

Docket Number: 3927

SHA-NIC, INC.

~~Stanley R. Gentile, Esquire~~  
~~Wayne D. Simmons, Vice President~~  
~~Michael L. Volin, Esquire~~  
Kevin William Gibson, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES

~~Michael Eichert, Chief Counsel~~  
~~David L. Narkiewicz, Assistant Chief Counsel~~  
Harry R. Walter, III, Assistant Counsel

**\*December 27, 2007**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$66,554.40

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**December 31, 2007**

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

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**December 31, 2007**

Plaintiff filed Notice of Service of Request for Production of Documents.

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**January 7, 2008**

Attorney General filed Acknowledgement of Claim dated December 31, 2007. Receipt of same acknowledged on January 3, 2008.

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**\*January 15, 2008**

Plaintiff filed Amended Claim and proof of mailing. Amount of claim: \$91,269.00+. [04A022508D]

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**January 21, 2008**

Board issued letter to parties regarding the Amended Claim as a motion to amend which the Board intends to grant unless opposed by Defendant.

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**February 5, 2008**

Defendant filed Answer and New Matter to the Original Complaint and Counterclaim.

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**February 5, 2008**

Defendant filed Response to Claimant's Motion to Amend its Statement of Claim and Brief in Support.

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**February 6, 2008**

Board forwarded letter to Plaintiff, with copy to Defendant, requesting response to New Matter and Counterclaim.

**February 6, 2008**

Board issued Opinion and Order. Order as follows: **"AND NOW**, this 6<sup>th</sup> day of February, 2008, the above-captioned matter is hereby **STAYED** until further notice." Copy forwarded to Plaintiff and Defendant.

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**February 7, 2008**

Board forwarded letter to Plaintiff requesting a reply to Defendant's Objections to the Amended claim.

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**February 8, 2008**

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

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**February 8, 2008**

Plaintiff filed Acceptance of Service of Opinion and Order dated February 6, 2008. Receipt of same acknowledged on February 8, 2008.

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**February 22, 2008**

Plaintiff filed Reply to DGS's Answer to Sha-Nic, Inc.'s Motion to Amend its Statement of Claim and Brief in Reply.

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**March 14, 2008**

Plaintiff filed letter stating that they would like an expedited decision on the subject motion and also to expedite disposition of the matter as a whole.

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**March 18, 2008**

Board forwarded letter to Plaintiff and Defendant requesting hearing information.

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**March 26, 2008**

Board issued an Opinion and Order. Order as follows: **"AND NOW**, this 26<sup>th</sup> day of March, 2008, it is **ORDERED** and **DECREED** that Plaintiff's motion to amend its claim is **GRANTED**. The Amended Claim, as provided to Defendant and submitted to this Board on or about January 15, 2008, shall be deemed filed with the Board and served upon Defendant as of the exit date of this Order. Defendant is hereby directed to file a response to Plaintiff's Amended Claim within 30 days of the exit date of this Order. It is further **ORDERED** and **DECREED** that the temporary stay imposed on this case is hereby rescinded for all intents and purposes, provided however that the response period for any outstanding discovery requests shall be deemed to commence with the exit date of this Order as well." Copy forwarded to Plaintiff and Defendant.

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**March 27, 2008**

Plaintiff filed a proposed scheduling order as requested by the Board.

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**March 28, 2008**

Defendant filed Acceptance of Service of Opinion and Order dated March 26, 2008. Receipt of same acknowledged on March 27, 2008.

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**April 1, 2008**

Defendant filed a proposed scheduling order as requested by the Board.

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**April 2, 2008**

Plaintiff filed Acceptance of Service of Opinion and Order dated March 26, 2008. Receipt of same acknowledged on March 31, 2008.

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**April 4, 2008**

Plaintiff filed an amended proposed scheduling order as requested by the Board.

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**April 9, 2008**

Defendant filed Application to Amend Order to Include Statement Specified in 42 Pa.C.S. § 702(b) and Brief in Support. [10A041008D]

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**April 10, 2008**

Board forwarded letter to Plaintiff requesting response to Defendant's Application to Amend Order.

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**April 22, 2008**

Defendant filed Preliminary Objections to Plaintiff's Amended Statement of Claim/Complaint and Brief in Support. [09A070108]

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**April 25, 2008**

Plaintiff filed Response to DGS' Application to Amend Order to Include Statement Specified in 42 Pa.C.S. § 702(b) and Brief in Opposition.

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**April 28, 2008**

Board issued Opinion and Order. Order as follows: **"AND NOW**, this 28th day of April 2008, it is **ORDERED** and **DECREED** that the Department of General Services' Application to Amend Order to Include Statement as Specified in 42 Pa.C.S.A. § 702(b) is **DENIED.**" Copy forwarded to Plaintiff and Defendant.

