

Docket Number: 4074

**COMMONWEALTH OF PENNSYLVANIA,
STATE SYSTEM OF HIGHER EDUCATION,
BLOOMSBURG UNIVERSITY**

William D. Clifford, Esquire
Brett W. Farrar, Esquire

VS.

KILLIAN CONSTRUCTION COMPANY

Timothy J. Woolford, Esquire
Hannah K. Hemry, Pro Hac Vice
Ryan J. Watson, Pro Hac Vice
Jason C. Smith, Pro Hac Vice

and

SAFECO INSURANCE COMPANY OF AMERICA

~~Cameron A. Welch, Esquire~~
Timothy J. Woolford, Esquire

February 11, 2013

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

February 12, 2013

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

February 19, 2013

Plaintiff filed an Affidavit of Service of Complaint.

February 21, 2013

Attorney General filed acknowledgment of claim form. Receipt of same acknowledged February 19, 2013.

March 7, 2013

Killian Construction transmitted via facsimile a letter advising that the parties have agreed to extend the time for Killian Construction to file Response to Statement of Claim.

March 7, 2013

Killian Construction filed a letter advising that the parties have agreed to extend the time for Killian Construction to file Response to Statement of Claim.

March 7, 2013

Board forwarded letter to parties acknowledging extension of time in which to file Response to Statement of Claim.

March 18, 2013

Killian Construction transmitted via facsimile a letter advising that the parties have agreed to extend the time for Safeco Insurance Company of America to file Response to Statement of Claim.

March 19, 2013

Board forwarded letter to parties acknowledging extension of time in which to file Response to Statement of Claim.

March 19, 2013

Killian Construction transmitted filed a letter advising that the parties have agreed to extend the time for Safeco Insurance Company of America to file Response to Statement of Claim.

April 3, 2013

Safeco Insurance filed via facsimile an Entry of Appearance of Cameron A. Welch, Esquire and the law office of Cole, Schotz, Meisel, Forman & Leonard, P.A. on behalf of Safeco Insurance.

April 4, 2013

Safeco Insurance filed via U.S. Mail an Entry of Appearance of Cameron A. Welch, Esquire and the law office of Cole, Schotz, Meisel, Forman & Leonard, P.A. on behalf of Safeco Insurance.

April 12, 2013

Safeco Insurance filed Answer and New Matter and Notice to Plead.

April 12, 2013

Board forwarded letter to Plaintiff requesting response to New Matter.

April 12, 2013

Killian Construction filed Answer and New Matter and Counterclaim.

April 12, 2013

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

April 12, 2013

Board issued Acknowledgment letter and forwarded Answer and New Matter and Counterclaim to Attorney General.

April 19, 2013

Attorney General filed Acknowledgment of Answer and New Matter and Counterclaim form. Receipt of same acknowledged April 16, 2013.

April 22, 2013

Killian Construction transmitted via facsimile a letter requesting that a telephonic status conference be held by June 11, 2013.

April 23, 2013

Board forwarded letter to parties requesting scheduling information.

April 23, 2013

Killian Construction filed via U.S. Mail a letter requesting that a telephonic status conference be held by June 11, 2013.

April 24, 2013

Board forwarded letter to parties requesting proposed scheduling information.

May 10, 2013

Plaintiff filed a letter advising that the parties conferred and agreed upon a scheduling order which is attached.

June 3, 2013

Plaintiff filed Reply to Safeco's New Matter.

June 3, 2013

Plaintiff filed Reply to Killian's New Matter with Affirmative Defenses and Answer to Killian's Counterclaim with Affirmative Defenses.

June 3, 2013

Board forwarded letter to Killian requesting response to Plaintiff's Affirmative Defenses.

June 3, 2013

Board rendered Scheduling Order. Order as follows: "AND NOW, this 3rd day of June, 2013, 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 November 13, 2013;¹ 2. The last day for defendants' expert report, if any, to be provided to plaintiff is December 13, 2013;¹ 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by January 15, 2014;² 4. The last day for filing pre-trial motions is February 7, 2014;² 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than March 13, 2014 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, April 3, 2014 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 Monday, May 5, 2014 and running through Friday, May 16, 2014, 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 all parties of record.

June 7, 2013

Plaintiff filed Acceptance of Service of Scheduling Order dated June 3, 2013. Receipt of same acknowledged June 5, 2013.

June 10, 2013

Killian filed Acceptance of Service of Scheduling Order dated June 3, 2013. Receipt of same acknowledged June 7, 2013.

June 13, 2013

Safeco filed Acceptance of Service of Scheduling Order dated June 3, 2013. Receipt of same acknowledged June 6, 2013.

June 19, 2013

Killian filed Reply to Plaintiff's Affirmative Defenses.

