

Docket Number: 3702

~~\*MICHAEL GALLAGHER t/d/b/a~~ GALLAGHER FLOORS

Darryl R. Slimak, Esquire  
Russell A. Ventura, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF LABOR & INDUSTRY, STATE WORKERS= INSURANCE FUND

Roger H. Caffier, Chief Counsel  
James D. Jordan, Esquire

C L O S E D

**March 31, 2004**

Plaintiff filed Claim, filing fee and proof of mailing. Amount of Claim: unspecified. ACCEPTED FOR FURTHER PROCESSING.

---

**April 1, 2004**

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

---

**April 6, 2004**

Attorney General filed Acknowledgment of claim form. Receipt of same acknowledged April 2, 2004.

---

**April 19, 2004**

Defendant filed Entry of Appearance of James D. Jordan, Esquire on behalf of Defendant.

---

**May 3, 2004**

Defendant filed Preliminary Objections and Brief in Support. Copy forwarded to Plaintiff.

---

**May 6, 2004**

Defendant filed Certificate of Service of Defendant's Requests for Admission Addressed to Plaintiff.

---

**May 11, 2004**

Plaintiff filed Response in Opposition to Preliminary Objections and Brief. Copy forwarded to Defendant.

---

**May 11, 2004**

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

---

**May 11, 2004**

Plaintiff filed Notice of Service of Plaintiff's First Request for Production of Documents Directed to Defendant.

---

**June 14, 2004**

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

---

**June 23, 2004**

Plaintiff filed Certificate of Service of Plaintiff's Response to Defendant's Requests for Admission.

---

**June 25, 2004**

Plaintiff filed Motion to Compel Full and Complete Answers to First Set of Interrogatories, Brief in Support of Motion to Compel Full and Complete Answers to First Set of Interrogatories as well as a Proposed Rule to Show Cause and Proposed Order. Copy forwarded to Defendant.

---

**June 28, 2004**

Defendant filed a copy of Defendant's Requests for Admissions and Plaintiff's responses as a record in support of its Preliminary Objections. Copy forwarded to Plaintiff.

---

**July 14, 2004**

Defendant filed Response to Motion to Compel Answers and Brief in Opposition. Copy forwarded to Plaintiff.

---

**July 22, 2004**

Plaintiff filed Reply Brief to Defendant's Brief in Opposition to Plaintiff's Motion to Compel. Copy forwarded to Defendant.

---

**August 27, 2004**

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 27<sup>th</sup> day of August, 2004, the Preliminary Objections of the Defendant, Commonwealth of Pennsylvania, Department of Labor & Industry, State Workers' Insurance Fund, are **SUSTAINED IN PART** and **DENIED IN PART**. The objections pertaining to subject matter jurisdiction and sovereign immunity are hereby **DENIED**. The objection with respect to real party interest is hereby **GRANTED**.

Plaintiff shall have twenty (20) days from the exit date of this Order to amend its Complaint." Copy forwarded to Plaintiff and Defendant.

---

**September 1, 2004**

Plaintiff filed Acceptance of Service of Opinion and Order dated August 27, 2004. Receipt of same acknowledged August 30, 2004.

---

**\*September 13, 2004**

Plaintiff re-filed Claim, characterized by the Board as an Amended Claim, and proof of mailing. Amount of Claim: unspecified.

---

**September 14, 2004**

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

---

**September 21, 2004**

Plaintiff filed a letter acknowledging the Board's receipt of the Amended Claim and advising that Plaintiff still has an outstanding Motion to Compel Discovery for action by the Board.

---

**September 22, 2004**

Attorney General filed Acknowledgment form of Amended Claim. Receipt of same acknowledged September 16, 2004.

---

**September 24, 2004**

Defendant filed Application to Amend Order to Include Interlocutory Review Language Prescribed in 42 Pa. C.S.A. 702(b) and a Proposed Order. Copy forwarded to Plaintiff.

