

Docket Number: 4142

NEW ENTERPRISE STONE & LIME, INC.

James W. Kutz, Esquire
~~Ashley Brooke Nichols, Esquire~~

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION**

~~William J. Cressler, Chief Counsel~~
Robert T. Kuntz, Assistant Counsel

May 12, 2016

Plaintiff filed Complaint, proof of mailing and filing fee.
Amount of Claim: \$5,591,454.09+.

May 13, 2016

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

May 18, 2016

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged May 16, 2016.

June 10, 2016

Defendant filed answer and new matter as well as notice to plead.

June 13, 2016

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

June 17, 2016

Plaintiff requested via telephone one Subpoena 4009.21 - to produce documents.

June 20, 2016

Board forwarded one Subpoena 4009.21 - to produce documents dated June 20, 2016 to Plaintiff.

June 29, 2016

Plaintiff filed Praecipe to Withdraw Appearance of Ashley Brooke Nichols on behalf of Plaintiff.

June 30, 2016

Plaintiff filed its reply to new matter.

June 30, 2016

Plaintiff filed a letter requesting that a status conference be scheduled.

July 1, 2016

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

July 1, 2016

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

July 12, 2016

Plaintiff transmitted via facsimile a letter advising that the parties are available to for status conference on July 28, 2016, as well as, July 17, 2016.

July 12, 2016

Board scheduled status conference for July 28, 2016 at 1:00 p.m.

July 19, 2016

Defendant filed Notice of Service of Deposition Upon Oral Examination, Defendant's Request for Production of Documents and Defendant's Interrogatories to Plaintiff.

July 28, 2016

Board held status conference.

July 29, 2016

Board rendered an order. Order as follows: "**AND NOW**, this 29th day of July, 2016, it is hereby **ORDERED** and **DECREED** as follows:

1. The last day for plaintiff's expert report, if any, to be provided to the defendant is March 2, 2018; 2. The last day for defendant's expert report, if any, to be provided to the plaintiff is April 6, 2018; 3. Any further expert rebuttal reports shall be provided to opponent by May 11, 2018; 4. All discovery for this matter shall be completed by June 11, 2018; 5. The last day for filing pre-trial motions is June 29, 2018; 6. Pre-trial statements of all parties shall be filed with the Board and served upon one another no later than August 8, 2018 (Please note BOC R.P. 899.501(b) and (c)(3)); 7. A pre-trial conference is scheduled for Wednesday, August 15, 2018 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 8. This matter is set for hearing beginning on Monday, September 10, 2018 and running through Friday, October 5, 2018, 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 Plaintiff and Defendant.

August 4, 2016

Defendant filed Acceptance of Service of Scheduling Order dated July 29, 2016. Receipt of same acknowledged August 4, 2016.

August 24, 2016

Defendant filed Acceptance of Service of Scheduling Order dated July 29, 2016. Receipt of same acknowledged August 5, 2016.

September 16, 2016

Defendant requested via telephone five Subpoenas 4009.21 - to produce documents.

September 16, 2016

Board forwarded five Subpoenas 4009.21 - to produce documents dated September 16, 2016 to Defendant.

December 16, 2016

Plaintiff requested via telephone two Subpoenas 4009.21 - to produce documents.

December 19, 2016

Board forwarded two Subpoenas 4009.21 - to produce documents dated December 19, 2016 to Plaintiff.

August 16, 2017

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.23.

October 18, 2017

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.23.

October 18, 2017

Plaintiff requested via letter three Subpoenas 4009.21 - to produce documents.

October 19, 2017

Board forwarded three Subpoenas 4009.21 - to produce documents dated October 19, 2017 to Plaintiff.

January 18, 2016

Plaintiff filed a letter on behalf of both parties requesting slight revisions to the Scheduling Order and proposed revised scheduling order.

January 29, 2018

Board rendered a Revised Scheduling Order. Order as follows: "AND NOW, this 29th day of January, 2018, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to the defendant is April 2, 2018; 2. The last day for defendant's expert report, if any, to be provided to the plaintiff is May 7, 2018; 3. Any further expert rebuttal reports shall be provided to opponent by June 11, 2018; 4. All discovery for this matter shall be completed by July 20, 2018; 5. The last day for filing pre-trial motions is June 29, 2018; 6. Pre-trial statements of all parties shall be filed with the Board and served upon one another no later than August 8, 2018 (Please note BOC R.P. 899.501(b) and (c)(3)); 7. A pre-trial conference is scheduled for Wednesday, August 15, 2018 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 8. This matter is set for hearing beginning on Monday, September 10, 2018 and running through Friday, October 5, 2018, 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 Plaintiff and Defendant.

February 1, 2018

Plaintiff filed acceptance of service of Revised Scheduling Order dated January 29, 2018. Receipt of same acknowledged January 30, 2018.

February 5, 2018

Defendant filed Certificate Prerequisite to Service of a Subpoena Pursuant to Rule 4009.23.

April 24, 2018

Defendant filed a letter requesting the Board to extend its expert reports due date to May 25, 2018 and rebuttal reports to June 29, 2018 and advising that the parties have mutually agreed.

April 24, 2018

Board rendered a Second Revised Scheduling Order. Order as follows: **"AND NOW**, this 24th day of April, 2018, it is hereby **ORDERED** and **DECREED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to the defendant is April 2, 2018; 2. The last day for defendant's expert report, if any, to be provided to the plaintiff is May 25, 2018; 3. Any further expert rebuttal reports shall be provided to opponent by June 29, 2018; 4. All discovery for this matter shall be completed by July 20, 2018; 5. The last day for filing pre-trial motions is June 29, 2018; 6. Pre-trial statements of all parties shall be filed with the Board and served upon one another no later than August 8, 2018 (Please note BOC R.P. 899.501(b) and (c)(3)); 7. A pre-trial conference is scheduled for Wednesday, August 15, 2018 at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 8. This matter is set for hearing beginning on Monday, September 10, 2018 and running through Friday, October 5, 2018, 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 Plaintiff and Defendant.

April 27, 2018

Defendant filed acceptance of service of Second Revised Scheduling Order dated April 24, 2018. Receipt of same acknowledged April 26, 2018.

May 3, 2018

Plaintiff filed acceptance of service of Second Revised Scheduling Order dated April 24, 2018. Receipt of same acknowledged April 27, 2018.

May 8, 2018

Plaintiff requested via letter five Subpoenas 234.1 - to testify.

May 9, 2018

Board forwarded five Subpoenas 234.1 - to testify dated May 9, 2018 to Plaintiff.

June 14, 2018

Parties filed a letter advising that they have reached a tentative settlement and requesting that the case be removed from the hearing schedule.

January 23, 2019

Plaintiff filed a joint praecipe to discontinue.

January 25, 2019

Board rendered an Order. Order as follows: "**AND NOW**, this 25th day of January, 2019, upon receipt of a joint Praecipe executed by James W. Kutz, Esquire, on behalf of Plaintiff, New Enterprise Stone & Lime, Inc. and Robert T. Kuntz, Assistant Counsel, on behalf of Defendant, Commonwealth of Pennsylvania, Department of Transportation, requesting that the Board please mark the above-referenced action settled, ended and discontinued with prejudice, docketed with this Board under date of January 23, 2019, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

January 30, 2019

Plaintiff filed acceptance of service of order dated January 25, 2019. Receipt of same acknowledged January 29, 2019.
