

Docket Number: 3717

PITTSBURGH BUILDING COMPANY

Christopher Opalinski, Esquire
F. Timothy Grieco, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES

~~Trent Hargrave, Chief Counsel~~
~~Elizabeth A. O'Reilly, Senior Counsel~~
~~*Michael C. Barr, Senior Counsel~~

June 21, 2004

Plaintiff filed Claim. Proof of Mailing and filing fee. Amount of Claim: \$200,583.00. ACCEPTED FOR FURTHER PROCESSING.

June 24, 2004

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

July 29, 2004

Defendant filed Answer with New Matter and Counterclaim.

August 18, 2004

Plaintiff filed Reply to New Matter.

August 19, 2004

Board forwarded letter directing parties to commence with discovery.

September 29, 2004

Plaintiff filed letter advising that the parties are commencing with discovery and upon completion of same, will notify the Board to move forward to schedule a hearing before a Western District Panel.

November 1, 2004

Plaintiff filed Certificate Prerequisite to Service of Subpoena Pursuant to Pa.R.C.P. 4009.22.

November 1, 2004

Plaintiff filed Motion to Compel Discovery.

December 27, 2004

Plaintiff filed letter requesting the Board to rule on Plaintiff's Motion to Compel without the response of Defendant.

January 13, 2005

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 13th day of January, 2005, upon Plaintiff's Motion to Compel Discovery Responses, it is **ORDERED** and **DECREED** that Plaintiff's Motion is **GRANTED**. Defendant shall file Answers to Plaintiff's First Set of Interrogatories and First Request for Production of Documents within twenty (20) days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

January 21, 2005

Plaintiff filed Acceptance of Service of Opinion and Order dated January 13, 2005. Receipt of same acknowledged January 19, 2005.

January 26, 2005

Defendant filed letter-type Certificate of Service of Defendant's Answers to Interrogatories and Responses to Requests for Production of Documents.

***January 31, 2005**

Defendant filed Praecipe to Withdraw Elizabeth O'Reilly and Entry of Appearance of Michael C. Barrett, Senior Counsel filed on behalf of Defendant.

April 21, 2005

Plaintiff filed letter via facsimile advising that discovery is completed and Plaintiff further requests a Western District Panel hearing be set.

April 21, 2005

Defendant filed letter advising that Defendant does not feel this case is in a posture for hearing as all discovery has not been completed.

April 21, 2005

Plaintiff filed letter via U.S. Mail advising that discovery is completed and Plaintiff further requests a Western District Panel hearing be set.

May 6, 2005

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 6th day of May, 2005, it is hereby **ORDERED** and **DECREED** as follows: All depositions and discovery shall be completed by July 26, 2005*; Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than August 9, 2005; A pre-trial conference is scheduled for Tuesday, August 23, 2005, at 1:00 p.m. Pre-trial conference may be attended by telephone conference call if arrangements are made in advance. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; The last day for filing pre-trial motions is Wednesday, August 31, 2005*; This matter is set for hearing before a panel beginning on Monday, October 17, 2005 and running through Thursday, October 20, 2005, as necessary; and Location of the hearing in the Pittsburgh area will be the subject of a subsequent Order.

May 12, 2005

Plaintiff filed letter advising that Plaintiff would like to attend the pre-trial conference by conference call.

May 12, 2005

Plaintiff filed Acceptance of Service of Scheduling Order dated May 6, 2005. Receipt of same acknowledged May 10, 2005.

May 13, 2005

Defendant filed Notice of Service of Interrogatories of Defendant to Plaintiff.

May 13, 2005

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

July 21, 2005

Defendant filed Motion to Compel Answers to Interrogatories Addressed to Plaintiff.

August 3, 2005

Plaintiff filed letter advising they forwarded to Defendant the requested interrogatory answers pursuant to Defendant's Motion to Compel.

August 3, 2005

Defendant filed Motion for Continuance and Brief and Support.

August 9, 2005

Defendant filed letter advising that Defendant has received the responses to interrogatories and is therefore withdrawing its Motion to Compel, however, Defendant requests their Motion for Continuance stand.

August 9, 2005

Defendant filed Pre-Trial Statement.

August 15, 2005

Plaintiff filed Brief in Opposition to Motion for Continuance.

August 17, 2005

Plaintiff filed Pre-hearing statement via facsimile without attachments.

August 17, 2005

Plaintiff filed Pre-hearing statement via U.S. Mail.