---

**September 30, 2004**

The Board rendered an Opinion and Amended Order. Amended Order as follows: **"AND NOW**, this 30<sup>TH</sup> day of September, 2004, the Board's Order of August 27, 2004, is hereby amended to read as follows: **AND NOW**, this 27<sup>th</sup> day of August, 2004, the Preliminary Objections of the Defendant, Commonwealth of Pennsylvania, Department of Labor & Industry, State Workers' Insurance Fund, are **SUSTAINED IN PART** and **DENIED IN PART**. The objections pertaining to subject matter jurisdiction and sovereign immunity are hereby **DENIED**. The objection with respect to real party interest is hereby **GRANTED**. Plaintiff shall have twenty (20) days from the exit date of this Order to amend its Complaint. However, it is also the opinion of the Board that this Order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the matter. Therefore, immediate appeal to Commonwealth Court is hereby **PERMITTED**." Copy forwarded to Plaintiff and Defendant.

---

**October 4, 2004**

Plaintiff filed (via fax) Motion to Reconsider the Board's September 30, 2004 Opinion and Order and Response in Opposition to Amend Order to Include Interlocutory Review Language and Proposed Order. Copy forwarded to Defendant.

---

**October 5, 2004**

Plaintiff filed (via U.S. mail) Motion to Reconsider the Board's September 30, 2004 Opinion and Order and Response in Opposition to Amend Order to Include Interlocutory Review Language and Proposed Order. Copy forwarded to Defendant.

---

**October 6, 2004**

Defendant filed Acceptance of Service of Opinion and Amending Order dated September 30, 2004. Receipt of same acknowledged October 4, 2004.

---

**October 6, 2004**

Defendant filed (via fax) Response to Motion to Reconsider Board's September 30, 2004 Opinion and Order and Proposed Order. Copy forwarded to Plaintiff.

---

**October 7, 2004**

Plaintiff filed Acceptance of Service of Opinion and Amending Order dated September 30, 2004. Receipt of same acknowledged October 4, 2004.

---

**October 7, 2004**

Defendant filed (via U.S. mail) Response to Motion to Reconsider Board's September 30, 2004 Opinion and Order and Proposed Order. Copy forwarded to Plaintiff.

---

**October 8, 2004**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 8<sup>th</sup> day of October, 2004, it is hereby **ORDERED** and **DECREED** that Plaintiff's Motion to Reconsider the Board's September 30, 2004, Opinion and Order is **DENIED.**" Copy forwarded to Plaintiff and Defendant.

---

**October 8, 2004**

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

---

**October 13, 2004**

Plaintiff filed Acceptance of Service of Opinion and Order dated October 8, 2004. Receipt of same acknowledged October 12, 2004.

---

**October 28, 2004**

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

---

**November 23, 2004**

Commonwealth Court rendered an Order. Order as follows: "NOW, November 22, 2004, upon consideration of the State Workers' Insurance Fund's petition for permission to appeal and the brief in opposition thereto, the petition is denied."

---

**December 3, 2004**

Plaintiff filed a letter requesting the Board to rule on the outstanding Motion to Compel Full and Complete Answers to Plaintiff's First Set of Interrogatories, now that Commonwealth Court has denied Defendant's Petition to Appeal.

---

**December 23, 2004**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 23<sup>rd</sup> day of December, 2004, based upon a reading of the Briefs, it is hereby **ORDERED** and **DECREED** that the Plaintiff's, Gallagher Floors, Motion to Compel Answers to Interrogatories and Production of Documents, is hereby **GRANTED** with the following exceptions. Defendant's, Commonwealth of Pennsylvania, Department of Labor & Industry, State Workers' Insurance Fund, objection to Interrogatory 16 is hereby **GRANTED**.

