

Docket Number: 3812

A & L, INC.

~~Brian W. Ashbaugh, Esquire~~
~~Patrick G. Lutz, Esquire~~
~~Heather Troxel Feinstein, Esquire~~
Kevin J. McKeon, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~Andrew S. Gora, Counsel~~
Jeffrey M. Morris, Assistant Counsel

November 30, 2005

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$1,056,106.34+.

December 2, 2005

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

December 14, 2005

Attorney General filed Acknowledgment of Claim dated December 2, 2005. Receipt of same acknowledged December 8, 2005.

December 20, 2005

Defendant filed Preliminary Objection in the Nature of a Demurrer and Brief in Support. [05A021606D]

January 17, 2006

Plaintiff filed letter requesting an extension of time until February 15, 2006, in which to file its response to Preliminary Objections.

February 16, 2006

Plaintiff filed (via fax) Response in Opposition to Preliminary Objections in the Nature of a Demurrer and Brief in Support.

February 16, 2006

Plaintiff filed (via US mail) Response in Opposition to Preliminary Objections in the Nature of a Demurrer and Brief in Support.

April 3, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 3rd day of April, 2006, after review of defendant's preliminary objections and brief in support thereof, and plaintiff's response and brief in support, it is hereby **ORDERED** and **DECREED** that defendant's first and second preliminary objections are **OVERRULED**. Defendant's third and fourth preliminary objections are **SUSTAINED**, and plaintiff's claims for interest, penalties and attorney fees under the Contractor and Subcontractor Payment Act and under the Procurement Code are **DISMISSED**." Copy forwarded to Plaintiff and Defendant.

April 10, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated April 3, 2006. Receipt of same acknowledged April 6, 2006.

April 13, 2006

Defendant filed letter requesting an extension of time until May 23, 2006, in which to file an answer to Plaintiff's claim.

May 16, 2006

Plaintiff filed (via fax) Praecipe for Withdrawal and Substitution of Counsel withdrawing Patrick G. Lutz, Esquire and entering Heather Troxel Feinstein, Esquire, on behalf of Plaintiff.

May 17, 2006

Plaintiff filed (via US mail) Praecipe for Withdrawal and Substitution of Counsel withdrawing Patrick G. Lutz, Esquire and entering Heather Troxel Feinstein, Esquire, on behalf of Plaintiff.

May 19, 2006

Defendant filed Answer with New Matter.

June 2, 2006

Plaintiff filed (via fax) Reply to New Matter.

June 5, 2006

Board forwarded letter to parties directing them to proceed with discovery.

June 5, 2006

Plaintiff filed (via U.S. mail) Reply to New Matter.

June 21, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for a subpoena served on Titusville Fabricators, Inc.

June 21, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for a subpoena served on Callahan Paving Products, Inc.

June 21, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for a subpoena served on Gerdau Ameristeel US Inc.

June 21, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for a subpoena served on Re-Steel Supply Co., Inc.

June 21, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for a subpoena served on Skyline Steel Corporation.

June 21, 2006

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 for a subpoena served on Zottola Simpson Rebar, Inc.

July 20, 2006

Plaintiff filed Motion to Compel Answers to Claimant's First Set of Interrogatories and Request for Production of Documents.

July 24, 2006

Defendant filed an answer to Plaintiff's Motion to Compel Answers to Claimant's First Set of Interrogatories and Request for Production of Documents.

July 26, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 26th day of July, 2006, it is hereby **ORDERED** and **DECREED** that the motion to compel answers to Plaintiff's interrogatories and request for production of documents filed by the Plaintiff on July 20, 2006, is hereby **DENIED** as **MOOT.**" Copy forwarded to Plaintiff and Defendant.

July 31, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated July 26, 2006. Receipt of same acknowledged July 28, 2006.

