

Docket Number: 3817

DALRYMPLE GRAVEL AND CONTRACTING, CO., INC.

Paul A. Logan, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

~~Andrew S. Gordon, Chief Counsel~~
Gerald R. Schultz, Assistant Counsel

***January 9, 2006**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: unknown.

January 10, 2006

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

January 17, 2006

Plaintiff filed Affidavit of Service of Claim mailed to Attorney General, Department of Transportation's Chief Counsel and Department of Transportation's Secretary.

January 25, 2006

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged January 16, 2006.

February 10, 2006

Defendant filed Preliminary Objections and Brief in Support.

February 13, 2006

Board forwarded letter to Plaintiff requesting response to Preliminary Objections.

***February 24, 2006**

Plaintiff filed an Amended Claim and proof of mailing. Amount of Claim: unknown.

February 24, 2006

Plaintiff filed a letter advising that Plaintiff has filed an amended claim which it believes fully addresses the preliminary objections.

February 27, 2006

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

February 28, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 28th day of February, 2006, the preliminary objections filed by the Defendant on February 10, 2006, are hereby **DENIED** as **MOOT**." Copy forwarded to Plaintiff and Defendant.

March 2, 2006

Attorney General filed Acknowledgment of Amended Claim form. Receipt of same acknowledged February 28, 2006.

March 6, 2006

Plaintiff filed Praecipe to Substitute Verification attached to the Amended Complaint.

March 6, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated February 28, 2006. Receipt of same acknowledged March 3, 2006.

March 21, 2006

Defendant filed Preliminary Objections to Amended Claim and Brief in Support. [09A041806D]

March 22, 2006

Board forwarded letter to Plaintiff requesting response to preliminary objections.

April 13, 2006

Plaintiff filed Answer to Preliminary Objections and Memorandum of Law in Support.

May 3, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 3rd day of May, 2006, upon consideration of PennDOT's preliminary objections to Dalrymple's amended complaint, as well as supporting briefs filed by both parties, Defendant's preliminary objections are **GRANTED**. Plaintiff's request for penalties and attorney's fees pursuant to 62 Pa. C.S.A. §3935 is hereby **STRICKEN**. Plaintiff is granted 20 days leave to amend its complaint should it wish to restate its claim for attorney's fees. Defendant shall have the later of 40 days from the exit date of this Order or 20 days from the filing of a second amended claim to file an answer." Copy forwarded to Plaintiff and Defendant.

May 22, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated May 3, 2006. Receipt of same acknowledged May 18, 2006.

June 27, 2006

Defendant filed Answer to Amended Complaint and New Matter.

June 28, 2006

Board forwarded letter to Plaintiff requesting response to new matter.

July 26, 2006

Plaintiff filed letter (via facsimile) requesting an extension of time to file Response to New Matter until August 25, 2006.

July 27, 2006

Board issued letter to Plaintiff, with copy to Defendant granting extension of time for Plaintiff to file Response to New Matter.

July 28, 2006

Plaintiff filed letter via us mail requesting an extension of time in which to reply to Defendant's New Matter until August 25, 2006.

August 23, 2006

Plaintiff filed a Reply to New Matter.

August 24, 2006

Board forwarded letter to parties directing parties to commence with discovery.

September 26, 2006

Defendant filed a Notice of Service of supplemental response to Plaintiff's Interrogatories pursuant to Pa R.C.P. 4007.4(1).

September 28, 2007

Board forwarded letter to parties requesting a status report.

October 18, 2007

Plaintiff filed status letter advising that the parties are still engaged in discovery.

November 5, 2007

Defendant filed status letter advising that the parties are still engaged in discovery.

September 15, 2008

Defendant filed Motion to Compel Answers to Interrogatories Pursuant to Pa. R.C.P. 4019 and Brief in Support.

September 16, 2008

Board forwarded letter to Plaintiff requesting response to motion.

October 15, 2008

Defendant filed Amended Motion to Compel Answers to Interrogatories Pursuant to Pa. R.C.P. 4019 and Brief in Support. [05A110608]

October 16, 2008

Board forwarded letter to Plaintiff requesting response to amended motion.

November 5, 2008

Plaintiff filed Answer to Amended Motion to Compel and Memorandum of Law in Support of its Opposition.

December 10, 2008

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 10th day of December, 2008, it is hereby **ORDERED** and **DECREED** that Defendant's amended motion to compel answers to interrogatories is **DENIED**." Copy forwarded to Plaintiff and Defendant.

December 22, 2008

Plaintiff filed Acceptance of Service of Opinion and Order dated December 10, 2008. Receipt of same acknowledged December 16, 2008.

March 6, 2009

Defendant filed Motion to Compel Production of Documents and Brief in Support.

March 9, 2009

Board forwarded letter to Plaintiff requesting response to motion.

March 26, 2009

Defendant filed letter advising that Defendant has entered into discussions with Plaintiff's counsel regarding documents to be produced and therefore, Defendant does not object to the Board granting and indefinite time extension in which Plaintiff's response is to be filed.