Defendant's objection to Interrogatory 7 is **GRANTED** to the extent that Defendant shall provide to Plaintiff a list of the audits requested by Plaintiff occurring over the past ten (10) years identified by Audit Number only, and upon written request by Plaintiff, provide copies of same redacted to eliminate all material identifying the insured. The names, addresses and telephone numbers and identification of individuals and companies audited shall not be provided. Defendant shall have thirty (30) days from the exit date of this Order to provide full and complete answers to the discovery requests as directed above." Copy forwarded to Plaintiff and Defendant.

---

**December 29, 2004**

Plaintiff filed Acceptance of Service of Opinion and Order dated December 23, 2004. Receipt of same acknowledged December 28, 2004.

---

**January 27, 2005**

Defendant filed Certificate of Service of answers to interrogatories.

---

**March 7, 2005**

Defendant filed Certificate of Service of amended answers to interrogatories pursuant to Board's order dated December 23, 2004.

---

**September 14, 2005**

Plaintiff filed letter advising that Plaintiff and Defendant agree this case is ready to be listed for hearing.

---

**October 4, 2005**

Plaintiff filed Proposed Scheduling Order. Copy forwarded to Defendant.

---

**October 7, 2005**

Defendant filed letter outlining his proposed schedule for trial.

---

**October 20, 2005**

Board rendered the following Scheduling Order. Order as follows: **"AND NOW**, this 20<sup>th</sup> day of October, 2005, it is hereby **ORDERED** and **DECREED** as follows: 1.All depositions and discovery shall be completed by December 20, 2005; 2. The last day for filing Pre-Trial Motions is December 30, 2005;3.Pre-Trial Statements of both parties shall be filed with the Board and served upon one another no later than January 16, 2006 (Please note BOC R.P. 501(b) and (c)(3));4.A Pre-Trial Conference is scheduled for Thursday, February 9, 2006 at 10:00 a.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; and 5. This matter is set for hearing beginning on Wednesday, March 1, 2006 and running through Thursday, March 2, 2006, 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.



**October 27, 2005**

Plaintiff filed Acceptance of Service of Scheduling Order dated October 20, 2005. Receipt of same acknowledged October 24, 2005.

---

**November 23, 2005**

Plaintiff filed Notice of Oral Deposition Directed to Jeremy Pardo, Matt Schilling and John Webner.

---

**January 12, 2006**

Defendant filed Prehearing Memorandum. Copy forwarded to Plaintiff.

---

**January 13, 2006**

Plaintiff filed Pretrial statement and Memorandum. Copy forwarded to Defendant.

---

**February 8, 2006**

Defendant filed letter via fax requesting the Board reschedule Pretrial Conference.

---

**February 8, 2006**

Plaintiff filed letter via fax advising the Board that a verbal settlement has been reached and requesting the Board cancel the Pretrial Conference and the Hearing.

---

**February 8, 2006**

Board forwarded letter to parties continuing the Pretrial conference scheduled for February 9, 2006 and Hearing scheduled for March 1-2, 2006 until further notice.

---

**February 9, 2006**

Plaintiff filed letter via U.S. mail advising the Board that a verbal settlement has been reached and requesting the Board cancel the Pretrial Conference and the Hearing.

---

**April 18, 2006**

Plaintiff filed a Praecipe that the final settlement documents in the above-referenced matter have now been completed and exchanged. Please mark the matter as settled, ended and discontinued, with prejudice. Copy forwarded to Defendant.

---

**April 19, 2006**

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 19th day of April, 2006, upon receipt of a praecipe to mark the case settled, ended, and discontinued with prejudice, executed by Darryl R. Slimak, Esquire, on behalf of Plaintiff, Gallagher Floors, requesting that the Board mark the above-captioned matter "settled, ended, and discontinued, with prejudice," docketed with this Board under date of April 18, 2006, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked "settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

---

**April 26, 2006**

Plaintiff filed Acceptance of Service of Opinion and Order dated April 19, 2006. Receipt of same acknowledged by Plaintiff April 25, 2006.

---

C L O S E D