

Docket Number: 4097

KOBIN COAL CORPORATION AND HAZLETON SHAFT CORPORATION

Thomas J. Mosca, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF GENERAL SERVICES

~~Andrew S. Gordon, Chief Counsel~~  
David L. Narkiewicz, Assistant Chief Counsel  
Joseph M. Gavazzi, Assistant Counsel

AND

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF CORRECTIONS

~~Theron Perez, Chief Counsel~~  
David L. Narkiewicz, Assistant Chief Counsel  
Joseph M. Gavazzi, Assistant Counsel

**January 6, 2014**

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$890,800.00+.

---

**January 6, 2014**

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

---

**January 13, 2014**

Attorney General filed Acknowledgment of claim form. Receipt of same acknowledged January 9, 2014.

---

**February 6, 2014**

Defendants filed Answer and New Matter.

---

**February 7, 2014**

Board forwarded letter to Plaintiffs, with copy to Defendants requesting a response to Defendants' new matter.

---

**February 26, 2014**

Plaintiffs filed Reply to New Matter.

---

**February 26, 2014**

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

---

**August 29, 2014**

Defendants filed an Entry of Appearance entering Jospeh M. Gavazzi, Assistant Counsel as Co-Counsel for Defendants.

---

**September 2, 2014**

Plaintiffs filed a Notice of Service of Interrogatories and First Request for Production of Documents.

---

**October 21, 2014**

Defendants filed a Notice of Service of Department of General Services' Answers to Plaintiffs' Interrogatories.

---

**October 21, 2014**

Defendants filed a Notice of Service of Department of General Services' Answers to Plaintiffs' First Request for Production of Documents.

---

**October 21, 2014**

Defendants filed a Notice of Service of Department of Corrections' Answers to Plaintiffs' Interrogatories.

---

**October 21, 2014**

Defendants filed a Notice of Service of Department of Corrections' Answers to Plaintiffs' First Request for Production of Documents.

---

**September 23, 2015**

Defendants transmitted a letter via facsimile requesting a scheduling conference.

---

**September 28, 2015**

Plaintiffs transmitted a letter via facsimile providing dates in which the parties are available for a scheduling conference and requesting that Plaintiff be permitted to participate in the conference by telephone.

---

**September 29, 2015**

Board forwarded letter to parties setting status/scheduling conference for October 16, 2015 at 1:00 p.m.

---

**October 9, 2015**

Plaintiffs filed a letter advising that he will be attending the status/scheduling conference by teleconference and advising of a change of address.

---

**October 19, 2015**

Board rendered Scheduling Order. Order as follows: "**AND NOW**, this 19<sup>th</sup> day of October, 2015, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiffs' expert report, if any, to be provided to defendants is April 8, 2016; 2. The last day for defendants' expert report, if any, to be provided to plaintiffs is May 13, 2016; 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by June 17, 2016; 4. The last day for filing pre-trial motions is July 1, 2016; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than August 11, 2016 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, August 17, 2016 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, September 19, 2016 and running through Friday, September 23, 2016, or as otherwise 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 22, 2015**

Defendants filed Acceptance of Service of Scheduling Order dated October 19, 2015. Receipt of same acknowledged October 20, 2015.

---

**October 26, 2015**

Plaintiffs filed Acceptance of Service of Scheduling Order dated October 19, 2015. Receipt of same acknowledged October 23, 2015.

---

**June 10, 2016**

Plaintiffs filed Motion to Compel Department of Corrections and Brief in Support.

---

**June 10, 2016**

Plaintiffs filed Motion for Extension of Scheduling Order and Brief in Support.

---

**June 14, 2016**

Board forwarded letter to Defendants, with copy to Plaintiffs, requesting response to motion to compel.

---

**June 14, 2016**

Board forwarded letter to Defendants, with copy to Plaintiffs, requesting response to motion for extension.

---

**June 21, 2016**

Defendants transmitted via facsimile a letter advising that Defendants concur with Plaintiffs' motion for extension of scheduling order.

---

**June 21, 2016**

Defendants transmitted via facsimile a letter advising that Defendants are providing opposing counsel with an unredacted copy of the e-mail in dispute.

---

**June 23, 2016**

Plaintiffs transmitted via facsimile a letter agreeing to a 90 extension and advising that it has received a copy of the email in question and Plaintiffs' motion to compel is now moot.

---

**June 24, 2016**

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

---

**June 28, 2016**

Defendants transmitted via facsimile a letter providing date for status conference.

---

**June 28, 2016**

Board forwarded letter to parties scheduling a status conference for July 14, 2016 at 1:00 p.m.

