

Docket Number: 4007

S.P. MCCARL & COMPANY, INC.

Kurt F. Fernsler, Esquire

VS.

~~COMMONWEALTH OF PENNSYLVANIA~~
~~*DEPARTMENT OF GENERAL SERVICES~~

~~Michael Eichholtz, Chief Counsel~~
~~Michael C. Barrett, Assistant Counsel~~

~~COMMONWEALTH OF PENNSYLVANIA~~
~~*DEPARTMENT OF PUBLIC WELFARE~~

~~Allen L. Warshaw, Chief Counsel~~
~~Sallie M. Rodgers, Senior Counsel~~

***March 1, 2011**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$315,495.00+.

March 1, 2011

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

March 8, 2011

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged March 5, 2011.

March 21, 2011

Plaintiff filed Motion to Amend Statement of Claim/Complaint to Correct Party Name, Memorandum of Law in Support of Motion and Amended Statement of Claim/Complaint. [05A040611D]

March 22, 2011

Board issued letter to Department of Public Welfare (DPW) directing its response to Plaintiff's Motion to Amend Statement of Claim/Correct Party Name, Memorandum of Law in Support (with a copy to DGS and Plaintiff).

March 30, 2011

DGS filed preliminary objections and memorandum of law in support.

March 30, 2011

Board forwarded letter to Plaintiff, with copy to DGS and DPW advising of rules for filing responses/briefs.

April 5, 2011

Defendant filed Answer to Motion to Amend Statement of Claim and Brief in Opposition.

April 12, 2011

Plaintiff filed reply brief in support of its motion to amend statement of claim.

April 26, 2011

Board forwarded letter to DGS, with copy to Plaintiff and DPW advising that if DGS wishes to file a response to Plaintiff's reply brief in support of its motion to amend statement of claim, it should do so within 15 days.

April 26, 2011

Plaintiff transmitted via fax a Motion for Postponement of Adjudication of Preliminary Objections.

April 27, 2011

Plaintiff filed a Motion for Postponement of Adjudication of Preliminary Objections.

May 19, 2011

Board rendered Opinion and Order. Order as follows: **"AND NOW,** this 19th day of May, 2011, upon consideration of Plaintiff's Motion to Amend Statement of Claim/Complaint to Correct Party Name, DGS's response and DPW's lack thereof, said Motion is **GRANTED**. McCarl is granted leave to file its amended statement of claim and serve same upon DGS and DPW within 15 days of the date of this Order. Upon the filing of said amended statement of claim, DGS shall be dismissed as a party to the case." Copy forwarded to Plaintiff and Defendant.

***May 31, 2011**

Plaintiff filed Amended Claim and proof of mailing. Amount of Claim: amount unchanged.

May 31, 2011

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

June 2, 2011

Plaintiff filed Acceptance of Service of Opinion and Order dated May 19, 2011. Receipt of same acknowledged May 31, 2011.

June 3, 2011

Defendant filed Acceptance of Service of Opinion and Order dated May 19, 2011. Receipt of same acknowledged June 1, 2011.

June 7, 2011

Attorney General filed Acknowledgment of Amended Claim form. Receipt of same acknowledged June 6, 2011.

July 8, 2011

Defendant filed Preliminary Objections to Plaintiff's Amended Statement of Claim and Brief in Support. [03A091211D]

August 5, 2011

Plaintiff filed Response in Opposition to Preliminary Objections.

August 8, 2011

Board forwarded letter to parties advising that a status conference is scheduled for August 23, 2011 at 1:00 p.m. in the Judge's Office.

August 23, 2011

Status conference held at 1:00 p.m. in the Judge's Office.

August 29, 2011

Parties transmitted (via fax) a letter requesting an extension of time until September 2, 2011 in which to file a stipulation regarding service of the original statement of claim.

August 31, 2011

Parties filed a letter (via U.S. Mail) requesting an extension of time until September 2, 2011 in which to file a stipulation regarding service of the original statement of claim.

September 7, 2011

Plaintiff transmitted (via fax) joint stipulation of uncontested facts.

September 7, 2011

Plaintiff filed (via US mail) joint stipulation of uncontested facts.

September 12, 2011

Plaintiff filed (via US mail) joint stipulation of uncontested facts.

September 13, 2011

Board forwarded letter to parties requesting proposed dates for the scheduling of an evidentiary hearing.

September 26, 2011

Plaintiff transmitted (via facsimile) letter providing Board with dates that counsel for both Plaintiff and Defendant are available for an evidentiary hearing.

September 26, 2011

Plaintiff filed letter providing Board with dates that counsel for both Plaintiff and Defendant are available for an evidentiary hearing as well as exhibits.

September 27, 2011

Board rendered an Order. Order as follows: "AND NOW, this 27th day of September, 2011, an evidentiary hearing to determine factual issues pertinent to service of S.P. McCarl & Company, Inc.'s original Statement of Claim/Complaint upon the Department of Public Welfare has been set for Wednesday, October 19, 2011. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 beginning at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

September 28, 2011

Defendant transmitted (via fax) a letter in response to Plaintiff's letter dated September 23, 2011.

September 29, 2011

Defendant filed (via US mail) a letter in response to Plaintiff's letter dated September 23, 2011.

October 3, 2011

Plaintiff filed Acceptance of Service of Order dated September 27, 2011. Receipt of same acknowledged September 30, 2011.

October 3, 2011

Plaintiff requested via telephone two 234.1 - to attend with duces tecum subpoenas.

October 4, 2011

Board forwarded two 234.1 - to attend with duces tecum subpoenas dated October 4, 2011 to Plaintiff.

October 19, 2011

Evidentiary Hearing held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 beginning at 9:30 a.m. Case completed.

October 27, 2011

Testimony of evidentiary hearing held October 19, 2011 filed. Copy forwarded to attorney for Defendant.

November 4, 2011

Defendant filed acceptance of service of testimony of hearing held October 19, 2011. Receipt of same acknowledged November 3, 2011.

November 23, 2011

Plaintiff filed Proposed Findings of Fact, Conclusions of Law and Brief in Support.

December 28, 2011

Defendant filed Proposed Findings of Fact, Conclusions of Law and Brief in Support.

January 5, 2012

Board forwarded letter to parties allowing Plaintiff 20 days to provide additional briefing on the alternative issue and allowing Defendant an additional 20 days thereafter to respond to Plaintiff.

January 17, 2012

Plaintiff filed Reply Brief in Opposition to Defendant's Brief in Support of Defendant's Preliminary Objections.

January 24, 2012

Plaintiff filed Brief on the Alternative Issue that its claim against Defendant has not yet accrued.

February 14, 2012

Defendant filed its Supplemental brief on Alternate Issue.

February 23, 2012

Board forwarded letter to parties requesting additional information.

March 23, 2012

Defendant filed additional information as requested by the Board.

May 8, 2012

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 8th day of May, 2012, upon consideration of the Commonwealth of Pennsylvania, Department of Public Welfare's preliminary objections and Plaintiff's response thereto, it is **ORDERED** and **DECREED** that the preliminary objections are **DENIED**. However, it appearing from the evidence and arguments submitted that this matter has been prematurely filed at the Board, it is **FURTHER ORDERED** and **DECREED** that this case is **DISMISSED** for lack of Board jurisdiction." Copy forwarded to Plaintiff and Defendant.

May 9, 2012

Defendant filed Acceptance of Service of Opinion and Order dated May 8, 2012. Receipt of same acknowledged May 9, 2012.

May 14, 2012

Plaintiff filed Acceptance of Service of Opinion and Order dated May 11, 2012. Receipt of same acknowledged May 11, 2012.