June 19, 2013

Board forwarded letter directing parties to proceed with discovery.

July 3, 2013

Killian requested per telephone Subpoena 4009.21 - to produce documents.

July 5, 2013

Board forwarded Subpoena 4009.21 - to produce documents dated July 5, 2013 to Killian.

July 17, 2013

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

August 9, 2013

Killian filed Notice of Service of Killian's Answers and Objections to Bloomsburg's First Set of Interrogatories and Responses and Objections to Bloomsburg's First Set of Requests for Production of Documents.

August 19, 2013

Safeco filed Notice of Service of Answers and Objections to Plaintiff's First Set of Interrogatories and Responses and Objections to Plaintiff's First Set of Requests for Production of Documents.

August 19, 2013

Killian filed Notice of Service of Subpoena to Produce Documents or Things for Discovery.

August 19, 2013

Killian filed Certificate Prerequisite to Service of Subpoena Pursuant to Rule 4009.22.

September 4, 2013

Killian filed Certificate Prerequisite to Service of Subpoena Pursuant to Rule 4009.22.

September 4, 2013

Killian filed Notice of Service of Subpoena to Produce Documents or Things for Discovery.

September 12, 2013

Killian filed Certificate Prerequisite to Service of Subpoena Pursuant to Rule 4009.22.

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Killian filed Certificate Prerequisite to Service of Subpoena Pursuant to Rule 4009.22.

September 12, 2013

Killian filed Notice of Service of Subpoena to Produce Documents or Things for Discovery.

September 12, 2013

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September 12, 2013

Killian filed Notice of Service of Subpoena to Produce Documents or Things for Discovery.

September 12, 2013

Killian filed Notice of Service of Subpoena to Produce Documents or Things for Discovery.

September 18, 2013

Plaintiff requested via telephone Subpoena 234.1 - to attend with duces tecum and 4009.21 - to produce documents.

September 18, 2013

Board forwarded Subpoena 234.1 - to attend with duces tecum and 4009.21 - to produce documents dated September 18, 2013 to Plaintiff.

October 4, 2013

Plaintiff filed Certificate of Prerequisite to Service of Subpoena Notice of Service as to Power Steel.

October 4, 2013

Plaintiff filed Certificate of Prerequisite to Service of Subpoena Notice of Service as to R&R Drywall Co., Inc.

October 4, 2013

Plaintiff filed Certificate of Prerequisite to Service of Subpoena Notice of Service as to Bartholomew Concrete & Excavating.

October 4, 2013

Plaintiff filed Certificate of Prerequisite to Service of Subpoena Notice of Service as to Caretti, Inc.

October 24, 2013

Plaintiff filed Motion to Modify Scheduling Order.

October 25, 2013

Board rendered Amended Scheduling Order. Order as follows: "AND NOW, this 25th day of October, 2013, 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 December 18, 2013;¹ 2. The last day for defendants' expert report, if any, to be provided to plaintiff is January 24, 2014;¹ 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by February 14, 2014;² 4. The last day for filing pre-trial motions is February 21, 2014;² 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than March 13, 2014 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, April 3, 2014 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 Monday, May 5, 2014 and running through Friday, May 16, 2014, 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 all parties of record.

October 31, 2013

Plaintiff filed Acceptance of Service of Amended Scheduling Order dated October 25, 2013. Receipt of same acknowledged October 28, 2013.

December 9, 2013

Plaintiff filed Motion to Modify Scheduling Order and to Compel Responses to Discovery and proposed order.

December 10, 2013

Board forwarded letter to Defendants, with copy to Plaintiff, requesting a response to Plaintiff's motion to modify scheduling order and to compel responses to discovery.

December 26, 2013

Killian filed Response to Plaintiff's Motion to Modify Scheduling Order and to Compel Responses to Discovery.

December 27, 2013

Board forwarded letter to all parties requesting a date for a telephonic status conference.

January 2, 2014

Plaintiff transmitted via facsimile a letter advising that all parties are available for a telephonic conference call at 1:00 p.m. on January 29, 2014.

January 6, 2014

Plaintiff filed via U.S. Mail a letter advising that all parties are available for a telephonic conference call at 1:00 p.m. on January 29, 2014.

January 6, 2014

Board forwarded letter to parties scheduling a telephonic status conference for Wednesday, January 29, 2014 at 1:00 p.m.

January 16, 2014

Killian filed Uncontested Motion for Admission Pro Hac Vice of Hannah K. Hemry, Esquire.

January 16, 2014

Killian filed Uncontested Motion for Admission Pro Hac Vice of Ryan J. Watson, Esquire.

January 17, 2014

Killian filed Uncontested Motion for Admission Pro Hac Vice of Jason C. Smith, Esquire.