---

**July 11, 2016**

Defendants filed motion for summary judgment and brief in support.

---

**July 11, 2016**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 11<sup>th</sup> day of July, 2016, upon consideration of Defendants' Motion for Summary Judgment and Brief in Support, it is hereby **ORDERED** and **DECREED** that said motion is **DENIED** as untimely filed." Copy forwarded to Plaintiffs and Defendants.

---

**July 14, 2016**

Status Conference held on July 14, 2016 at 1:00 p.m.

---

**July 15, 2016**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 15<sup>th</sup> day of July, 2016, pursuant to discussions between the parties at the status conference held July 14, 2016, it is hereby **ORDERED** that the dates set forth in the Board's Scheduling Order of October 19, 2015, including the hearing dates, are postponed indefinitely. The parties are to notify the Board if and when they wish to reschedule the hearing in this case." Copy forwarded to all parties of record.

---

**July 18, 2016**

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 18<sup>th</sup> day of July, 2016, it is hereby **ORDERED** and **DECREED** that Plaintiffs' Motion to Compel against the Department of Corrections is **DENIED** as **MOOT**." Copy forwarded to all parties of record.

---

**July 18, 2016**

Plaintiffs filed Acceptance of Service of Opinion and Order dated July 11, 2016. Receipt of same acknowledged July 11, 2016.

---

**July 20, 2016**

Defendants filed Acceptance of Service of Opinion and Order dated July 15, 2016. Receipt of same acknowledged July 18, 2016.

---

**July 20, 2016**

Defendants filed Acceptance of Service of Opinion and Order dated July 18, 2016. Receipt of same acknowledged July 19, 2016.

---

**July 29, 2016**

Plaintiffs transmitted via facsimile a letter requesting the Board issue a new Scheduling Order and requesting that no discovery take place during August.

---

**August 1, 2016**

Board forwarded letter via Facsimile & U.S. Mail to Plaintiffs, with copy to Defendants, requesting dates for close of discovery and commencement of hearing.

---

**August 1, 2016**

Plaintiffs filed Acceptance of Service of Order dated July 18, 2016. Receipt of same acknowledged July 27, 2016.

---

**August 1, 2016**

Plaintiffs filed Acceptance of Service of Order dated July 15, 2016. Receipt of same acknowledged July 27, 2016.

---

**September 1, 2016**

Board forwarded second letter via Facsimile & U.S. Mail to Plaintiffs, with copy to Defendants, requesting dates for close of discovery and commencement of hearing.

---

**September 15, 2016**

Plaintiffs transmitted via facsimile a letter providing proposed dates for the new scheduling order. Defendants concur.

---

**September 16, 2016**

Board rendered Revised Scheduling Order. Order as follows: "**AND NOW**, this 16<sup>th</sup> day of September, 2016, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiffs' expert report, if any, to be provided to defendants is November 30, 2016;<sup>1</sup> 2. The last day for defendants' expert report, if any, to be provided to plaintiffs is December 30, 2016;<sup>1</sup> 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by March 31, 2017;<sup>2</sup> 4. The last day for filing pre-trial motions is April 21, 2017;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than Friday, June 2, 2017 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, June 7, 2017 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, July 10, 2017 and running through Friday, July 14, 2017, or as otherwise 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 Plaintiffs and Defendants.

---



**September 21, 2016**

Defendants filed Acceptance of Service of Revised Scheduling Order dated September 16, 2016. Receipt of same acknowledged September 19, 2016.

---

**October 3, 2016**

Plaintiffs filed Acceptance of Service of Revised Scheduling Order dated September 16, 2016. Receipt of same acknowledged September 28, 2016.

---

**January 30, 2017**

Defendants filed Notice of Service of First Set of Interrogatories and First Request for Production of Documents.

---

**March 29, 2017**

Plaintiffs filed Motion for Extension of Revised Scheduling Order

---

**March 31, 2017**

Board rendered Second Revised Scheduling Order. Order as follows: **"AND NOW**, this 31st day of March, 2017, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiffs' expert report, if any, to be provided to defendants was November 30, 2016;<sup>1</sup> 2. The last day for defendants' expert report, if any, to be provided to plaintiffs was December 30, 2016;<sup>1</sup> 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by June 7, 2017;<sup>2</sup> 4. The last day for filing pre-trial motions is June 21, 2017;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than Thursday, August 3, 2017 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, August 9, 2017 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, September 11, 2017 and running through Friday, September 15, 2017, or as otherwise 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 Plaintiffs and Defendants.

---

**April 6, 2017**

Plaintiffs transmitted via facsimile a letter requesting a third revised scheduling order to be held in either August, September, or October. Plaintiff states Defendant, Mr. Gavazzi, concurs.