March 27, 2009

Board forwarded letter to parties advising that the Board will take no action on Defendant's Motion to Compel unless and until it is further advised by Defendant whether or not the parties have reached an amicable resolution of these issues.

September 6, 2013

Defendant filed letter requesting that the Board issue a letter rogatory pursuant to 42 Pa.C.S.A. 5323 (a)(4).

September 9, 2013

Board issued letter to Plaintiff requesting response to Defendant's request for letter rogatory.

October 16, 2013

Letter Rogatory issued by Board of Claims as follows: "The above-captioned action was filed with the Pennsylvania Board of Claims on January 9, 2006. Defendant Department of Transportation is entitled to take appropriate action in the pursuit of this matter pursuant to Pennsylvania law. Counsel for Defendant has been advised that Scott Gerould, a former Project Manager for Plaintiff Dalrymple Gravel and Contracting, Co., Inc. who worked on the project which is the subject of this lawsuit has moved to Chemung County, New York. Were Mr. Gerould still living in Pennsylvania he would be deposed under the appropriate Pennsylvania Rules of Civil Procedure.

On the basis of the above, the Board requests that you, by the proper and usual process of your Court, authorize the issuance and service of a subpoena for the taking of an oral deposition in New York with the Pennsylvania attorneys." Copy forwarded to Plaintiff.

October 16, 2013

Board issued Order. Order as follows: **"AND NOW**, this 16th day of October, 2013, the clerk of the Board of Claims is hereby directed to issue a Letter Rogatory to the New York Supreme Court in Chemung County, New York, 224 Lake Street, P.O. Box 588, Elmira, NY 14902-0588 requesting that the Court issue a subpoena for the deposition of Scott Gerould to occur as it may direct on all matters discoverable for use during discovery and/or trial purposes in this case." Copy forwarded to Plaintiff.

February 6, 2014

Plaintiff filed letter requesting a conference in order to set a trial schedule. Defendant is in agreement.

February 6, 2014

Board forwarded letter to parties requesting scheduling information.

February 21, 2014

Defendant filed Proposed Scheduling Order.

February 24, 2014

Plaintiff filed Proposed Scheduling Order.

February 27, 2014

Board rendered Scheduling Order. Order as follows: **"AND NOW**, this 27th day of February, 2014, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant is November 24, 2014;¹ 2. The last day for defendants' expert report, if any, to be provided to plaintiff is January 15, 2015;¹ 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by February 27, 2015;² 4. The last day for filing pre-trial motions is March 20, 2015;² 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than July 1, 2015 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, July 15, 2015 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 7. This matter is set

for hearing to begin on September 14 and run through September 25, 2015, or as otherwise necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101. Unless otherwise noted, the first day of all hearings begins at 9:30 a.m., and subsequent hearing days begin at 9:00 a.m." Copy forwarded to Plaintiff and Defendant.

March 10, 2014

Plaintiff filed Acceptance of Service of Scheduling Order dated February 27, 2014. Receipt of same acknowledged March 6, 2014.

March 19, 2014

Defendant requested in person a Subpoena 234.1 - to attend with duces tecum and 4009.21 - to produce documents.

March 19, 2014

Board forwarded a Subpoena 234.1 - to attend with duces tecum and 4009.21 - to produce documents dated March 19, 2014 to Defendant.

December 10, 2014

Defendant filed a letter requesting a ten day extension of time in which to file Department's expert reports.

December 10, 2014

Board forwarded letter to Defendant, with copy to Plaintiff, granting a 10 day extension of time for Defendant to file its expert reports.

June 18, 2015

Board forwarded Notice of Settlement Conference.

July 1, 2015

Plaintiff filed Pre-Trial Statement.

July 1, 2015

Defendant filed Pre-Trial Statement and Expert Reports of Louis J. Rubino and Urban Engineers, Inc.

July 9, 2015

Plaintiff filed Expert Report.

July 15, 2015

Board held pre-trial conference on July 15, 2015 at 1:00 p.m.

August 7, 2015

Defendant filed Motion to Compel Production of Documents and Brief in Support.

August 10, 2015

Board forwarded letter via facsimile & U.S. Mail to Plaintiff, with copy to Defendant advising Plaintiff to file response via facsimile by August 13, 2015.

August 13, 2015

Plaintiff transmitted via facsimile response to Defendant's Motion to Compel Production of Documents and brief in support.

August 13, 2015

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 14th day of August, 2015, it is hereby **ORDERED** and **DECREED** that the motion to compel filed by the Commonwealth of Pennsylvania, Department of Transportation is hereby **DENIED**. Plaintiff and Defendant are otherwise **ORDERED** to comply with the instructions outlined in the Opinion above." Copy forwarded (via Facsimile & U.S. Mail) to Plaintiff and Defendant.

August 14, 2015

Defendant filed letter requesting clarification regarding a deadline date noted in Opinion and Order dated August 13, 2015 in which Plaintiff has to provide certain actions.

