** that upon consideration of Plaintiff's uncontested Motion to Admit Additional Exhibits into Evidence, the Motion is **GRANTED**, and it is hereby **ORDERED** that the following nineteen (19) trial exhibits of Plaintiff are admitted into evidence in this matter: 23, 33, 97, 110, 123, 136, 140, 144, 187, 189, 190, 197, 203, 210, 216, 254, 257, 270 and 268E." Copy forwarded to Plaintiff and Defendant.

July 3, 2007

Plaintiff filed acceptance of service of Order dated June 29, 2007. Receipt of same acknowledged July 2, 2007.

July 3, 2007

Plaintiff filed Proposed Findings of Fact, Conclusions of Law and Post Hearing Brief.

July 17, 2007

Defendant filed (via fax) letter advising the Board that Plaintiff has agreed to an extension of time until August 10, 2007, for Defendant to file its post hearing filings, and that Defendant has agreed to an extension of time until August 30, 2007, for Plaintiff to file its reply.

July 18, 2007

Board forwarded letter to parties granting an extension of time until August 10, 2007, for Defendant to file its post hearing filings, and an extension of time until August 30, 2007, for Plaintiff to file its reply.

July 18, 2007

Defendant filed (via U.S. mail) letter advising the Board that Plaintiff has agreed to an extension of time until August 10, 2007, for Defendant to file its post hearing filings, and that Defendant has agreed to an extension of time until August 30, 2007, for Plaintiff to file its reply.

August 10, 2007

Defendant filed Proposed Findings of Fact and Conclusions of Law and Brief in Support.

August 30, 2007

Plaintiff filed Post Hearing Brief.

September 7, 2007

Defendant filed letter in response to Plaintiff's Reply Brief.

July 25, 2008

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 25th day of July, 2008, **IT IS ORDERED** and **DECREED** that judgment be entered in favor of Plaintiff, Wayne Knorr, Inc. ("Knorr") against the Defendant, Commonwealth of Pennsylvania, Department of Transportation ("PennDOT"), in the sum of \$537,528. This sum consists of \$413,483, the amount owed to Knorr for damages incurred as a result of PennDOT's breach of contract on the SR28 project (after setoff for counterclaim) and \$124,045 in prejudgment interest on that amount. In addition, Plaintiff is awarded post-judgment interest on the total outstanding judgment at the statutory rate for judgments (6% per annum) beginning on the date of this Order and continuing until the judgment is paid in full. Each party herein will bear its own costs and attorney fees." Copy forwarded to Plaintiff, Defendant and Attorney General.

July 30, 2008

Defendant filed acceptance of service of Opinion and Order dated July 25, 2008. Receipt of same acknowledged July 28, 2008.

August 4, 2008

Plaintiff filed acceptance of service of Opinion and Order dated July 25, 2008. Receipt of same acknowledged August 1, 2008.

August 6, 2008

Attorney General filed acceptance of service of Opinion and Order dated July 25, 2008. Receipt of same acknowledged August 5, 2008.

August 22, 2008

Plaintiff filed Petition for Review in the Nature of an Appeal as filed in Commonwealth Court. [No. 1593 C.D. 2008]

August 25, 2008

Defendant filed Petition for Review in the Nature of an Appeal as filed in Commonwealth Court. [No. 1598 C.D. 2008]

August 26, 2008

Commonwealth Court issued Notice of Filing of Petition for Review. [1593 C.D. 2008]

August 26, 2008

Commonwealth Court issued Notice of Filing of Petition for Review. [1598 C.D. 2008]

August 27, 2008

Board filed certified list comprising the record from the Board of Claims to Commonwealth Court.

August 29, 2008

Commonwealth Court issued an Order. Order as follows: "Now, August 27, 2008, the above-captioned cross petitions for review are hereby sua sponte consolidated."

September 4, 2008

Board forwarded testimony of hearing held March 19, 20, 21, 22, 23, 26, 27, 28, 29 & 30, 2007 at Commonwealth Court.

September 5, 2008

Plaintiff filed docketing statement as filed in Commonwealth Court.

September 22, 2008

Plaintiff filed Wayne Knorr's Counter-Designation of Parts of Record to be Reproduced and Issues Presented for Review as filed in Commonwealth Court.

September 29, 2008

Commonwealth Court issued an Order. Order as follows: "NOW, September 25, 2008, upon consideration of the motion of R. James Reynolds, Jr., Esq., for admission pro hac vice of C. William Grocup, Esq., on behalf of Wayne Knorr, Inc., it is hereby ordered: (1) C. William Grocup, Esq., is admitted pro hac vice to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301, as co-counsel on behalf of Wayne Knorr, Inc. in this matter; (2) C. William Grocup, Esq., shall abide by the rules of this Court including all disciplinary rules; (3) C. William Grocup, Esq., shall immediately notify this Court of any matter affecting his standing at the bar of any other court where he may be admitted to practice; and (4) R. James Reynolds, Jr., Esq., the moving party herein shall continue to be responsible as counsel of record for the conduct of this matter on behalf of the Wayne Knorr, Inc."

September 29, 2008

Commonwealth Court issued an Order. Order as follows: "NOW, September 25, 2008, upon consideration of petitioner Department of Transportation's concurred-in motion to transmit record, the motion is granted. No later than October 17, 2008, the Board of Claims shall certify any parts of the original record listed in the certified list of documents included in the record and not yet certified to this court, including but not limited to all trial exhibits. The Chief Clerk shall send a copy of this order to the Board of Claims."

October 9, 2008

Board forwarded entire file to Commonwealth Court.

December 18, 2008

Commonwealth Court issued an Order. Order as follows: "NOW, December 16, 2008, the above petitions for review shall be submitted on briefs, without oral argument, unless otherwise ordered."

December 18, 2008

Commonwealth Court issued an Order. Order as follows: "NOW, December 16, 2008, upon consideration of respondent's request for extension of time to file reply briefs, and it appearing that said request is not opposed, said request is granted and respondent's reply brief (15 copies) shall be filed on or before January 7, 2009."

May 18, 2009

Commonwealth Court filed Opinion and Order. Order as follows: "AND NOW, this 14th day of May, 2009, the order of the Board of Claims is **AFFIRMED**. Wayne Knorr, Inc.'s Application to Strike Portions of the Second Brief and Reply Brief of the Department of Transportation and the Department of Transportation's Cross-Application to Strike Portions of Wayne Knorr Inc.'s Initial Brief and Reply Brief are **DENIED**."

July 17, 2009

Commonwealth Court returned file.