January 17, 2014

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 17th day of January, 2014, after review of Killian Construction Company's Uncontested Motion to Admit Attorney Jason C. Smith to Practice before this Court in this Case Pro Hac Vice, it is hereby **ORDERED** that: 1) Effective upon the date of this Order, Jason C. Smith shall be **ADMITTED pro hac vice** to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301 for the limited purpose of serving as co-counsel on behalf of Plaintiff in this matter; 2) Jason C. Smith, Esquire shall abide by all the rules of, and applicable to, practice before this Board, including all attorney disciplinary rules; and 3) Jason C. Smith, Esquire shall immediately notify this Board of any matter affecting their standing at the bar of any other court or jurisdiction where they may be admitted to practice. All correspondence with this Board shall continue to be accomplished through the Pennsylvania attorney of record." Copy forwarded to all parties of record.

January 17, 2014

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 17th day of January, 2014, after review of Killian Construction Company's Uncontested Motion to Admit Attorney Hannah K. Hemry to Practice before this Court in this Case Pro Hac Vice, it is hereby **ORDERED** that: 1) Effective upon the date of this Order, Hannah K. Hemry shall be **ADMITTED pro hac vice** to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301 for the limited purpose of serving as co-counsel on behalf of Plaintiff in this matter; 2) Hannah K. Hemry, Esquire shall abide by all the rules of, and applicable to, practice before this Board, including all attorney disciplinary rules; and 3) Hannah K. Hemry, Esquire shall immediately notify this Board of any matter affecting their standing at the bar of any other court or jurisdiction where they may be admitted to practice. All correspondence with this Board shall continue to be accomplished through the Pennsylvania attorney of record." Copy forwarded to all parties of record.

January 17, 2014

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 17th day of January, 2014, after review of Killian Construction Company's Uncontested Motion to Admit Attorney Ryan J. Watson to Practice before this Court in this Case Pro Hac Vice, it is hereby **ORDERED** that: 1) Effective upon the date of this Order, Ryan J. Watson shall be **ADMITTED pro hac vice** to the bar of the Commonwealth of Pennsylvania under Pennsylvania Bar Admission Rule 301 for the limited purpose of serving as co-counsel on behalf of Plaintiff in this matter; 2) Ryan J. Watson, Esquire shall abide by all the rules of, and applicable to, practice before this Board, including all attorney disciplinary rules; and 3) Ryan J. Watson, Esquire shall immediately notify this Board of any matter affecting their standing at the bar of any other court or jurisdiction where they may be admitted to practice. All correspondence with this Board shall continue to be accomplished through the Pennsylvania attorney of record." Copy forwarded to all parties of record.

January 22, 2014

Killian filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 20, 2014.

January 22, 2014

Killian filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 20, 2014.

January 22, 2014

Killian filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 20, 2014.

January 24, 2014

Safeco filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 22, 2014.

January 24, 2014

Safeco filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 22, 2014.

January 24, 2014

Safeco filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 22, 2014.

January 27, 2014

Killian filed via facsimile a proposed scheduling order in which all parties have agreed to as well as a letter advising that counsel for Killian is unavailable for the status conference on January 29, 2014 and requests that the pro hac vice attorneys be permitted to participate in the call without local counsel.

January 27, 2014

Killian filed a proposed scheduling order in which all parties have agreed to as well as a letter advising that counsel for Killian is unavailable for the status conference on January 29, 2014 and requests that the pro hac vice attorneys be permitted to participate in the call without local counsel.

January 30, 2014

Board rendered an Order. Order as follows: **"AND NOW**, this 30th day of January, 2014, it is hereby **ORDERED** and **DECREED** as follows: 1. Discovery shall be completed by September 26, 2014; 2. The last day for Plaintiff's expert report, if any, to be provided to Defendants is November 7, 2014; 3. The last day for Defendants' expert report, if any, to be provided to Plaintiff is December 19, 2014; 4. The last day to provide rebuttal expert reports shall be February 2, 2015; 5. The last day for filing pre-trial motions is February 16, 2015; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than March 23, 2015 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, April 2, 2015 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 Monday, May 4, 2015 and running through Friday, May 15, 2015, 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 all parties of record.

January 30, 2014

Plaintiff filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 22, 2014.

January 30, 2014

Plaintiff filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 22, 2014.

January 30, 2014

Plaintiff filed Acceptance of Service of Opinion and Order dated January 17, 2014. Receipt of same acknowledged January 22, 2014.

February 4, 2014

Killian filed Acceptance of Service of Second Amended Scheduling Order dated January 30, 2014. Receipt of same acknowledged February 3, 2014.

February 6, 2014

Safeco filed Acceptance of Service of Second Amended Scheduling Order dated January 30, 2014. Receipt of same acknowledged February 4, 2014.

