

Docket Number: 4010

**PENN STATE CONSTRUCTION, J&D, LLC**

John G. Milakovic, Esquire  
Charles O. Beckley, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION**

~~Andrew S. Gordon, Chief Counsel~~  
~~Jeffrey M. Spotts, Assistant Counsel~~

**CLOSED**

**April 5, 2011**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$95,871.22+.

---

**April 5, 2011**

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

---

**April 13, 2011**

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged April 8, 2011.

---

**May 5, 2011**

Defendant filed preliminary objections and brief in support. [08A052311D]

---

**May 23, 2011**

Plaintiff filed response to preliminary objections and brief in opposition.

---

**June 15, 2011**

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 15<sup>th</sup> day of June, 2011, upon consideration of the Department's Preliminary Objections and Plaintiff's response thereto, it is **ORDERED** and **DECREED** that the Preliminary Objections are **GRANTED** in part and **DENIED** in part. The Department's preliminary objections to Counts I and III of Penn State Construction's statement of claim are **OVERRULED**. The Department's preliminary objection to Count II of the statement of claim in the nature of a demurrer is **SUSTAINED** and Count II is **DISMISSED**. Accordingly, Penn State Construction shall be granted twenty (20) days leave from the date of this Order to file an amended statement of claim to address this decision should it so desire. If Penn State Construction does not file an amended statement of claim within that period, Defendant shall file its answer to the remaining Counts I and III within thirty-five (35) days of the date of this Order." Copy forwarded to Plaintiff and Defendant.

---

**June 17, 2011**

Plaintiff filed Acceptance of Service of Opinion and Order dated June 15, 2011. Receipt of same acknowledged June 17, 2011.

---

**June 21, 2011**

Defendant filed Acceptance of Service of Opinion and Order dated June 15, 2011. Receipt of same acknowledged June 20, 2011.

---

**June 24, 2011**

Plaintiff filed a letter advising that they do not plan on filing an amended statement of claim.

---

**July 20, 2011**

Defendant filed an Answer and New Matter.

---

**July 20, 2011**

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

---

**August 5, 2011**

Plaintiff filed Reply to New Matter.

---

**August 8, 2011**

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

---

**October 4, 2011**

Defendant filed Notice of Service of Response to the Claimant's First Set of Interrogatories.

---

**October 6, 2011**

Defendant filed Notice of Service of Answer to the Claimant's first Set of Requests for Production of Documents.

---

**December 8, 2011**

Defendant filed Notice of Service of Response to Plaintiff's Second Set of Interrogatories and Requests for Production of Documents.

---

**December 13, 2011**

Defendant filed Notice of Service of First Set of Interrogatories and Requests for Production of Documents.

---

**May 4, 2012**

Defendant filed Notice of Service of Second First Set of Interrogatories and Requests for Production of Documents.

---

**June 4, 2012**

Plaintiff filed a letter requesting a status conference to establish a schedule.

---

**June 5, 2012**

Board forwarded letter to parties requesting proposed scheduling information.

---

**June 6, 2012**

Defendant transmitted via facsimile a letter requesting the Board extend a period of time for Plaintiff and Defendant to work together on a schedule to be submitted to the Board.

---

**June 11, 2012**

Plaintiff filed letter regarding scheduling a status conference as well as a proposed scheduling order.

---

**June 13, 2012**

Board rendered a scheduling order. Order as follows: **"AND NOW**, this 13<sup>th</sup> day of June, 2012, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for the initial expert report, if any, of Plaintiff to be provided to Defendant is September 26, 2012; 2. The last day for the initial expert report, if any, of Defendant to be provided to Plaintiff is October 26, 2012; 3. All discovery, including exchange of any further expert rebuttal reports, shall be completed by November 26, 2012; 4. The last day for filing pre-trial motions is December 3, 2012; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than January 11, 2013 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, January 16, 2013 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7<sup>th</sup> Floor, Harrisburg, PA 17101; 7. This matter is set for hearing beginning on Tuesday, February 19, 2013 and running through Friday, February 22, 2013, or as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6<sup>th</sup> 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.

---

**June 14, 2012**

Plaintiff filed Acceptance of Service of Scheduling Order dated June 13, 2012. Receipt of same acknowledged June 14, 2012.

---

**June 21, 2012**

Defendant filed Acceptance of Service of Scheduling Order dated June 13, 2012. Receipt of same acknowledged June 18, 2012.

---

**January 10, 2013**

Plaintiff filed pretrial statement.

---

**January 11, 2013**

Defendant filed pretrial statement.

---

**January 16, 2013**

Pretrial conference held.

---

**January 17, 2013**

Plaintiff filed letter advising the parties have reached a settlement in this matter.

---

**March 27, 2013**

Joint Praecipe to Discontinue with Prejudice filed by Plaintiff and Defendant.

---

**March 28, 2013**

Board rendered the following Order: **"AND NOW**, this 28<sup>th</sup> day of March, 2013, upon receipt of a Joint Praecipe to Discontinue with Prejudice executed by John G. Milakovic, Esquire, on behalf of Plaintiff, Penn State Construction, J&D, LLC and Jeffrey M. Spotts, Assistant Counsel on behalf of Defendant, Commonwealth of Pennsylvania, Department of Transportation, requesting that the Board kindly discontinue, with prejudice, the above-captioned matter, marking the same settled and closed for the record, docketed with this Board under date of March 27, 2013, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice."

---

**April 1, 2013**

Plaintiff filed Acceptance of Service of Opinion and Order dated March 28, 2013. Receipt of same acknowledged by Plaintiff April 1, 2013.

---

**April 3, 2013**

Defendant filed Acceptance of Service of Opinion and Order dated March 28, 2013. Receipt of same acknowledged by Defendant April 2, 2013.