

Docket Number: 4194

A.P. CONSTRUCTION, INC.

Mason Avrigian, Jr., Esquire
Jeffrey P. Wallack, Esquire
Jason E. Powell, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
PHILADELPHIA REGIONAL PORT AUTHORITY
a/k/a PHILAPORT, THE PORT OF PHILADELPHIA**

~~Gregory V. Iannarelli, Chief Counsel~~
Francis X. Crowley, Esquire

December 27, 2018

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

December 28, 2018

Board issued Acknowledgment letter requesting response from Defendant and forwarding a copy of the Statement of Claim to Attorney General.

January 14, 2019

Attorney General filed acknowledgment of Statement of Claim form. Receipt of same acknowledged January 7, 2019.

January 28, 2019

Defendant filed Answer with New Matter and Counterclaim.

January 28, 2019

Board issued Acknowledgment letter requesting a response from Plaintiff and forwarding a copy of the Answer with New Matter and Counterclaim to Attorney General.

February 11, 2019

Attorney General filed acknowledgment of answer, new matter and crossclaim form. Receipt of same acknowledged February 6, 2019.

February 14, 2019

Plaintiff filed Reply to New Matter and Answer and New Matter to Counterclaim.

February 14, 2019

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

March 7, 2019

Defendant filed reply to Plaintiff's new matter.

March 8, 2019

Board forwarded letter directing parties to proceed with discovery.

June 27, 2019

Plaintiff transmitted via facsimile a letter requesting a status conference for the purpose of scheduling discovery deadlines, filing deadlines, prehearing proceedings and hearing dates.

July 1, 2019

Plaintiff filed via U.S. Mail a letter requesting a status conference for the purpose of scheduling discovery deadlines, filing deadlines, prehearing proceedings and hearing dates.

July 1, 2019

Board forwarded letter to parties requesting proposed hearing dates.

July 15, 2019

Plaintiff transmitted via facsimile Proposed Scheduling Order.

July 15, 2019

Defendant transmitted via facsimile Proposed Scheduling Order.

July 16, 2019

Plaintiff filed via U.S. Mail Proposed Scheduling Order.

July 16, 2019

Defendant filed via U.S. Proposed Scheduling Order.

July 17, 2019

Board rendered Scheduling Order. Order as follows: "AND NOW, this 17th day of July, 2019, it is hereby **ORDERED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant and filed with the Board is April 24, 2020;¹ 2. The last day for defendants' expert report, if any, to be provided to plaintiff and filed with the Board is May 29, 2020;¹ 3. All discovery (including exchange and Board filing of any further rebuttal expert reports) shall be completed by June 26, 2020;² 4. The last day for filing pre-trial motions is July 10, 2020;² 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than August 24, 2020 (Please note BOC R.P. 899.501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, September 2, 2020 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 13, 2020 and running through Friday, October 23, 2020, 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.

July 25, 2019

Defendant filed acceptance of service of Scheduled Order dated July 17, 2019. Receipt of same acknowledged July 23, 2019.

July 25, 2019

Plaintiff filed acceptance of service of Scheduled Order dated July 17, 2019. Receipt of same acknowledged July 23, 2019.

September 23, 2019

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

September 23, 2019

Board forwarded two Subpoenas 4009.21 - to produce documents dated September 23, 2019 to Plaintiff.

January 28, 2020

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

January 28, 2020

Board forwarded one Subpoena 4009.21 - to produce documents dated January 28, 2020 to Defendant.

March 12, 2020

Defendant filed Certificate Prerequisite to the Service of a Subpoena Pursuant to Rule 4009.22.

March 19, 2020

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

March 25, 2020

Board forwarded one Subpoena 234.1 - to attend with duces tecum dated March 25, 2020 to Plaintiff.

August 3, 2020

Board forwarded Notice of Settlement Conference.

August 10, 2020

Plaintiff transmitted via facsimile a letter advising that the parties have agreed to extending deadlines and issuing an amended scheduling order.

August 12, 2020

Board rendered an Amended Scheduling Order. Order as follows: **"AND NOW**, this 12th day of August, 2020, it is hereby **ORDERED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant and filed with the Board is October 15, 2020; 2. The last day for defendants' expert report, if any, to be provided to plaintiff and filed with the Board is November 16, 2020; 3. All discovery (including exchange and Board filing of any further rebuttal expert reports) shall be completed by December 18, 2020; 4. The last day for filing pre-trial motions

is January 6, 2021; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than February 19, 2021 (Please note BOC R.P. 899.501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, March 3, 2021 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, April 12, 2021 and running through Friday, April 23, 2021, 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 14, 2020

Plaintiff filed via U.S. Mail a letter advising that the parties have agreed to extending deadlines and issuing an amended scheduling order.

August 24, 2020

Plaintiff filed acceptance of service of Amended Scheduled Order dated August 12, 2020. Receipt of same acknowledged August 20, 2020.

October 20, 2020

Plaintiff filed Motion to Enforce Compliance with Subpoena Directed to Industrial & Crane Services, Inc.

