

Docket Number: 3988

HEMPT BROS., INC.

Kenneth L. Sable, Esquire
John W. Dornberger, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

~~Andrew S. Gordon, Chief Counsel~~
Jason M. Wolgemuth, Assistant Counsel

April 30, 2010

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$288,592.85.

May 4, 2010

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

May 13, 2010

Attorney General filed Acknowledgement of Claim dated May 4, 2010. Receipt of same acknowledged on May 10, 2010.

May 26, 2010

Plaintiff filed letter advising that it granted Defendant an indefinite extension of time in which to file its response to the Statement of Claim.

August 26, 2010

Defendant filed letter requesting an extension of time until September 2, 2010 in which to file its Answer and advised that Plaintiff has agreed to extension.

August 27, 2010

Board forwarded letter to Defendant granting extension of time.

September 2, 2010

Defendant filed Answer with New Matter.

September 3, 2010

Board forwarded letter to Plaintiff, with copy to Defendant, requesting a response to new matter.

September 29, 2010

Plaintiff filed Reply to New Matter of Defendant.

September 30, 2010

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

June 5, 2012

Plaintiff filed Verified Motion to Compel Defendant to Grant Request for the Entry Upon Property for Inspecting and Testing and Brief in Support.

June 5, 2012

Board forwarded letter to Defendant requesting response to Plaintiff's Verified Motion to Compel Defendant to Grant Request for the Entry Upon Property for Inspecting and Testing.

July 2, 2012

Defendant filed letter advising Plaintiff has provided Defendant with an extension of time until July 19, 2012 in which to file Defendant's response to Plaintiff's Motion to Compel.

July 2, 2012

Board forwarded letter to Defendant acknowledging extension of time.

July 18, 2012

Defendant filed letter advising Plaintiff has provided Defendant with an extension of time until July 31, 2012 in which to file Defendant's response to Plaintiff's Motion to Compel.

July 19, 2012

Board forwarded letter to Defendant acknowledging extension of time until July 31, 2012.

July 30, 2012

Defendant filed letter advising Plaintiff has provided Defendant with an extension of time until August 17, 2012 in which to filed Defendant's response to Plaintiff's Motion to Compel.

July 31, 2012

Board forwarded letter to Defendant acknowledging extension of time until August 17, 2012.

August 17, 2012

Defendant filed letter advising Plaintiff has provided Defendant with an extension of time until August 29, 2012 in which to filed Defendant's response to Plaintiff's Motion to Compel.

August 20, 2012

Board forwarded letter to Defendant, with copy to Plaintiff, acknowledging extension of time until August 29, 2012.

August 29, 2012

Defendant filed letter advising Plaintiff has provided Defendant with an extension of time until September 14, 2012 in which to filed Defendant's response to Plaintiff's Motion to Compel.

August 30, 2012

Board forwarded letter to Defendant, with copy to Plaintiff, acknowledging extension of time until September 14, 2012.

September 11, 2012

Defendant filed letter advising Plaintiff has provided Defendant with an extension of time until September 28, 2012 in which to filed Defendant's response to Plaintiff's Motion to Compel.

September 12, 2012

Board forwarded letter to Defendant, with copy to Plaintiff, acknowledging extension of time until September 14, 2012.

September 28, 2012

Defendant filed Brief in Opposition to Plaintiff's Verified Motion to Compel.

October 9, 2012

Plaintiff filed letter via facsimile requesting leave to file a response to Defendant's Brief in Opposition to Plaintiff's Verified Motion to Compel.

October 22, 2012

Plaintiff filed Reply Brief to Defendant's Brief in Opposition to Plaintiff's Verified Motion to Compel.

October 25, 2012

Board rendered the following Opinion and Order: **"AND NOW,** this 25th day of October, 2012, upon consideration of the Plaintiff's Motion to Compel Defendant to Grant Request for Entry Upon Property for Inspection and Testing and its supporting brief, Defendant's Brief in Opposition to the Motion, and Plaintiff's Reply Brief, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**. The terms of the Order are: 1. At its own expense, Hempt Bros. or its representatives shall enter S.R. 30 in Abbottstown, Pennsylvania and extract up to three (3) pavement cores at approximately Sta 731+50 LT. The cores will be extracted transverse across the roadway at various distances: the first core will be no closer than 3' from the curb and the other cores will be at 6' and 8' from the curb; 2. Each core shall start at 4" depth and proceed incrementally until the core breaks free. The depth of each core shall not exceed the total depth of the wearing course, binder course and leveling course. The sub-base will not be disturbed; 3. Hempt Bros. shall perform the core extractions in accordance with Publication 408, Pennsylvania Test Methods (PTMs) and other applicable guidance documents identified by the Department; 4. Hempt Bros. shall perform the testing on the dates and at the times agreed to with the Department; 5. Hempt Bros. shall perform the testing in the presence of Department personnel and/or consultants; 6. The courses of material in the cores may be measured on the extracted cores at the time of the testing by either party. Should the Department wish to independently take measurements of the courses of material before the cores are taken from the project site, Hempt Bros. will provide the Department with reasonable time and opportunity to do so; 7. Hempt Bros. shall provide, at its own

October 25, 2012 (Con't)

expense, MPT during the testing at the direction of the Department; 8. Hempt Bros. shall provide the Department with all reports, data and information obtained through the testing and subsequent evaluation of the cores; 9. Hempt Bros. shall retain the cores for the duration of this litigation or as otherwise directed by the Board; 10. Hempt Bros. shall repair and restore the roadway to the Department's requirements for repair of roadway core sampling; and 11. In the event that Hempt Bros. cores into, or disturbs, the material in the sub-base, it shall, at the Department's request, repair the roadway around the cored area by: a. Establishing a uniform pavement patch which extends 3' longitudinally from the centerline of either side of the core holes (minimum 6') and extends for the full width of the travel lane and/or shoulder; b. Saw cut the pavement full depth and excavate accordingly; c. Restore the patch area with 12 ½" of 2 mm BCBC on the existing sub-base, 2 ½" of 19 mm binder material on top of the BCBC material and 1 ½" of 12.5 mm wearing course material on top of the binder material; d. Bituminous material types are to be equivalent to that which was specified in the original SR 30, Section 014, project typical sections; e. Construct and compact the patch in accordance with applicable Department specifications; and f. Seal all completed joints between new material and existing material in accordance with applicable Department specifications.