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**April 30, 2008**

Defendant filed Acceptance of Service of Opinion and Order dated April 28, 2008. Receipt of same acknowledged on April 29, 2008.

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**May 2, 2008**

Plaintiff filed Leave to Withdraw as Counsel and Memorandum of Law in Support and also requested the Board stay the case regarding the Response to Defendant's Preliminary Objections.

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**May 2, 2008**

Plaintiff filed Acceptance of Service of Opinion and Order dated April 28, 2008. Receipt of same acknowledged on April 30, 2008.

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**May 5, 2008**

Board issued Opinion and Order. Order as follows: **"AND NOW**, this 5<sup>th</sup> day of May, 2008, upon receipt of Plaintiff's request to stay this matter, it is hereby **ORDERED** and **DECREED** that these proceedings are hereby stayed until further order of the Board. Plaintiff is directed to provide the Board with name, address and phone number of substitute counsel or name, address and phone number of a contact person at Sha-Nic, Inc. to correspond with relative to this case within 10 days from the date of this Order." Copy forwarded to Plaintiff and Defendant.

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**May 7, 2008**

Defendant filed Acceptance of Service of Opinion and Order dated May 5, 2008. Receipt of same acknowledged on May 6, 2008.

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**May 9, 2008**

Plaintiff filed Acceptance of Service of Opinion and Order dated May 5, 2008. Receipt of same acknowledged on May 7, 2008.

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**May 19, 2008**

Plaintiff filed letter responding to the Board's request for contact information.

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**June 9, 2008**

Plaintiff filed letter requesting that its Motion to Withdraw Appearance be withdrawn and is resuming his representation of Sha-Nic. Also requests a due date for its answers/opposition to Defendant's Preliminary Objections once the stay is lifted.

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**June 11, 2008**

Board forwarded letter to all parties of record acknowledging Stanley R. Gentile of Archer & Greiner resuming as legal counsel for Plaintiff.

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**June 12, 2008**

Board issued Order. Order as follows: **"AND NOW**, this 12<sup>th</sup> day of June, 2008, it is **ORDERED** and **DECREED** that the motion to lift stay which has been filed by Sha-Nic, Inc. is **GRANTED**. The stay which had previously been placed on this case by Order dated May 5, 2008 shall be lifted, and the parties shall proceed with the pleadings. Sha-Nic, Inc. shall have 30 days after the exit date of this Order to file a response to the preliminary objections which were filed by the Commonwealth of Pennsylvania, Department of General Services, on April 22, 2008." Copy forwarded to Plaintiff and Defendant.

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**June 16, 2008**

Defendant filed Acceptance of Service of an Order dated June 12, 2008. Receipt of same acknowledged on June 13, 2008.

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**June 30, 2008**

Plaintiff filed Motion to Compel Discovery.

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**July 1, 2008**

Plaintiff filed Answer to the Preliminary Objections filed by the Defendant and Brief in Opposition.

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**July 2, 2008**

Board forwarded letter to Defendant requesting response to Plaintiff's Motion to Compel.

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**July 29, 2008**

Board issued Opinion and Order. Order as follows: **"AND NOW**, this 29<sup>th</sup> day of July, 2008, upon consideration of the preliminary objections of the Commonwealth of Pennsylvania, Department of General Services, and the response of Sha-Nic, Inc., it is **ORDERED** and **DECREED** that a decision on the objection to the Board's in personam jurisdiction over the Department and the objection of failure to join an indispensable party is hereby deferred to enable the parties to conduct such discovery as may be appropriate to prepare for an evidentiary hearing on the issue of in personam jurisdiction in accordance with our discussion in the foregoing Opinion. To this latter end, the parties are directed to submit to the Board, within 20 days of the exit date of this Order, a proposed schedule for: the close of discovery on the pending preliminary objection to the Board's in personam jurisdiction over DGS; the filing of pre-hearing memoranda (compliant with BOC R.P. 501(b)); and the dates (and time estimates) for the proposed hearing." Copy forwarded to Plaintiff and Defendant.

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**August 11, 2008**

Plaintiff filed Acceptance of Service of Opinion and Order dated July 29, 2008. Receipt of same acknowledged on August 8, 2008.

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**August 12, 2008**

Plaintiff filed Motion for Reconsideration of the Board of Claim's Opinion and Order dated July 29, 2008 or, in the Alternative, Motion to Amend to Bring Clarity in Light of the Board's Previous Holdings and Rulings and Brief in Support.

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**August 14, 2008**

Board forwarded letter to Defendant requesting response to Plaintiff's Motion.

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**September 9, 2008**

Defendant filed Entry of Appearance of Harry R. Walter, II, Assistant Counsel.