September 21, 2006

Plaintiff filed Motion to Compel More Definite Answers to Certain Interrogatories and Proposed Order. [08A102606D]

September 22, 2006

Board forwarded letter to Plaintiff requesting a brief in support of its Motion to Compel More Definite Answers to Certain Interrogatories and Proposed Order.

September 26, 2006

Plaintiff filed (via fax) Brief in Support of Motion to Compel More Definite Answers to Certain Interrogatories.

September 27, 2006

Plaintiff filed (via U.S. mail) Brief in Support of Motion to

Compel More Definite Answers to Certain Interrogatories.

October 25, 2006

Defendant filed Brief in Opposition to Motion to Compel More Definite Answers to Certain Interrogatories.

November 1, 2006

Plaintiff filed Motion for Reconsideration of Order Sustaining Preliminary Objections to Claims for Statutory Penalties, Interest and Attorneys' Fees and Brief in Support.

November 9, 2006

Defendant filed (via facsimile) Reply Brief in Support of Motion to Compel More Definite Answers to Certain Interrogatories.

November 13, 2006

Defendant filed (via U.S. Mail) Reply Brief in Support of Motion to Compel More Definite Answers to Certain Interrogatories.

November 14, 2006

Defendant filed a letter requesting the Board to schedule an oral argument or a conference to discuss the Plaintiff's motion to compel.

November 17, 2006

Board rendered Order. Order as follows: "**AND NOW**, this 17th day of November, 2006, pursuant to the request of the Defendant for a conference, it is **ORDERED** that a status conference shall be held on December 6, 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 days prior to the conference and places the teleconference call as the Board directs." Copy forwarded to Plaintiff and Defendant.

November 27, 2006

Plaintiff filed Acceptance of Service of Order dated November 17, 2006. Receipt of same acknowledged November 21, 2006.

November 30, 2006

Defendant filed Brief in Opposition to Plaintiff's Motion for reconsideration.

December 7, 2006

Defendant filed letter regarding information discussed during conference.

December 18, 2006

Plaintiff filed Reply Brief in Support of its Motion for Reconsideration.

December 19, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 19th day of December, 2006, it is hereby **ORDERED** that Claimant's Motion to Compel More Definite Answers to Certain Interrogatories is **GRANTED** in part and **DENIED** in part, as follows: Interrogatories 18 - 19. Defendant is ordered to answer Interrogatories 18 - 19, limited to documents or information communicated to or from PennDOT's central offices in Harrisburg during the three year period commencing July 1, 2003. Interrogatories 24 - 25. Defendant is ordered to answer Interrogatory 24, limited to documents or information communicated to or from PennDOT's central offices in Harrisburg during the three year period commencing July 1, 2003. Claimant's motion as to Interrogatory 25 is denied. Interrogatories 26 - 29. Defendant is ordered to answer Interrogatories 26 - 29 provided that the scope of Interrogatory 26 is limited to individuals in PennDOT's central offices in Harrisburg for the three year period beginning July 1, 2003. Interrogatory 32. Defendant is ordered to supplement its answer Interrogatory 32 as directed. Interrogatory 33. Defendant is ordered to answer Interrogatory 33 to the extent there are contracts containing price escalation clauses for steel. Defendant is also directed to provide Plaintiff with an example of each type of price escalation clause utilized in a PennDOT contract since January 2004. It is so **ORDERED."** Copy forwarded to Plaintiff and Defendant.

December 27, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated December 19, 2006. Receipt of same acknowledged December 21, 2006.

January 25, 2007

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 25th day of January, 2007, it is hereby **ORDERED** and **DECREED** that Plaintiff's motion for reconsideration of the Order of April 3, 2006, sustaining preliminary objections to its claim for statutory penalties, interest and attorney fees pursuant to the Prompt Payment Act is **DENIED**. Plaintiff's motion for reconsideration sustaining preliminary objections to its claim for statutory penalties, interest and attorney fees pursuant to 62 Pa.C.S.A. §3935 is **GRANTED**. However, upon reconsideration, the Board will again **SUSTAIN** and **GRANT** Defendant's preliminary objections to Plaintiff's claims for statutory penalties, interest and attorney fees pursuant to 62 Pa.C.S.A. §3935 for the reasons stated herein." Copy forwarded to Plaintiff and Defendant.