---

**April 7, 2017**

Board rendered Third Revised Scheduling Order. Order as follows: "**AND NOW**, this 7th day of April, 2017, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiffs' expert report, if any, to be provided to defendants was November 30, 2016;<sup>1</sup> 2. The last day for defendants' expert report, if any, to be provided to plaintiffs was December 30, 2016;<sup>1</sup> 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by May 15, 2017;<sup>2</sup> 4. The last day for filing pre-trial motions is May 30, 2017;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than Wednesday, July 5, 2017 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Tuesday, July 11, 2017 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, August 7, 2017 and running through Friday, August 11, 2017, or as otherwise 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 Plaintiffs and Defendants.

---

**April 12, 2017**

Plaintiffs filed Acceptance of Service of Third Revised Scheduling Order dated April 7, 2017. Receipt of same acknowledged April 13, 2017.

---

**May 3, 2017**

Defendants filed Acceptance of Service of Third Revised Scheduling Order dated April 7, 2017. Receipt of same acknowledged April 11, 2017.

---

**May 30, 2017**

Defendants transmitted via facsimile a letter requesting a teleconference to discuss amending the Third Revised Scheduling Order.

---

**May 30, 2017**

Board forwarded letter to parties (via facsimile & U.S. Mail) requesting prompt advise as to whether a hearing scheduled for October 3-7, 2017 would work for both parties.

---

**May 31, 2017**

Plaintiffs transmitted via facsimile a letter advising that Plaintiffs are available for a hearing the week of October 2, 2017.

---

**May 31, 2017**

Defendants transmitted via facsimile a letter advising that Defendants are available for a hearing the week of October 2, 2017 contingent upon the Plaintiffs' immediate compliance with pervious written responses.

---

**June 1, 2017**

Board rendered Fourth Revised Scheduling Order. Order as follows: **"AND NOW**, this 1<sup>st</sup> day of June, 2017, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiffs' expert report, if any, should have been provided to defendants by January 20, 2017;<sup>1</sup> 2. The last day for defendants' expert report, if any, should have been provided to plaintiffs by February 21, 2017;<sup>1</sup> 3. All discovery, including exchange of any further rebuttal expert reports, shall be completed by July 14, 2017;<sup>2</sup> 4. The last day for filing pre-trial motions is July 21, 2017;<sup>2</sup> 5. Pre-trial statements of both parties shall be filed

with the Board and served upon one another no later than Thursday, August 31, 2017 (Please note BOC R.P. 501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Thursday, September 7, 2017 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, October 3, 2017 and running through Friday, October 6, 2017, or as otherwise 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 Plaintiffs and Defendants.

---

**June 14, 2017**

Plaintiffs filed Acceptance of Service of Fourth Revised Scheduling Order dated June 1, 2017. Receipt of same acknowledged June 12, 2017.

---

**June 27, 2017**

Defendants filed Notice of Service of Notice of Oral Deposition of Dan Nestor.

---

**August 10, 2017**

Board forwarded Notice of Settlement Conference.

---

**August 14, 2017**

Defendants transmitted via facsimile a letter requesting that the reschedule the pre-trial conference currently scheduled for September 7, 2017 due to a scheduling conflict.

---

**August 15, 2017**

Board rendered Schedule Revision Order. Order as follows: "**AND NOW**, this 15th day of August, 2017, the pre-trial conference currently scheduled for Thursday, September 7, 2017 is moved to Tuesday, September 12, 2017 at 1:00 p.m. All other dates and times in the Fourth Revised Scheduling Order remain the same." Copy forwarded to Plaintiffs and Defendants.

**August 21, 2017**

Defendants filed Acceptance of Service of Schedule Revision Order dated August 15, 2017. Receipt of same acknowledged August 18, 2017.

---

**August 28, 2017**

Plaintiffs filed Acceptance of Service of Schedule Revision Order dated August 15, 2017. Receipt of same acknowledged August 24, 2017.

---

**August 31, 2017**

Defendants filed Prehearing Memorandum.

---

**September 1, 2017**

Plaintiff filed Prehearing Memorandum.

---

**September 12, 2017**

Board pre-trial conference held at 200 North Third Street, Suite 700, Harrisburg, PA 17101.

---

**September 13, 2017**

Board forwarded letter, via Facsimile & U.S. Mail, directing number of copies required for hearing exhibits.

---

**September 22, 2017**

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

---

**September 22, 2017**

Board forwarded four Subpoenas 234.1 - to attend with duces tecum dated September 22, 2017 to Plaintiff.

