

Docket Number: 3720

INTERCOUNTY PAVING ASSOCIATES, LLC.

John P. DiBiasi, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~Andrew Gordon, Chief Counsel~~
~~Jeffrey W. Davis, Assistant Counsel~~

CLOSED

July 26, 2004

Plaintiff filed Claim, filing fee and proof of mailing. Amount of Claim: 1,110,644.00.

July 28, 2004

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

August 3, 2004

Chief Deputy Attorney General filed acknowledgment of Claim. Receipt of same acknowledged July 30, 2004.

August 26, 2004

Defendant filed Answer with New Matter.

September 21, 2004

Plaintiff filed Answer to Defendant's New Matter.

December 6, 2004

Plaintiff filed Notice of Service of Discovery.

September 1, 2005

Plaintiff filed letter advising the Board of the status of discovery in this action and a proposed case management schedule.

September 26, 2005

Defendant filed a proposed scheduling order.

September 27, 2005

Plaintiff filed letter requesting that telephonic status conferences be held with the Board every two or three months to ensure this matter is proceeding efficiently and to assist the parties with unforeseen circumstances that may arise.

October 7, 2005

Board issued Scheduling Order. Order as follows: "AND NOW, this 7th day of October, 2005, it is hereby **ORDERED** and **DECREED** as follows: 1. Plaintiff's expert reports if any, shall be provided to Defendant by March 31, 2006; 2. Defendant's expert reports, if any, shall be provided to Plaintiff by May 15, 2006; 3. Any and all expert rebuttal reports shall be exchanged by May 31 4. Depositions and all other discovery shall be completed by May 31, 2006;* 5. The last day for filing Pre-Trial Motions is June 10, 2006;* 6. Pre-Trial statements of both parties shall be filed with the Board and served upon one another no later than June 30, 2006 (Please note BOC R.P. 501(b) and (c)(3); Pre-Trial Conference is scheduled for Wednesday, July 12, 2006, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; and 8. This matter is set for hearing before the Board beginning on Monday, September 11, 2006, and running through Friday, September 22, 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. *All discovery motions shall be filed at least 45 days in advance of the close of discovery to allow for a 15 day response period and decision by the Board prior to the close of discovery." Copy forwarded to all parties of record.

October 14, 2005

Plaintiff filed Acceptance of Service of Scheduling Order dated October 7, 2005. Receipt of same acknowledged October 11, 2005.

January 18, 2006

Plaintiff filed a Proposed Consent Order for Pro Hac Vice Admission of Michael F. McKenna.

January 24, 2005

Board issued an Opinion and Order. Order as follows: "**AND NOW**, this 24th day of January, 2006, after review of Plaintiff's Consent Order for Pro Hac Vice Admission of Michael F. McKenna, it is hereby **ORDERED** that: 1) Effective upon the date of this Order, Michael F. McKenna 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 Plaintiff in this matter; 2) Michael F.

McKenna, Esquire shall abide by all the rules of, and applicable to, practice before this Board, including all attorney disciplinary rules; and 3) Michael F. McKenna, Esquire shall immediately notify this Board of any matter affecting their standing at the bar of any other court or jurisdiction where they may be admitted to practice. All correspondence with this Board shall continue to be accomplished through the Pennsylvania attorney of record unless otherwise requested in writing by the party." Copies forwarded to Plaintiff and Defendant.

February 1, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated January 24, 2006. Receipt of same acknowledged by attorney for Plaintiff January 27, 2006.

March 7, 2006

Plaintiff filed (via fax) letter requesting the Board to amend its scheduling order to allow a 60 day extension of time for the parties to file expert reports, as well as a proposed amended scheduling order.

March 9, 2006

Board rendered an Amended Scheduling Order. Order as follows: "**AND NOW**, this 9th day of March, 2006, pursuant to the request of both parties it is hereby **ORDERED** and **DECREED** that the initial scheduling order in this matter be amended as follows: 1. Plaintiff's expert reports if any, shall be provided to Defendant by May 31, 2006; 2. Defendant's expert reports, if any, shall be provided to Plaintiff by July 15, 2006; 3. Any and all expert rebuttal reports shall be exchanged by July 31, 2006; 4. Depositions and all other discovery shall be completed by July 31, 2006;* 5. The last day for filing Pre-Trial Motions is August 10, 2006;* 6. Pre-Trial statements of both parties shall be filed with the Board and served upon one another no later than August 30, 2006 (Please note BOC R.P. 501(b) and (c)(3)); 7. Pre-Trial Conference is scheduled for Wednesday, September 13, 2006, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; and 8. This matter is set for hearing before the Board beginning on Monday, November 6, 2006, and running through Monday, November 20, 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. *All discovery motions shall be filed at

least 45 days in advance of the close of discovery to allow for a 15 day response period and decision by the Board prior to the close of discovery." Copy forwarded to Plaintiff and Defendant.