August 19, 2005

Plaintiff filed Earthtech's Report and Cogent Construction Consultants Statement of Damages.

August 30, 2005

Board rendered Revised Scheduling Order as follows: **"AND NOW,** this 30th day of August, 2005, pursuant to discussion at pre-

trial conference of August 23, 2005, it is hereby **ORDERED** and **DECREED** as follows: 1. Pursuant to confirmation from the Department of General Services, its Motion to Compel filed July 21, 2005, shall be deemed **WITHDRAWN**; 2. Commonwealth of Pennsylvania, Department of General Services' Motion for Continuance is **GRANTED** and the revised schedule is set forth in this Order; 3. The deposition of Greg Miller by Defendant shall be completed by September 30, 2005; 4. Revised pre-trial statements of both parties (including all expert reports) shall be filed with the Board and served upon the opposing party no later than October 7, 2005; 5. The parties shall file agreed upon stipulations by October 7, 2005; 6. The last day for filing pre-trial motions is October 7, 2005; 7. The last day to respond to pre-trial motions is October 24, 2005; and 8. This matter is set for hearing beginning Monday, November 14, 2005 and running through Friday, November 18, 2005, as necessary, at St. Joseph's Center, 2900 Seminary Drive, Greensburg, PA 15601 commencing at 9:30 a.m. Copy forwarded to Plaintiff and Defendant.

October 11, 2005

Plaintiff filed via facsimile Supplemental Pre-Hearing Statement.

October 11, 2005

Plaintiff filed via facsimile Motion to Compel Discovery.

October 11, 2005

Plaintiff filed via U.S. Mail Supplemental Pre-Hearing Statement.

October 11, 2005

Plaintiff filed via U.S. Mail Motion to Compel Discovery.

October 7, 2005

Defendant filed Motion for Summary Judgment and Brief in Support.

October 7, 2005

Defendant filed Amended Pre-Trial Statement.

October 24, 2005

Defendant filed Response to Motion to Compel Discovery and Brief in Opposition.

October 24, 2005

Plaintiff filed Brief in Opposition to Motion for Summary Judgment.

November 3, 2005

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 3rd day of November, 2005, it is hereby **ORDERED** and **DECREED** that Claimant's, Pittsburgh Building Company, motion to compel discovery is **DENIED**." Copy forwarded to Plaintiff and Defendant.

November 7, 2005

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

November 8, 2005

Plaintiff filed Acceptance of Service of Opinion and Order dated November 3, 2005. Receipt of same acknowledged November 8, 2005.

November 11, 2005

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 11th day of November 2005 after review of the Briefs in the above captioned matter, the Motion for Summary Judgment of the Defendant, Commonwealth of Pennsylvania, Department of General Services, against the Plaintiff, Pittsburgh Building Company, is hereby **DENIED**." Copy forwarded to Plaintiff and Defendant.

November 14, 2005

Panel Hearing (Bresnahan/Conner) held at St. Joseph's Center, Greensburg, PA commencing at 9:30 am.

November 15, 2005

Panel Hearing (Bresnahan/Conner) held at St. Joseph's Center, Greensburg, PA commencing at 9:30 am.

November 16, 2005

Panel Hearing (Bresnahan/Conner) held at St. Joseph's Center, Greensburg, PA commencing at 9:30 am. Case Completed.

November 21, 2005

Defendant filed Acceptance of Service of Opinion and Order dated November 11, 2005. Receipt of same acknowledged November 15, 2005.

November 23, 2005

Plaintiff filed Memorandum in Support of entitlement of Damages and Memorandum in Support of its Entitlement to Interest, Penalty Interest and Attorneys' Fees as requesting in the hearing in this matter.

December 12, 2005

Panel Report filed by Messrs. Bresnahan and Conner.

December 28, 2005

Testimony of panel hearing held November 14-16, 2005 filed.

December 29, 2005

Board forwarded copy of testimony of panel hearing held November 14-16, 2005 to Defendant.

January 4, 2006

Plaintiff filed Memorandum in Support of Entitlement of Damages.
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January 4, 2006

Plaintiff filed Memorandum in Support of Its Entitlement to
Interest, Penalty Interest and Attorneys' Fees.

January 4, 2006

Defendant filed Post-trial Brief.

January 4, 2006

Plaintiff filed Post-trial Reply Brief.

January 6, 2006

Defendant filed Acceptance of Service of testimony of hearing
held November 14-16, 2005 dated December 29, 2005. Receipt of
same acknowledged January 6, 2006.