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**September 9, 2008**

Defendant filed Answer to Motion for Reconsideration and Brief in Support.

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**September 10, 2008**

Board issued Order. Order as follows: **"AND NOW**, this 10th day of September, 2008, in consideration of Plaintiff's motion for reconsideration of this Board's Order of July 29, 2008, and Defendant's response thereto, Plaintiff's motion for reconsideration is **DENIED** for the reasons stated in our Order of July 29, 2008." Copy forwarded to Plaintiff and Defendant.

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**September 15, 2008**

Defendant filed Acceptance of Service of Order dated September 10, 2008. Receipt of same acknowledged on September 11, 2008.

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**October 1, 2008**

Defendant transmitted via facsimile a letter submitting a proposed scheduling order for the hearing on the pending preliminary objections to the Board's in personam jurisdiction.

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**October 2, 2008**

Defendant filed a letter submitting a proposed scheduling order for the hearing on the pending preliminary objections to the Board's in personam jurisdiction.

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**October 7, 2008**

Plaintiff filed Petition for Review of the Board of Claim's Order dated September 10, 2008 with the Commonwealth Court.

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**October 9, 2008**

Commonwealth Court issued Petition for Review (No. 1916 C.D. 2008).

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**October 15, 2008**

Board forwarded file to Commonwealth Court.

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**October 16, 2008**

Commonwealth Court sent letter requesting briefs including the original and reproduced records, be filed no later than 11/24/08.

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**October 17, 2008**

Commonwealth Court sent letter stating that the Board was removed as a party to the appeal.

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**October 20, 2008**

Plaintiff filed a copy of a Praecipe to Discontinue and End without Prejudice as filed in Commonwealth Court.

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**October 21, 2008**

Commonwealth Court filed Notice of Discontinuance of Action certified on October 20, 2008. Notice as follows: "The above-captioned matter has been marked "Discontinued" with this Court. Certification is being sent to the lower court."

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**October 23, 2008**

Board forwarded letter to parties requesting a proposed schedule for discovery and hearing on Defendant's preliminary objection.

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**October 27, 2008**

Defendant filed a letter submitting a proposed scheduling order for the hearing on the pending preliminary objections to the Board's in personam jurisdiction.

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**November 3, 2008**

Commonwealth Court returned file.

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**November 6, 2008**

Plaintiff transmitted letter via facsimile advising that there is a substitution of counsel and that they will not be prosecuting the Sixth Count of the Amended Claim.

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**November 10, 2008**

Plaintiff filed a letter advising that there is a substitution of counsel and that they will not be prosecuting the Sixth Count of the Amended Claim.

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**November 12, 2008**

Board forwarded letter to parties stating that there is no need for a fact hearing at this time due to Plaintiff's letter regarding count six.

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**December 22, 2008**

Plaintiff filed a letter stating that DGS does not consent to the filing of a second amended statement of claim and for that reason they are asking the Board to enter an order dismissing count six of the first amended statement of claim and ordering DGS to answer the remaining five counts within 20 days.

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**January 13, 2009**

Board issued Opinion and Order. Order as follows: **"AND NOW,** this 13<sup>th</sup> day of January, 2009, upon receipt of Sha-Nic's request to dismiss Count Six of its First Amended Complaint, it is hereby **ORDERED** and **DECREEED** that Count Six is **DISMISSED**. DGS shall file a new response to the remaining five counts within 20 days after the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

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**January 16, 2009**

Defendant filed Acceptance of Service of Opinion and Order dated January 13, 2009. Receipt of same acknowledged on January 14, 2009.

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**February 2, 2009**

Defendant filed Answer and New Matter to Amended Complaint and Counterclaim.

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**February 3, 2009**

Board forwarded letter to Plaintiff requesting response to New Matter and Counterclaim.

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**February 23, 2009**

Plaintiff filed Answer to New Matter and Counterclaim with New Matter to Counterclaim.

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**February 23, 2009**

Defendant filed Answer to Plaintiff's New Matter to Counterclaim.

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**February 23, 2009**

Defendant filed Praecipe to File Verification.

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**February 24, 2009**

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

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**April 28, 2009**

Defendant filed Motion for Leave to File Amended Answer and New Matter to Amended Complaint and Counterclaim.

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**April 28, 2009**

Board forwarded letter to Plaintiff requesting response to Amended Answer, New Matter and Counterclaim.