March 16, 2006

Plaintiff filed Acceptance of Service of Amended Scheduling Order. Receipt of same acknowledged March 13, 2006.

March 24, 2006

Plaintiff filed (via U.S. Mail) letter requesting the Board to amend its scheduling order to allow a 60 day extension of time for the parties to file expert reports, as well as a proposed amended scheduling order.

April 11, 2006

Plaintiff filed Certification of Service pursuant to Rule 4009.22.

May 18, 2006

Plaintiff filed an Affidavit of Service of a Subpoena and a Notice to Produce served on Henkels & McKoy.

May 23, 2006

Plaintiff filed (via fax) a letter advising that the parties jointly request a 30 day extension to the scheduling deadlines set forth in the Board's Amended Scheduling Order of March 9, 2006.

May 24, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 24th day of May, 2006, it is hereby **ORDERED** and **DECREED** that the request of the parties for a second modification to the scheduling order is **DENIED.**" Copy forwarded to Plaintiff and Defendant.

May 25, 2006

Plaintiff filed (via U.S. mail) a letter advising that the parties jointly request a 30 day extension to the scheduling deadlines set forth in the Board's Amended Scheduling Order of March 9, 2006.

May 26, 2006

Plaintiff filed (via fax) a letter requesting the Board reschedule the hearing already set to January 2007.

May 30, 2006

Plaintiff filed (via fax) a letter requesting the Board reschedule the hearing already set to January 2007.

May 31, 2006

Defendant filed letter advising that there is no agreement in place to mediate the dispute involved in this case, as stated by Plaintiff.

June 6, 2006

Board rendered a Second Amended Scheduling Order. Order as follows: **"AND NOW**, this 6th day of June, 2006, pursuant to the request of both parties, it is hereby **ORDERED** and **DECREED** that the amended scheduling order in this matter issued March 9, 2006, be further amended as follows: 1. Plaintiff's expert reports if any, shall be provided to Defendant by June 30, 2006; 2. Defendant's expert reports, if any, shall be provided to Plaintiff by August 15, 2006; 3. Any and all expert rebuttal reports shall be exchanged by August 31, 2006; 4. Depositions and all other discovery shall be completed by September 30, 2006;* 5. The last day for filing Pre-Trial Motions is October 20, 2006;* 6. Pre-Trial statements of both parties shall be filed with the Board and served upon one another no later than November 17, 2006 (Please note BOC R.P. 501(b) and (c)(3)); 7. Pre-Trial Conference is scheduled for Thursday, November 30, 2006, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; and 8. This matter is set for hearing before the Board beginning on Monday, January 29, 2007, and running through Monday, February 12, 2007, 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.

June 12, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated May 24, 2006. Receipt of same acknowledged May 31, 2006.

June 19, 2006

Plaintiff filed Acceptance of Service of the Amended Scheduling Order dated June 6, 2006. Receipt of same acknowledged on June 9, 2006.

November 17, 2006

Plaintiff filed pre-trial statement.

November 17, 2006

Defendant filed pre-trial statement.

November 30, 2006

Plaintiff filed supplement to the pre-trial statement.

November 30, 2006

Pre-trial Conference held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101 at 1:00 p.m.

December 19, 2006

Plaintiff filed Stipulated and Uncontested Facts as well as Intended Trial Exhibits as directed at the Pre-trial Conference.

January 9, 2007

Plaintiff filed letter (via facsimile) advising that a witness is undergoing surgery and requests the date of the hearing not be changed.

January 9, 2007

Defendant filed letter requesting a continuance of the trial.

January 9, 2007

Board forwarded letter to parties scheduling a status conference for Thursday, January 11, 2007 at 1:00 P.M.

January 11, 2007

Plaintiff filed letter (via U.S. Mail) advising that a witness is undergoing surgery and requests the date of the hearing not be changed.

January 11, 2007

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

January 18, 2007

Plaintiff filed letter (via facsimile) advising that the Defendant has not yet informed him of arrangements and requests the trial begin on its scheduled date.

January 18, 2007

Defendant filed letter advising that he no longer requests a continuance due to witness's surgery being postponed.

January 19, 2007

Board rendered Order. Order as follows: "**AND NOW**, this 19th day of January, 2007, pursuant to Plaintiff's letter dated January 17, 2007, and Defendant's letter dated January 18, 2007, hearing in this matter is rescheduled to commence on Monday, February 5, 2007, at 9:30 a.m. and to run through Monday, February 19, 2007, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101." Copy forwarded to Plaintiff and Defendant.