February 7, 2014

Plaintiff filed Acceptance of Service of Second Amended Scheduling Order dated January 30, 2014. Receipt of same acknowledged February 4, 2014.

February 20, 2014

Plaintiff filed a letter withdrawing its motion to compel response to discovery requests.

April 2, 2014

Killian filed Praecipe to Withdraw and Entry of Appearance withdrawing appearance of Ciara C. Young, Esquire and entering appearance of Timothy J. Woolford, Esquire on behalf of Killian.

June 3, 2014

Safeco filed praecipe for entry of appearance of Timothy J. Woolford, Esquire and praecipe for withdrawal of appearance of Cameron Welch, Esquire, on behalf of Safeco Insurance Company.

December 8, 2014

Board forwarded letter to parties rescheduling pre-trial conference previously scheduled for April 2, 2015 at 1:00 p.m. to now commence on March 26, 2015 at 1:00 p.m.

February 27, 2015

Board forwarded Notice of Settlement Conference.

March 23, 2015

Plaintiff filed Pre-trial Statement as well as Expert Report concerning the Evaluation of the Renovation of Bloomsburg University's Elwell Residence Hall (3 volumes) and Expert Report concerning the Rebuttal to Quackenbush & Associates, Inc. Performance Evaluation of the Elwell Hall Renovations.

March 23, 2015

Killian & Safeco filed Pretrial Statement with Expert Report.

March 26, 2015

Board held pre-trial conference on March 26, 2015 at 1:00 p.m.

April 6, 2015

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

April 6, 2015

Board forwarded Subpoenas 234.1 - to attend with duces tecum dated April 6, 2015 to Plaintiff.

April 30, 2015

Plaintiff filed Joint Amended Pre-Trial Statement.

April 30, 2015

Board forwarded letter (via Facsimile and U.S. Mail) directing parties to provide one full set of drawings in paper format for the hearing.

May 4, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

May 5, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

May 6, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

May 7, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

May 8, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

May 11, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

May 12, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

May 13, 2015

Board hearing held in Board's Courtroom No. 1, 6th Floor, Fulton Bank Building, Harrisburg, Pa. (completed).

May 21, 2015

Testimony of hearing held May 4, 5, 6, 7 & 8, 2015.

May 28, 2015

Plaintiff filed Acceptance of Service of testimony of hearing held May 4, 5, 6, 7 & 8, 2015. Receipt of same acknowledged May 26, 2015.

May 29, 2015

Testimony of hearing held May 11, 2015 filed.

June 1, 2015

Testimony of hearing held May 12, 2015 filed.

June 2, 2015

Testimony of hearing held May 13, 2015 filed. Copy forwarded to attorney for Plaintiff. (Last Day)

June 8, 2015

Plaintiff filed Acceptance of Service of testimony of hearing held May 11, 12 & 13, 2015. Receipt of same acknowledged June 5, 2015.

July 17, 2015

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

August 17, 2015

Defendants filed Proposed Findings of Fact, Conclusions of Law and Brief.

September 1, 2015

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

January 29, 2016

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 29th day of January, 2016, **IT IS ORDERED** and **DECREED** that judgment be granted in favor of the Commonwealth of Pennsylvania, State System of Higher Education, Bloomsburg University ("University") against Killian Construction Company ("Killian"), in the sum of \$2,543,197. This sum consists of \$2,093,707, the net principal amount owed to the University for damages after resolution of the claims between the parties, and \$449,490 in prejudgment interest on that amount. No award is made to Killian on its claim. **IT IS FURTHER ORDERED** and **DECREED** that judgment be entered in favor of the Commonwealth of Pennsylvania, State System of Higher Education, Bloomsburg University ("University") against Safeco Insurance Company of America ("Safeco") in the sum of \$2,543,197. This sum consists of \$2,093,707, the net principal amount owed to the University by Safeco as performance bond surety on the Project and \$449,490 in prejudgment interest on that amount. The foregoing awards are several, not cumulative. The University is further awarded post-judgment interest on the outstanding amount of each judgment at the statutory rate for judgments (6% per annum) beginning on the date of this Order and continuing until said

judgment is paid in full. Each party herein will bear its own costs and attorney fees." Copy forwarded to Plaintiff, Defendant and Attorney General.

February 4, 2016

Chief Deputy Attorney General filed Acceptance of Service of Opinion and Order dated January 29, 2016. Receipt of same acknowledged February 2, 2016.

February 5, 2016

Plaintiff filed Acceptance of Service of Opinion and Order dated January 29, 2016. Receipt of same acknowledged February 3, 2016.

February 8, 2016

Defendants filed Acceptance of Service of Opinion and Order dated January 29, 2016. Receipt of same acknowledged February 3, 2016.

July 15, 2016

Plaintiff filed Notice of Satisfaction of Judgment.