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**May 4, 2009**

Board rendered Order. Order as follows: **"AND NOW**, this 4<sup>th</sup> day of May, 2009, upon review of the filings in the above-captioned matter, including Plaintiff's advice that it does not oppose Defendant's motion for leave to file an amended answer with new matter to amended complaint and counterclaim, Defendant's motion is hereby **GRANTED**. Defendant is granted leave to file an amended answer with new matter to Plaintiffs' amended complaint and counterclaim within 10 days of the exit date of this Order per B.O.C. R.P. 206. Plaintiff shall then have 20 days from its receipt of said amended answer and new matter to respond thereto." Copy forwarded to Plaintiff and Defendant.

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**May 6, 2009**

Defendant filed Acceptance of Service of Order dated May 4, 2009. Receipt of same acknowledged on May 5, 2009.

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**May 8, 2009**

Defendant filed Amended Answer and New Matter to Amended Complaint and Counterclaim.

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**May 12, 2009**

Board forwarded letter to Plaintiff requesting response to Amended Answer, New Matter and Counterclaim.

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**June 3, 2009**

Plaintiff filed Entry of Appearance of Kevin William Gibson, Esquire and Withdrawal of Appearance of Michael L. Volin, Esquire.

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**June 19, 2009**

Plaintiff filed a letter stating that they differ with Defendant's interpretation of several opinions regarding the delay claim and requests an office conference to resolve this issue.

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**June 22, 2009**

Defendant filed a letter in response to Defendant's letter regarding the delay claim and that they are in agreement that a conference is needed to move this case forward.

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**June 23, 2009**

Board issued Order. Order as follows: **"AND NOW**, this 23<sup>rd</sup> day of June, 2009, pursuant to the request of the Plaintiff for a conference, it is hereby **ORDERED** that said conference shall be held on June 30, 2009 at 200 North Third Street, Suite 700, Harrisburg, Pennsylvania 17101 commencing at 1:00 P.M., counsel for the parties to be present in person." Copy forwarded to Plaintiff and Defendant.

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**June 26, 2009**

Defendant filed Acceptance of Service of Order dated June 23, 2009. Receipt of same acknowledged on June 24, 2009.

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**June 29, 2009**

Plaintiff filed Acceptance of Service of Order dated June 23, 2009. Receipt of same acknowledged on June 25, 2009.

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**August 6, 2009**

Defendant filed Joint Stipulation of Facts.

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**August 7, 2009**

The Board concurs with the Joint Stipulation of Facts. Signed copies forwarded to Plaintiff and Defendant.

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**August 12, 2009**

Defendant filed Acceptance of Service of Joint Stipulation of Facts dated August 10, 2009. Receipt of same acknowledged on August 11, 2009.

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**December 28, 2009**

Plaintiff filed letter requesting that a trial date be set.

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**December 30, 2009**

Board forwarded letter to parties requesting proposed scheduling orders.

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**January 5, 2010**

Defendant filed proposed scheduling order.

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**January 7, 2010**

Defendant filed Notice of Service of Requests for Production of Documents addressed to Plaintiff.

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**January 26, 2010**

Defendant filed letter stating that Plaintiff has concurred with the proposed dates for the Scheduling Order as filed by DGS.

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**January 28, 2010**

Board issued Order. Scheduling Order as follows: **"AND NOW**, this 28<sup>th</sup> day of January, 2010, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for Sha-Nic, Inc. to notify Department of General Services of its intent to retain an expert is March 8, 2010; 2. The last day for Sha-Nic, Inc. to provide its expert report is May 3, 2010;<sup>1</sup> 3. The last day for the Department of General Services to provide its expert report is June 1, 2010;<sup>1</sup> 4. All discovery, including exchange of any further expert rebuttal reports, shall be completed by July 30, 2010;<sup>2</sup> 5. The last day for filing pre-trial motions is August 13, 2010;<sup>2</sup> 6. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than September 3, 2010 (Please note BOC R.P. 501(b) and (c)(3)); 7. A pre-trial conference is scheduled for Monday, October 4, 2010 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 8. This matter is set for hearing beginning on Monday, November 15, 2010 and running through Tuesday, November 23, 2010, or as 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.

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**February 1, 2010**

Defendant filed Acceptance of Service of Scheduling Order dated January 28, 2010. Receipt of same acknowledged on January 29, 2010.

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**May 6, 2010**

Plaintiff filed Praecipe to Mark Settled, Discontinued and Ended with Prejudice.

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**May 14, 2010**

Board rendered Order. Order as follows: **"AND NOW**, this 14<sup>th</sup> day of May, 2010, upon receipt of a Praecipe executed by Kevin William Gibson, Esquire, on behalf of Plaintiff, Sha-Nic, Inc., requesting that the Board mark the above-captioned matter settled, discontinued and ended, docketed with this Board under date of May 6, 2010, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

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**May 24, 2010**

Defendant filed Acceptance of Service of Order dated May 14, 2010. Receipt of same acknowledged on May 18, 2010.

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