

Docket Number: 3950

DRISCOLL CONSTRUCTION CO., INC.

Mason Avrigian, Jr., Esquire
Jeffrey P. Wallack, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

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

January 12, 2009

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

January 13, 2009

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

January 20, 2009

Attorney General filed Acknowledgement of Claim form. Receipt of same acknowledged January 15, 2009.

February 9, 2009

Defendant filed Answer with New Matter.

February 23, 2009

Plaintiff filed Notice of Service of Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents.

March 2, 2009

Plaintiff filed Reply to New Matter.

March 2, 2009

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

March 13, 2009

Plaintiff requested (4009.21 - to produce documents) subpoenas.

March 17, 2009

Board forwarded (4009.21 - to produce documents) subpoenas dated March 17, 2009 to Plaintiff.

April 16, 2009

Plaintiff requested (4009.21 - to produce documents) subpoenas.

April 17, 2009

Board forwarded (4009.21 - to produce documents) subpoenas dated April 17, 2009 to Plaintiff.

April 21, 2009

Plaintiff filed Certificate Prerequisite to Service of A Subpoena Pursuant to Rule 4009.22.

May 4, 2009

Plaintiff filed letter requesting a status conference be scheduled.

May 5, 2009

Board forwarded letter to parties requesting scheduling information.

May 18, 2009

Plaintiff filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 of Applied Geoscience & Engineering, Inc.

May 18, 2009

Plaintiff filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 of CMC Engineering.

May 20, 2009

Defendant filed proposed scheduling order as requested by the Board.

May 20, 2009

Defendant filed letter regarding proposed scheduling order.

May 21, 2009

Plaintiff filed letter regarding proposed scheduling order.

May 28, 2009

Plaintiff transmitted via facsimile a letter requesting a status conference.

May 29, 2009

Plaintiff filed via U.S. mail a letter requesting a status conference.

June 1, 2009

Plaintiff filed via U.S. mail a letter requesting a status conference.

June 1, 2009

Board rendered an Order. Order as follows: **"AND NOW**, this 1st day of June, 2009, pursuant to the request of the Plaintiff, Driscoll Construction Co., Inc. for a status conference, it is hereby **ORDERED** that a status conference shall be held on June 24, 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.

June 12, 2009

Plaintiff filed Acceptance of Service of Order dated June 1, 2009. Receipt of same acknowledged June 8, 2009.

June 22, 2009

Plaintiff filed (via fax) a letter providing the Board with the current status of discovery and an outline of remaining discovery to be conducted.

June 23, 2009

Plaintiff filed (via U.S. mail) a letter providing the Board with the current status of discovery and an outline of remaining discovery to be conducted.

June 24, 2009

Plaintiff filed (via U.S. mail) a letter providing the Board with the current status of discovery and an outline of remaining discovery to be conducted.

June 24, 2009

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

June 25, 2009

Board rendered an Order. Order as follows: "**AND NOW**, this 25th day of June, 2009, 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 July 23, 2010;¹ 2. The last day for defendant=s expert report, if any, to be provided to plaintiff is August 23, 2010;¹ 3. All discovery, including exchange of expert rebuttal reports, shall be completed by September 24, 2010;² 4. The last day for filing pre-trial motions is October 25, 2010;² 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later December 1, 2010 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for December 9, 2010 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 beginning on Tuesday, January 18, 2011 and running through Friday, January 28, 2011, 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.

July 13, 2009

Plaintiff filed Acceptance of Service of Order dated June 25, 2009. Receipt of same acknowledged June 29, 2009.

March 4, 2010

Plaintiff requested (234.1 - to attend with duces tecum) subpoenas. Board forwarded (234.1 - to attend with duces tecum) subpoenas dated this date to Plaintiff.

June 1, 2010

Defendant requested (4009.21 - to produce documents) subpoenas.

June 2, 2010

Board forwarded (4009.21 - to produce documents) subpoenas dated June 2, 2010 to Defendant.