February 9, 2006

Plaintiff filed (via fax) letter requesting the recusal of John
R. McCarty from participation in the adjudication of this
matter.

February 9, 2006

Plaintiff filed (via U.S. mail) letter requesting the recusal of
John R. McCarty from participation in the adjudication of this
matter.

February 10, 2006

Board forwarded letter to Defendant, with copy to Plaintiff,
requesting a response to Plaintiff's request for recusal.

February 13, 2006

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

March 14, 2006

Defendant filed letter via facsimile requesting a seven day extension of time in which to file Defendant's Findings of Fact, Conclusions of Law and Brief.

March 15, 2006

Board forwarded letter via facsimile and U.S. Mail granting Defendant's request for a seven day extension of time in which to file Defendant's Findings of Fact, Conclusions of Law and Brief.

March 22, 2006

Defendant filed Proposed Findings of Fact and Conclusions of Law as well as Defendant's Post-trial Brief.

March 23, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 23rd day of March, 2006, it is hereby **ORDERED** and **DECREED** that Citizen Member, John R. McCarty, shall take no part in consideration of this matter." Copy forwarded to Plaintiff and Defendant.

April 6, 2006

Plaintiff filed letter requesting extension of time until April 13, 2006 in which to file Plaintiff's Response to Defendant's Findings of Fact, Conclusions of Law and Brief.

April 6, 2006

Board forwarded letter to Plaintiff granting Plaintiff's request for an extension of time until April 13, 2006 in which to file Plaintiff's Response to Defendant's Findings of Fact, Conclusions of Law and Brief.

April 13, 2006

Plaintiff filed Response to Defendant's Post-Trial Brief.

April 14, 2006

Panel Report filed.

September 8, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 8th day of September, 2006, it is hereby **ORDERED**, that an award is entered on behalf of the Plaintiff, Pittsburgh Building Company, and against the Commonwealth of Pennsylvania, Department of General Services, in the amount of \$867,171.00, plus post judgment interest at 6% per annum until paid. Each party shall bear its own costs. It is so **ORDERED**." Copy forwarded to Plaintiff, Defendant and Chief Deputy Attorney General.

September 14, 2006

Defendant filed Acceptance of Service of Opinion and Order dated September 8, 2006. Receipt of same acknowledged September 12, 2006.

September 14, 2006

Attorney Genral filed Acceptance of Service of Opinion and Order dated September 8, 2006. Receipt of same acknowledged September 12, 2006.

September 15, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated September 8, 2006. Receipt of same acknowledged September 12, 2006.

October 11, 2006

Defendant filed Petition for Review as filed in Commonwealth Court.

October 12, 2006

Commonwealth Court filed Notice of Filing of Petition for Review.

October 23, 2006

Commonwealth Court filed Notice of Filing of Petition for Review.

October 24, 2006

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

October 25, 2006

Defendant filed Cross-Petition for Review as filed in Commonwealth Court.

October 30, 2006

Defendant filed Statement of Issues as filed in Commonwealth Court.

November 8, 2006

Plaintiff filed Designation of Exhibits and Transcript Excerpts for Petitioner's Cross Appeal and Brief Statement of Issues as filed in Commonwealth Court.

December 7, 2006

Plaintiff filed Petitioner's Supplemental designation of Reproduced Record for Respondent's Cross Appeal and Brief of Petitioner Pittsburgh Building Company as filed in Commonwealth Court.

January 30, 2007

Plaintiff filed Second Brief of Petitioner Pittsburgh Building Company as filed in Commonwealth Court.

April 6, 2007

Commonwealth Court issued Opinion and Order. Order as follows:
"NOW, April 5, 2007, the order of the Board of Claims in the above-captioned matter is hereby **AFFIRMED** in part, **REVERSED** in

part, and this matter is **REMANDED** to the Board of Claims. The order of the Board of Claims is **REVERSED** only to its denial of penalty and attorney fees, and this matter is **REMANDED** for a determination of penalty interest and attorney fees under Section 3935 of the Commonwealth Procurement Code, 62 Pa.C.S. §3935. In all other respects, the order of the Board of Claims is **AFFIRMED**. Jurisdiction relinquished."

May 25, 2007

Plaintiff filed Brief of Respondent in Opposition to Petition for Allowance of Appeal as filed in Supreme Court.