August 14, 2015

Board rendered Revised Opinion and Order. Order as follows: "**AND NOW**, this 14th day of August, 2015, it is hereby **ORDERED** and **DECREED** that the motion to compel filed by the Commonwealth of Pennsylvania, Department of Transportation is hereby **DENIED**. Plaintiff and Defendant are otherwise **ORDERED** to comply with the instructions outlined in the Opinion above." Copy forwarded (via Facsimile & U.S. Mail) to Plaintiff and Defendant.

August 17, 2015

Plaintiff filed via U.S. Mail facsimile response to Defendant's Motion to Compel Production of Documents and brief in support.

August 19, 2015

Plaintiff filed letter as well as two boxes of documents as requested by the Board's Revised Opinion and Order dated August 14, 2015.

August 19, 2015

Plaintiff filed Acceptance of Service of Opinion and Order dated August 13, 2015. Receipt of same acknowledged August 19, 2015.

August 19, 2015

Plaintiff filed Acceptance of Service of Revised Opinion and Order dated August 13, 2015. Receipt of same acknowledged August 19, 2015.

August 31, 2015

Plaintiff transmitted via facsimile Motion to Compel Defendant's Compliance with a Trial Notice to Attend.

August 31, 2015

Defendant filed a letter to bring to the Board's attention an issue that seems likely to present itself at the upcoming hearing.

August 31, 2015

Board forwarded letter (via Facsimile & U.S. Mail) scheduling teleconference on September 3, 2015 at 1:00 p.m.

September 1, 2015

Plaintiff transmitted (via facsimile) a letter in response to Defendant's letter of August 31, 2015.

September 2, 2015

Defendant filed Motion to Quash Notice to Attend and Produce Pursuant to Rule of Civil Procedure 234.3 and Brief in Support.

September 2, 2015

Plaintiff filed (via U.S. Mail) Motion to Compel Defendant's Compliance with a Trial Notice to Attend.

September 3, 2015

Plaintiff transmitted (via U.S. Mail) a letter in response to Defendant's letter of August 31, 2015.

September 3, 2015

Board held teleconference on September 3, 2015 at 1:00 p.m.

September 4, 2015

Plaintiff transmitted (via Facsimile) a letter regarding the issue of accuracy of the numbers reflected in the Cost Reports.

September 4, 2015

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 4th day of September, 2015, upon consideration of the Motion to Compel Defendant's Compliance with a Trial Notice to Attend, the Motion is **DENIED**." Copy forwarded to Plaintiff and Defendant.

September 4, 2015

Defendant filed a Praecipe to Withdraw Motion to Quash Notice to Attend and Produce Pursuant to Rule of Civil Procedure 234.3.

September 4, 2015

Plaintiff filed a revised list of exhibits, disks containing the exhibits as well as 6 boxes of exhibit binders.

September 4, 2015

Defendant filed an amended pre-trial statement as well as 5 boxes of exhibits.

September 8, 2015

Board rendered an Order. Order as follows: "**AND NOW**, this 8th day of September, 2015, pursuant to Commonwealth of Pennsylvania, Department of General Services's praecipe to withdraw its Motion to Quash Notice to Attend and Produce Pursuant to Rule of Civil Procedure 234.3 filed with this Board on September 2, 2015, the Department of General Services's motion to quash notice to attend and produce pursuant to Rule of Civil Procedure 234.3 is hereby deemed **WITHDRAWN**." Copy forwarded to Plaintiff and Defendant.

September 9, 2015

Defendant filed Expert Report by Urban Engineers, Inc. regarding Evaluation of Construction Claim Submission.

September 11, 2015

Defendant filed Motion to Dismiss for Lack of Jurisdiction and Brief in Support.

September 11, 2015

Plaintiff transmitted via facsimile acceptance of service of Order dated September 8, 2015. Receipt of same acknowledged September 10, 2015.

September 11, 2015

Plaintiff transmitted via facsimile acceptance of service of Order dated September 4, 2015. Receipt of same acknowledged September 8, 2015.

September 11, 2015

Plaintiff filed a cover letter addressed to Defendant providing Defendant with a worksheet used by O'Connell & Lawrence and requesting the worksheets of Urban Engineers and Louis Rubino.

September 11, 2015

Plaintiff transmitted via facsimile a letter advising that the parties were successful in reaching a settlement and the hearing does not need to commence.

September 14, 2015

Plaintiff filed Supplemental Exhibits to be added to Plaintiff's Project Overview #3 (Exhibit P - Exhibit P-7).

September 14, 2015

Plaintiff picked up its 6 boxes of Exhibits.

November 18, 2016

Board forwarded letter to Plaintiff, with copy to Defendant, requesting praecipe to discontinue and/or status update.

December 5, 2016

Plaintiff filed Praecipe to Settle, Discontinue and End.

December 5, 2016

Board rendered Order. Order as follows: "**AND NOW**, this 5th day of December, 2016, upon receipt of a praecipe executed by Paul A. Logan, Esquire, on behalf of Plaintiff, Dalrymple Gravel and Contracting, Co., Inc., requesting the Board mark the above-referenced matter settled, discontinued and ended, docketed with this Board under date of December 5, 2016, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

December 15, 2016

Plaintiff filed Acceptance of Service of Order dated December 5, 2016. Receipt of same acknowledged December 8, 2016.