January 31, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated January 25, 2007. Receipt of same acknowledged January 29, 2007.

March 15, 2007

Plaintiff filed Third Motion to Compel Answers to First Set of Interrogatories and Request for Production of Documents and First Motion to Compel More Definite Answers to Second Set of Interrogatories and Request for Production of Documents and Brief in Support.

March 16, 2007

Board rendered Order. Order as follows: "**AND NOW**, this 16th day of March, 2007, pursuant to Plaintiff's Third Motion to Compel Answers to Claimant's First Set of Interrogatories and Request for Production, Defendant is hereby **ORDERED** to comply fully with the Board's Order of December 19, 2006, within 20 days from the exit date of this Order or face appropriate sanctions pursuant to Pa.R.C.P. 4019 upon further motion of Plaintiff, excluding the imposition of attorneys fees and expenses as dictated by Pa.R.C.P. 4019(j)." Copy forwarded to Plaintiff and Defendant.

March 16, 2007

Board issued letter to Defendant requesting a response to Plaintiff's First Motion within 30 days.

March 19, 2007

Defendant filed letter requesting an extension of time of 30 days to file Answer.

March 22, 2007

Plaintiff filed Acceptance of Service of Order dated March 16, 2007. Receipt of same acknowledged March 19, 2007.

March 20, 2007

Board rendered Amending Order. Order as follows: "**AND NOW**, this 20th day of March, 2007, pursuant to Plaintiff's Third Motion to Compel Answers to Claimant's First Set of Interrogatories and Request for Production and Defendant's letter of March 19, 2007, explaining the delayed response and seeking additional time to respond to these interrogatories, the Board's Order of March 16, 2007, is hereby **AMENDED** to allow Defendant until April 19, 2007 to comply fully with the Board's Order of December 19, 2006, or face appropriate sanctions pursuant to Pa.R.C.P. 4019 upon further motion of Plaintiff, excluding the imposition of attorneys fees and expenses as dictated by Pa.R.C.P. 4019(j). Copy forwarded to Plaintiff and Defendant.

March 26, 2007

Plaintiff filed Acceptance of Service of Amended Order dated March 20, 2007. Receipt of same acknowledged March 22, 2007.

March 24, 2008

Board forwarded letter to parties requesting status report.

April 22, 2008

Plaintiff transmitted via fax status letter advising that Safeco intends to prosecute Plaintiff and that Safeco will determine whether further discovery is warranted.

April 30, 2008

Plaintiff filed status letter advising that Safeco intends to prosecute Plaintiff and that Safeco will determine whether further discovery is warranted.

May 1, 2008

Plaintiff filed Praecipe for Entry of Appearance of Kevin J. McKeon, Esquire, Christopher J. Brasco, Esquire and Christopher M. Anzidei, Esquire on behalf of Plaintiff.

May 19, 2008

Plaintiff filed Praecipe for Withdrawal of Appearance of Brian W. Ashbaugh, Esquire, Thomas M. Ferguson, Esquire and Heather Troxel Feinstein, Esquire on behalf of Plaintiff.

May 8, 2013

Plaintiff filed Termination of Case by Settlement.

May 9, 2013

Board rendered Order. Order as follows: "**AND NOW**, this 9th day of May, 2013, upon receipt of a Termination of Case By Settlement executed by Kevin J. McKeon, Esquire, on behalf of Plaintiff, A&L, Inc., requesting that the Board mark the above-captioned matter settled, docketed with this Board under date of May 8, 2013, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

May 20, 2013

Plaintiff filed Acceptance of Service of Order dated May 9, 2013. Receipt of same acknowledged May 13, 2013.