January 16, 2008

Supreme Court issued Opinion and Order. Order as follows: **AND NOW**, this 18th day of December 2007, the Petition for Allowance of Appeal is **DENIED**. [380 MAL 2007]

February 1, 2008

Plaintiff transmitted letter via facsimile advising that Supreme Court denied Defendant's Petition for Allowance of Appeal. Plaintiff therefore, request the Board's guidance as to how to expeditiously proceed with this matter.

February 4, 2008

Plaintiff filed U.S. mail letter advising that Supreme Court denied Defendant's Petition for Allowance of Appeal. Plaintiff therefore, request the Board's guidance as to how to expeditiously proceed with this matter.

February 6, 2008

Board rendered Opinion and Order. Order as follows: " **AND NOW**, this 6th day of February, 2008, Pittsburgh Building Company is hereby **ORDERED** and **DIRECTED** to submit to the Board an itemized listing of the attorney's fees and a calculation of penalty interest it claims for this matter pursuant to 62 Pa.C.S.A.

§3935. These itemizations shall be submitted to the Board within 10 days of the exit date of this Order. DGS shall then have 20 days from the submission of such itemized list of attorney's fees and penalty interest calculations to respond. In the event DGS contests any of the fees or penalty interest calculations and the parties are unable to stipulate to agreed upon amounts within 40 days from the exit date of this Order, the Board will hold an evidentiary hearing on same and issue a supplemental order respecting these fees and penalty interest awards only." Copy forwarded to Plaintiff and Defendant.

February 8, 2008

Defendant filed Acceptance of Service of Opinion and Order dated February 6, 2008. Receipt of same acknowledged February 7, 2008.

February 15, 2008

Plaintiff filed Motion to Mold Award for Attorneys' Fees and Penalty Interest. [01A041808D]

March 6, 2007

Defendant filed Reply to Claimant's Motion to Mold Award for Attorneys' Fees and Penalty Interest and New Matter.

March 10, 2008

Board forwarded letter to Plaintiff requesting response to New Matter.

March 24, 2008

Plaintiff transmitted by facsimile Plaintiff's Answer to Defendant's New Matter Relating to Plaintiff's Motion to Mold Award for Attorneys' Fees and Penalty Interest.

March 24, 2008

Plaintiff transmitted by facsimile a letter requesting the prompt scheduling of an evidentiary hearing in accordance with the Board's Order of February 6, 2008.

March 25, 2008

Plaintiff filed a letter requesting the prompt scheduling of an evidentiary hearing in accordance with the Board's Order of February 6, 2008.

March 25, 2008

Plaintiff filed Plaintiff's Answer to Defendant's New Matter Relating to Plaintiff's Motion to Mold Award for Attorneys' Fees and Penalty Interest.

March 31, 2008

Board forwarded letter to parties advising that no evidentiary hearing was needed and advising Defendant that it may brief its legal issue regarding Plaintiff's timeliness of filing its claim for attorney's fees.

April 10, 2008

Plaintiff transmitted by facsimile a letter advising that Plaintiff agrees with the Board that no evidentiary hearing is needed and that Plaintiff reserves the right to seek sanctions for the dilatory and frivolous conduct of Defendant.

April 14, 2008

Plaintiff filed by U.S. mail a letter advising that Plaintiff agrees with the Board that no evidentiary hearing is needed and that Plaintiff reserves the right to seek sanctions for the dilatory and frivolous conduct of Defendant.

April 21, 2008

Defendant filed Brief in Support of Reply to Plaintiff's Motion to Mold Award for Attorneys Fees and Penalty Interest.

April 25, 2008

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 25th day of April, 2008, after consideration of the

Motion to Mold Award for Attorneys' Fees and Penalty Interest of Pittsburgh Building Company and the response thereto by the Department of General Services, it is hereby **ORDERED** that an award of penalty interest in the amount of \$350,647.15, and an award of attorney fees in the amount of \$155,975.69 together with costs of \$21,528.86, for a total amount of \$528,151.70, is entered on behalf of plaintiff, Pittsburgh Building Company, and against the Commonwealth of Pennsylvania, Department of General Services. It is so **ORDERED**." Copy forwarded to Plaintiff and Defendant.

April 30, 2008

Plaintiff filed Acceptance of Service of Opinion and Order dated April 24, 2008. Receipt of same acknowledged undated.

May 1, 2008

Defendant filed Acceptance of Service of Opinion and Order dated April 24, 2008. Receipt of same acknowledged April 30, 2008.