---

**September 22, 2017**

Defendant filed Supplement to Prehearing Memorandum.

---

**September 27, 2017**

Plaintiff filed Supplement to Prehearing Memorandum.

---

**October 3, 2017**

Board hearing held in Board's Courtroom, 6th Floor, Fulton Bank Building, Harrisburg, Pa.

---

**October 4, 2017**

Board hearing held in Board's Courtroom, 6th Floor, Fulton Bank Building, Harrisburg, Pa. LAST DAY

---

**October 19, 2017**

Testimony of hearing held October 3-4, 2017 filed. Board forwarded copy of testimony of hearing held October 3-4, 2017 to Defendant. Last Day

---

**October 23, 2017**

Defendants filed Acceptance of Service of testimony of hearing held October 3-4, 2017 dated October 19, 2017. Receipt of same acknowledged October 19, 2017.

---

**November 20, 2017**

Plaintiffs filed Findings of Fact, Conclusions of Law, Post Hearing Brief and an electronic version (flash drive).

---

**December 20, 2017**

Defendants filed Findings of Fact, Conclusions of Law, Post Hearing Brief and an electronic version.

---

**January 16, 2018**

Plaintiffs filed Reply Brief.

---

**January 19, 2018**

Defendant filed motion to strike Plaintiff's reply brief.

---

**January 22, 2018**

Board forwarded letter via facsimile & U.S. Mail to Plaintiffs requesting response to motion to strike.

---

**January 22, 2018**

Plaintiffs transmitted via facsimile a letter advising that they had not yet received Defendants' Motion to Strike and would ask that opposing counsel email a copy of said motion.

---

**January 29, 2018**

Plaintiffs transmitted via facsimile a letter advising that they still have not yet received Defendants' Motion to Strike and advising that it will be difficult to respond within the ten days set forth by the Board due to a very full calendar.

---

**January 29, 2018**

Defendants transmitted via facsimile a letter advising that they are sending a scanned copy of the motion via e-mail to opposing counsel.

---

**January 29, 2018**

Board forwarded a copy of Defendants' motion to strike to Plaintiffs via facsimile & U.S. Mail, with copy to Defendants.

---

**February 2, 2018**

Plaintiffs filed Answer to Motion to Strike Reply Brief.

---

**February 5, 2018**

Board rendered Order. Order as follows: **"AND NOW**, this 5<sup>th</sup> day of February 2018, upon consideration of the Department of General Services' Motion to Strike Plaintiffs' Reply Brief as untimely filed and Plaintiffs' Answer thereto, it is hereby **ORDERED** and **DECREED** that the Motion to Strike is **DENIED**." Copy forwarded to all parties of record.

---

**February 12, 2018**

Plaintiffs filed Acceptance of Service of Order dated February 5, 2018. Receipt of same acknowledged February 8, 2018.

---

**February 13, 2018**

Defendants filed Acceptance of Service of Order dated February 5, 2018. Receipt of same acknowledged February 8, 2018.

---

**April 2, 2018**

Board rendered Final Opinion and Order. Order as follows: "**AND NOW**, this 2<sup>nd</sup> day of April, 2018, it is **ORDERED** and **DECREED** that judgment of **NO AWARD** is entered in favor of Defendants, Department of General Services and Department of Corrections, and against Plaintiffs, Robin Coal Corporation and Hazleton Shaft Corporation." Copy forwarded to all parties of record.

---

**April 4, 2018**

Defendants filed Acceptance of Service of Opinion and Order dated April 21, 2018. Receipt of same acknowledged April 3, 2018.

---

**April 9, 2018**

Attorney General filed Acceptance of Service of Opinion and Order dated April 21, 2018. Receipt of same acknowledged April 5, 2018.

---

**May 2, 2018**

Plaintiffs filed Acceptance of Service of Opinion and Order dated April 21, 2018. Receipt of same acknowledged April 4, 2018.

---

**May 2, 2018**

Plaintiffs filed a copy of Petition for Review as filed in Commonwealth Court.

---



**May 2, 2018**

Commonwealth Court filed Notice of Filing Petition for Review.  
No. 600 CD 2018.

---

**June 1, 2018**

Board filed original file and description of all documents, transcripts of testimony, exhibits and other material comprising the record from the Board of Claims to Commonwealth Court. Copy forwarded to Plaintiff and Defendant.

---

**January 10, 2019**

Commonwealth Court forwarded Order. Order as follows: "AND NOW, this 7<sup>th</sup> day of January, 2019, the April 2, 2018 order of the Board of Claims is hereby AFFIRMED."

---

**February 26, 2019**

File returned from Commonwealth Court.

---