October 21, 2020

Board forwarded letter to Industrial & Crane Services, Inc., with copy to Plaintiff and Defendant, requesting response to motion.

November 20, 2020

Mr. Frank Emmerich, counsel for Industrial & Crane Services, Inc., transmitted via facsimile a letter requesting to stay the pending motion to enforce compliance with subpoena.

November 23, 2020

Mr. Frank Emmerich, counsel for Industrial & Crane Services, Inc., filed via U.S. Mail a letter requesting to stay the pending motion to enforce compliance with subpoena.

November 24, 2020

Board rendered Order. Order as follows: **"AND NOW**, this 24th day of November, 2020, pursuant to Mr. Frank Emmerich, Jr.'s letter dated November 20, 2020, on behalf of Industrial & Crane Services, Inc., it is hereby **ORDERED** and **DECREED** that action on the motion to enforce compliance with subpoena in this case is **STAYED** until further action by the Board. Any of the entities involved may request removal of the stay as it deems appropriate." Copy forwarded to all entities involved.

November 25, 2020

Plaintiff filed Motion to Extend Amended Scheduling Order Deadlines (uncontested) and proposed order.

December 2, 2020

Board rendered an Order. Order as follows: **"AND NOW**, this 2nd day of December, 2020, it is hereby **ORDERED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant and filed with the Board is February 19, 2021; 2. The last day for defendants' expert report, if any, to be provided to plaintiff and filed with the Board is March 26, 2021; 3. All discovery (including exchange and Board filing of any further rebuttal expert reports) shall be completed by April 30, 2021; 4. The last day for filing pre-trial motions is May 14, 2021; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than June 21, 2021 (Please note BOC R.P. 899.501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Wednesday, June 30, 2021 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 2, 2021 and running through Friday, August 13, 2021, 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.

December 7, 2020

Industrial & Crane Services, Inc. filed acceptance of service of Order dated November 24, 2020. Receipt of same acknowledged December 3, 2020.

December 16, 2020

Defendant filed acceptance of service of Second Amended Scheduling Order dated December 2, 2020. Receipt of same acknowledged December 10, 2020.

December 21, 2020

Plaintiff filed acceptance of service of Second Amended Scheduling Order dated December 2, 2020. Receipt of same acknowledged December 15, 2020.

April 23, 2021

Plaintiff filed Motion to Compel the Deposition of Jeff Theobald and Brief in Support as well as Proposed Order.

April 26, 2021

Board forwarded letter to Defendant, with copy to Plaintiff, requesting response to motion to compel.

April 30, 2021

Plaintiff transmitted via facsimile a letter advising that the parties jointly request a status conference.

May 13, 2021

Board forwarded letter to parties requesting date for status conference.

May 14, 2021

Plaintiff transmitted via facsimile a letter advising that the parties are available to attend the telephonic status conference on May 24, 2021 at 2:00 p.m.

May 17, 2021

Board forwarded letter to parties scheduling telephonic status conference on May 24, 2021 at 2:00 p.m.

May 24, 2021

Board held telephonic status conference on May 24, 2021.

May 25, 2021

Plaintiff transmitted via facsimile the parties' proposed scheduling order.

June 7, 2021

Plaintiff filed via U.S. Mail the parties' proposed scheduling order.

June 9, 2021

Board rendered a Third Amended Scheduling Order. Order as follows: **"AND NOW**, this 9th day of June, 2021, it is hereby **ORDERED** as follows: 1. The last day for plaintiff's expert report, if any, to be provided to defendant and filed with the Board is July 16, 2021; 2. The last day for defendants' expert report, if any, to be provided to plaintiff and filed with the Board is August 13, 2021; 3. All discovery (including exchange and Board filing of any further rebuttal expert reports) shall be completed by September 13, 2021; 4. The last day for filing pre-trial motions is September 27, 2021; 5. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than October 25, 2021 (Please note BOC R.P. 899.501(b) and (c)(3)); 6. A pre-trial conference is scheduled for Monday, November 15, 2021 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, December 6, 2021 and running through Friday, December 17, 2021, 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.

June 16, 2021

Plaintiff transmitted via facsimile acceptance of service of Third Amended Scheduling Order. Receipt of same acknowledged June 16, 2021.

June 17, 2021

Defendant filed acceptance of service of Third Amended Scheduling Order dated June 9, 2021. Receipt of same acknowledged June 16, 2021.

June 18, 2021

Plaintiff filed acceptance of service of Third Amended Scheduling Order dated June 9, 2021. Receipt of same acknowledged June 16, 2021.

June 29, 2021

Plaintiff transmitted via facsimile a letter requesting two subpoenas 234.1 - to attend with duces tecum.

June 29, 2021

Board forwarded two Subpoena 234.1 - to attend with duces tecum dated June 29, 2021 to Plaintiff.

July 2, 2021

Plaintiff filed via U.S. mail a letter requesting two subpoenas 234.1 - to attend with duces tecum.