June 16, 2010

Plaintiff filed Certificate Prerequisite to Service of a Subpoena Upon Skelly and Loy, Inc. and Urban Engineers, Inc. pursuant to Rule 4009.22.

June 25, 2010

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.22 of Mattiola Services, LLC and Elgredge, Inc.

August 24, 2010

Plaintiff filed Motion to Compel Answer to Interrogatories and Document Requests and Production of Requested Documents and Proposed Order. [01A09082010D]

August 25, 2010

Board forwarded letter to Defendant, with copy to Plaintiff, requesting a response to Plaintiff's motion within 15 days.

August 25, 2010

Defendant filed Motion to Compel Answers to Interrogatories and Proposed Order.

August 26, 2010

Board forwarded letter to Plaintiff, with copy to Defendant, requesting a response to Defendant's motion within 15 days.

August 26, 2010

Defendant filed a letter advising that Defendant received Plaintiff's Answers to Interrogatories and requesting 10 days in which to supplement the Defendant's Motion to Compel in order to address certain respects of Defendant's Interrogatories that Plaintiff refused to answer.

August 30, 2010

Board forwarded a letter to parties granting a 10 day extension of time for Defendant to file a supplement to its motion to compel and Plaintiff 15 days to respond to the supplement.

September 7, 2010

Defendant filed a letter advising that Defendant does not need to supplement its motion and hereby withdraws the motion.

September 7, 2010

Defendant filed its Response to Plaintiff's Motion to Compel.

September 7, 2010

Per Defendant's letter of September 7, 2010, Defendant's Motion to Compel filed August 25, 2010, has been withdrawn.

September 14, 2010

Board rendered an Opinion and Order. Order as follows: **"AND NOW, this 14th day of September, 2010, Plaintiff's Motion to Compel Answers to Interrogatories and Document Requests and Production of Requested Documents from Defendant is hereby DENIED as MOOT. Plaintiff is further GRANTED leave until October 1, 2010 to file a revised motion to compel."** Copy forwarded to Plaintiff and Defendant.

September 22, 2010

Plaintiff filed Acceptance of Service of Opinion and Order dated September 14, 2010. Receipt of same acknowledged September 20, 2010.

September 24, 2010

Defendant requested 234.1 - to attend with duces tecum subpoena.

September 27, 2010

Board forwarded 234.1 - to attend with duces tecum subpoena dated September 27, 2010 to Defendant.

September 28, 2010

Plaintiff requested 234.1 - to attend with duces tecum subpoena.

September 28, 2010

Board forwarded 234.1 - to attend with duces tecum subpoena dated September 28, 2010 to Plaintiff.

October 1, 2010

Plaintiff filed Revised Motion to Compel Answers to Interrogatories and Document Requests and Production of Requested Documents and Proposed Order.

October 18, 2010

Defendant filed a letter requesting an extension of time until October 22, 2010, in which to file a response to Plaintiff's revised motion to compel.

October 19, 2010

Plaintiff filed (via fax) a letter advising that Plaintiff has no opposition to the Commonwealth's request for an extension of time until October 22, 2010, in which to file a response to Plaintiff's revised motion to compel.

October 19, 2010

Board forwarded letter to parties (via fax and U.S. Mail) granting Defendant an extension of time until October 22, 2010, in which to file its response to Plaintiff's revised motion to compel.

October 22, 2010

Defendant filed letter advising that Defendant fulfilled its obligations under Plaintiff's outstanding discovery requests and that it does not believe that any further proceedings are necessary with respect to Plaintiff's revised motion to compel.

October 25, 2010

Defendant filed Motion for Leave to File Amended Answer with New Matter and Brief in Support.

October 27, 2010

Board forwarded letter to Plaintiff, with copy to Defendant advising of the rules for filing responses/briefs.

November 9, 2010

Plaintiff filed Response to Defendant's Motion for Leave to File Amended Answer with New Matter, Memorandum of Law and Proposed Order.