January 22, 2007

Plaintiff filed Acceptance of Service of Order dated January 19, 2007. Receipt of same acknowledged January 19, 2007.

January 22, 2007

Plaintiff filed letter (via U.S. mail) advising that the Defendant has not yet informed him of arrangements and requests the trial begin on its scheduled date.

January 26, 2007

Plaintiff filed evidentiary, demonstrative and illustrative trial exhibits.

January 29, 2007

Defendant filed letter relative to objections to Plaintiff's damage claims being too voluminous to be examined at trial.

January 30, 2007

Plaintiff filed letter (via facsimile) advising that Defendant has not yet filed its intended trial exhibits.

January 31, 2007

Plaintiff filed intended evidentiary trial exhibits "1K", 1L", and "1N".

February 1, 2007

Plaintiff filed letter (via U.S. Mail) advising that Defendant has not yet filed its intended trial exhibits.

February 5, 2007

Board hearing held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m.

February 6, 2007

Board hearing held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m.

February 7, 2007

Board hearing held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m.

February 8, 2007

Board hearing held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m.

February 9, 2007

Board hearing held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m.

February 12, 2007

Board hearing held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m. Case completed.

February 22, 2007

Plaintiff filed CDs of Trial Exhibits.

March 15, 2007

Testimony of hearing held February 5-9 & 12, 2007 filed.

March 19, 2007

Board forwarded copy of testimony of hearing held February 5-9 & 12, 2007 to Defendant. (LAST DAY)

April 3, 2007

Plaintiff filed letter (via facsimile) as a receipt and acceptance of Board's letter dated March 19, 2007.

April 6, 2007

Plaintiff filed letter (via U.S. Mail) as a receipt and acceptance of Board's letter dated March 19, 2007.

May 3, 2007

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

June 1, 2007

Defendant filed letter requesting an extension of time until June 18, 2007 in which to file Findings of Fact, Conclusions of Law and Post-hearing brief and also advised that Plaintiff has no objection but requests Plaintiff's Reply be extended until July 19, 2007.

June 1, 2007

Board forwarded letter to parties granting request for extension of time until June 18, 2007 in which to file Defendant's Findings of Fact, Conclusions of Law and Post-hearing brief and granting request for extension of time until July 19, 2007 in which to file Plaintiff's Responses.

June 18, 2007

Defendant filed Proposed Findings of Fact and Conclusions of Law and Post-Hearing Brief.

July 18, 2007

Plaintiff filed (via fax) letter requesting an extension of time until July 23, 2007, in which to file its response to Defendant's post-trial submissions.

July 23, 2007

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

July 24, 2007

Plaintiff filed electronic version of Plaintiff's Response to Defendant's Post-Hearing Brief.

August 8, 2007

Board forwarded letter to parties requesting a brief stating its position on this matter along with supporting case law.

August 28, 2007

Plaintiff filed Memorandum in Support of the Admission into Evidence of Defendant's Utility Relocation Design Manual by Judicial Notice.

August 28, 2007

Defendant filed Brief in Response to Board's letter of August 8, 2007.

April 23, 2009

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 23rd day of April, 2009, it is hereby **ORDERED** and **DECREED** that Intercounty's request to take judicial notice of the document titled "Design Manual Part Five-Utilities Relocation" attached to its Findings of Fact and Conclusions of Law, and to utilize same as evidence in this case, is hereby **DENIED.**" Copy forwarded to Plaintiff and Defendant.

April 23, 2009

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 23rd day of April, 2009, **IT IS ORDERED** and **DECREED** that judgment be entered in favor of Plaintiff, Intercounty Paving Associates, LLC, and against Defendant, Commonwealth of Pennsylvania, Department of Transportation, in the total sum of \$760,289.23 for damages incurred in the amount of \$590,883.06 plus \$169,406.17 in pre-judgment interest thereon. In addition, Plaintiff is awarded post-judgment interest on the 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 will bear its own costs and attorney fees." Copy forwarded to Plaintiff, Defendant and Attorney General.

April 29, 2009

Attorney General filed Acceptance of Service of Opinion and Order dated April 23, 2009. Receipt of same acknowledged April 27, 2009.

April 30, 2009

Plaintiff filed Acceptance of Service of Opinion and Order dated April 23, 2009. Receipt of same acknowledged April 27, 2009.

June 18, 2009

Plaintiff filed letter advising that Defendant has satisfied the Board's April 23, 2009 Opinion and Order of Judgment and requests this matter be closed.