August 2, 2021

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 2nd day of August, 2021, it is **ORDERED** and **DECREED** that Plaintiff's Motion to Compel Deposition of Jeff Theobald is **GRANTED**. Defendant shall produce Mr. Theobald for deposition within thirty (30) days of the date of this Order." Copy forwarded to Plaintiff and Defendant.

August 3, 2021

Defendant transmitted via facsimile a letter requesting three subpoenas 234.1 - to attend with duces tecum and three subpoenas 4009.21 - to produce documents.

August 3, 2021

Defendant filed via U.S. mail a letter requesting three subpoenas 234.1 - to attend with duces tecum and three subpoenas 4009.21 - to produce documents.

August 3, 2021

Board forwarded three Subpoenas 234.1 - to attend with duces tecum and three subpoenas 4009.21 - to produce documents dated August 3, 2021 to Defendant.

September 13, 2021

Plaintiff filed Motion to Enforce Subpoena Directed to Gannett Fleming, Inc.

September 14, 2021

Board forwarded letter to Gannett Fleming, Inc., with copy to Plaintiff and Defendant, requesting response to motion.

October 6, 2021

Defendant filed Expert Report of Resolution Management Consultants.

October 19, 2021

Plaintiff transmitted via Facsimile a letter regarding scheduling issues pertaining to the pre-trial conference and the pre-trial statement due date.

October 20, 2021

Plaintiff filed via U.S. Mail a letter regarding scheduling issues pertaining to the pre-trial conference and the pre-trial statement due date.

October 20, 2021

Plaintiff transmitted via facsimile a letter advising that Plaintiff no longer has a conflict with the pre-trial conference scheduled for November 15, 2021 at 1:00 p.m. and does not request a rescheduling.

October 21, 2021

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 21st day of October, 2021, it is **ORDERED** and **DECREED** that Plaintiff's Motion to Enforce Subpoena Directed to Gannett Fleming, Inc. is **GRANTED**. Gannett Fleming, Inc. shall comply with said subpoena within 15 days of the date of this Order." Copy forwarded to all parties of record as well as counsel for Gannett Fleming, Inc.

October 21, 2021

Board forwarded Notice of Settlement Conference.

October 22, 2021

Board rendered a Fourth Amended Scheduling Order. Order as follows: **"AND NOW**, this 22nd day of October, 2021, it is hereby **ORDERED** as follows: Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than **noon on November 10, 2021** (Please note BOC R.P. 899.501(b) and (c)(3)); The Board's Third Amended Scheduling Order issued June 9, 2021 shall remain in effect as to all other matters." Copy forwarded to Plaintiff and Defendant.

October 25, 2021

Plaintiff filed via U.S. Mail a letter advising that Plaintiff no longer has a conflict with the pre-trial conference scheduled for November 15, 2021 at 1:00 p.m. and does not request a rescheduling.

October 25, 2021

Plaintiff filed acceptance of service of Fourth Amended Scheduling Order dated October 22, 2021. Receipt of same acknowledged October 25, 2021.

October 25, 2021

Defendant filed acceptance of service of Fourth Amended Scheduling Order dated October 22, 2021. Receipt of same acknowledged October 25, 2021.

October 28, 2021

Defendant filed acceptance of service of Fourth Amended Scheduling Order dated October 22, 2021. Receipt of same acknowledged October 25, 2021.

November 1, 2021

Plaintiff filed acceptance of service of Opinion and Order dated October 21, 2021. Receipt of same acknowledged November 1, 2021.

November 9, 2021

Plaintiff filed Expert Report of Mr. John M. Walker, PE, PSP, CFCC.

November 10, 2021

Defendant filed prehearing memorandum.

November 10, 2021

Plaintiff filed its pre-trial statement.

November 15, 2021

Board held Pre-Trial Conference on November 15, 2021 at 1:00 p.m.

September 12, 2022

Parties filed a joint Praecipe to Mark All Claims Settled, Discontinued, and Ended.

September 14, 2022

Board rendered Order. Order as follows: "**AND NOW**, this 14th day of September, 2022, upon receipt of a Praecipe executed by Mason Avrigian, Jr., Esquire, on behalf of Plaintiff, A.P. Construction, Inc., and Francis X. Crowley, Esquire, on behalf of Defendant, Philadelphia Regional Port Authority a/k/a PhilaPort, The Port of Philadelphia, requesting that the Board mark all claims in the above-captioned matter as settled, discontinued and ended, with prejudice, docketed with this Board under date of September 12, 2022, it is **ORDERED** and **DIRECTED** that the above-captioned matter be marked settled, discontinued and ended with prejudice." Copy forwarded to Plaintiff and Defendant.

September 21, 2022

Defendant filed acceptance of service of Order dated September 14, 2022. Receipt of same acknowledged September 20, 2022.

September 26, 2022

Plaintiff filed acceptance of service of Order dated September 14, 2022. Receipt of same acknowledged September 26, 2022.

September 29, 2022

Plaintiff filed acceptance of service of Order dated September 14, 2022. Receipt of same acknowledged September 26, 2022.