November 9, 2010

Board rendered an Order. Order as follows: **"AND NOW**, this 9th day of November, 2010, upon consideration of Defendant Commonwealth of Pennsylvania Department of Transportation's (the "Department") Motion for Leave to File Amended Answer with New Matter, and Plaintiff Driscoll Construction Co., Inc.'s ("Driscoll Construction") response thereto, it is hereby **ORDERED** and **DECREED** that the Department's motion will be **GRANTED** upon Board confirmation of successful completion of the following: 1. The Department shall file a properly verified Amended Answer with New Matter in the form attached to its Motion for Leave by November 12, 2010; 2. Driscoll Construction shall serve the Document Requests, Interrogatories and Notice of Deposition attached to Driscoll Construction's Response to the Motion for Leave by November 15, 2010; 3. The Department shall serve verified answers to the Document Requests and Interrogatories and produce all requested documents by November 30, 2010, with no objections to discovery other than privilege (in which case any documents withheld pursuant to a claim of privilege shall be filed with the Board for in camera inspection by November 30, 2010 with an explanation of the

privilege asserted); and 4. The Department shall produce a designee or designees for deposition in accordance with Plaintiff's notice of deposition within five days after service of the Department's written discovery responses set forth in paragraph 3 above. Additionally, the date set for the filing of pre-trial statements in this case shall be postponed to December 8, 2010." Copy forwarded to Plaintiff and Defendant.

November 12, 2010

Defendant filed Amended Answer with New Matter.

November 15, 2010

Board rendered Order. Order as follows: "On October 1, 2010, Plaintiff herein filed a Revised Motion to Compel Answers to Interrogatories and Document Requests and Production of Requested Documents and Proposed Order. Thereafter, following a brief extension of time, Defendant, on October 22, 2010, filed a letter response advising that it had provided Plaintiff with the desired discovery responses and fulfilled its obligations under Plaintiff's outstanding discovery requests. The Board has received no further communication on this issue from Plaintiff. **AND NOW**, this 15th day of November, 2010, Plaintiff's Revised Motion to Compel Answers to Interrogatories and Document Requests and Production of Requested Documents and Proposed Order is hereby **DENIED** as **MOOT**." Copy forwarded to Plaintiff and Defendant.

November 18, 2010

Plaintiff filed Acceptance of Service of Order dated November 9, 2010. Receipt of same acknowledged November 12, 2010.

November 24, 2010

Defendant requested 234.1 to attend with duces tecum subpoena.

November 29, 2010

Board forwarded 234.1 to attend with duces tecum dated November 29, 2010 to Defendant.

November 30, 2010

Defendant filed a letter requesting the Board to either eliminate the requirement that Defendant designate one or more witnesses for a deposition, or to suspend that requirement until after the pretrial conference on December 9, 2010, so the issue can be discussed at the conference.

December 2, 2010

Plaintiff filed (via fax) a letter advising that they believe the Board's Order of November 9, 2010 should be complied with by Defendant with neither modification nor delay.

December 2, 2010

Board forwarded letter to parties advising that Defendant's requirement to designate one or more witnesses for a deposition will be suspended until discussion of same at the pre-trial conference on December 9, 2010.

December 3, 2010

Plaintiff filed Reply to Amended New Matter.

December 6, 2010

Plaintiff filed (via U.S. mail) a letter advising that they believe the Board's Order of November 9, 2010 should be complied with by Defendant with neither modification nor delay.

December 8, 2010

Defendant filed its pretrial memorandum, Expert Report prepared by Skelly and Loy, Inc. and Expert Report of Louis J. Rubino.

December 8, 2010

Plaintiff filed pre-trial statement.

December 9, 2010

Pretrial conference held.

December 9, 2010

Board rendered an Amending Order. Amending Order as follows: "**AND NOW**, this 10th day of December, 2010, having by letter of December 2, 2010, suspended the requirement that Defendant designate witnesses for deposition as set forth originally in this Board's Order of November 9, 2010 until after the pretrial conference, it is hereby **ORDERED** that said depositions, as further discussed at the pretrial conference of December 9, 2010, be accomplished by January 7, 2011. The parties shall notify this Board promptly when these depositions are completed. Further, the scheduling Order of June 25, 2009 is hereby modified to set the hearing in this matter to begin on Wednesday, January 19, 2011 at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

December 10, 2010

Plaintiff filed Acceptance of Service of Order dated November 15, 2010. Receipt of same acknowledged December 1, 2010.

December 16, 2010

Plaintiff transmitted via facsimile letter requesting Judge Harry G. Gamble, P.E. recuse himself from participating in the trial due to a conflict of interest.

December 17, 2010

Plaintiff filed Acceptance of Service of Order dated December 10, 2010. Receipt of same acknowledged December 13, 2010.

December 20, 2010

Plaintiff filed via U.S. Mail letter requesting Judge Harry G. Gamble, P.E. recuse himself from participating in the trial due to a conflict of interest.

December 17, 2010

Plaintiff filed Acceptance of Service of Order dated December 10, 2010. Receipt of same acknowledged December 13, 2010.

January 5, 2011

Defendant requested three 234.1 to attend with duces tecum subpoenas.

January 5, 2011

Board forwarded three 234.1 to attend with duces tecum subpoenas dated January 5, 2011 to Defendant.

January 11, 2011

Plaintiff faxed a letter as follow-up to the pre-trial conference held December 9, 2010.

January 11, 2011

Board rendered an Order. Order as follows: "AND NOW, this 11th day of January, 2011, upon advice by counsel for Plaintiff that the depositions directed by this Board pursuant to Plaintiff's request by Board Orders of November 9, 2010 and December 9, 2010, have been held or waived by Plaintiff, it is hereby **ORDERED** that Defendant's Amended Answer with New Matter filed November 12, 2010 and Plaintiff's Reply to Amended New Matter filed December 3, 2010 are accepted as operative pleadings in this matter." Copy forwarded to Plaintiff and Defendant.

January 13, 2011

Plaintiff filed a letter (via US mail) as follow-up to the pre-trial conference held December 9, 2010.

January 19, 2011

Parties tentatively settled prior to commencement of hearing.

January 20, 2011

Plaintiff transmitted by facsimile a letter advising that the parties have settled and the hearing can be cancelled and upon completion of the settlement, they will notify the Board and file an appropriate praecipe.

January 21, 2011

Plaintiff filed Acceptance of Service of Order dated January 11, 2011. Receipt of same acknowledged January 17, 2011.

January 24, 2011

Plaintiff filed a letter (via US mail) advising that the parties have settled and the hearing can be cancelled and upon completion of the settlement, they will notify the Board and file an appropriate praecipe.

April 26, 2011

Plaintiff filed Verified Petition to Enforce Settlement Agreement.

April 26, 2011

Board forwarded letter to Defendant, with copy to Plaintiff, requesting a response to Plaintiff's petition.

May 25, 2011

Defendant filed Response to Plaintiff's Verified Petition to Enforce Settlement Agreement.

June 1, 2011

Board forwarded letter to parties scheduling a teleconference for June 8, 2011 at 1pm.

June 8, 2011

Teleconference held at 1pm.

August 31, 2011

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 31st day of August, 2011, Driscoll's Verified Petition to Enforce Settlement Agreement is hereby **DENIED**." Copy forwarded to Plaintiff and Defendant.

September 23, 2011

Plaintiff filed Acceptance of Service of Opinion and Order dated August 31, 2011. Receipt of same acknowledged September 20, 2011.

September 23, 2011

Plaintiff filed a letter advising that its address has changed and giving the Board same.

March 5, 2015

Plaintiff filed Praecipe to Settle, Discontinue and End with Prejudice.

March 6, 2015

Board rendered Order. Order as follows: "**AND NOW**, this 6th day of March, 2015, upon receipt of a praecipe executed by Jeffrey P. Wallack Esquire, on behalf of the Plaintiff, Driscoll Construction Co., Inc., requesting that the Board kindly mark the above-referenced action settled, discontinued and ended with prejudice, docketed with this Board under date of March 5, 2015, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

March 12, 2015

Plaintiff filed Acceptance of Service of Order dated March 6, 2015. Receipt of same acknowledged March 10, 2015.
