

C. S. Fossee, Esquire  
~~Kenneth L. Soble, Esquire~~  
Michael Reed, Esquire

MOSITES CONSTRUCTION COMPANY  
VS.  
COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF TRANSPORTATION



- March 11, 1982      Complaint and filing fee filed. Amount of Claim: \$48,600.00+.
- March 19, 1982      Copies of Complaint forwarded to attorney for Defendant and Deputy Attorney General.
- April 19, 1982      Preliminary Objections to Plaintiff's Complaint filed by attorney for Defendant.  
Copy forwarded to attorney for Plaintiff by attorney for Defendant.
- April 20, 1982      Brief in Support of Preliminary Objections to Plaintiff's Complaint filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.
- May 20, 1982      Brief in Opposition to Preliminary Objections filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.
- July 8, 1982      The Board rendered an Opinion and made the following Order: "AND NOW, this 8th day of July 1982, the Preliminary Objections as filed by the Defendant are DISMISSED. The Defendant is DIRECTED to file responsive pleadings within thirty (30) days of the date of this Order." Copies forwarded to attorney for Plaintiff and attorney for Defendant.
- July 23, 1982      Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.
- January 6, 1983      Interrogatories (1st Set) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.
- January 17, 1983      Notice of Taking Deposition of Mosites Construction Company and Chester S. Fossee, Esquire, filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.
- February 1, 1983      Hearing scheduled for March 9, 10 and if necessary, March 11, 1983, before Western District, to be held in Room 1606, Pittsburgh State Office Building, commencing at 10 a.m.
- March 4, 1983      Reply to New Matter filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

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Docket No. 801

March 7, 1983      Answers to Interrogatories filed by attorney for Plaintiff. Copies forwarded to attorney for Defendant by attorney for Plaintiff.

March 8, 1983      Hearing scheduled for March 9, 10 and 11, 1983 continued to a later date.

March 14, 1983      Petition for Leave to Amend Answer and New Matter as well as Amended Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

March 17, 1983      Hearing scheduled for April 20, 21 and if necessary April 22, 1983, before Western District, to be held in Pittsburgh State Office Building, Pittsburgh, Pennsylvania immediately following Tri County Rural Electric Cooperative, Inc. case scheduled for April 13 through April 22, 1983 if necessary.

April 11, 1983      Plaintiff's Interrogatories to Defendant and Defendant's Answers (1st Set) filed by parties.

April 15, 1983      The Board rendered an opinion and made the following Order: "AND NOW, this 15th day of April, 1983, the request of the Defendant, Commonwealth of Pennsylvania, Department of Transportation, for leave to amend the Answer and New Matter is hereby granted. Paragraph 16 of Defendant's original Answer is amended to read as follows: 'Admitted in part and denied in part. It is admitted that the substitute fabricator experienced dimensional and tolerance problems and that the Department allowed certain deviations on the stated date. However, it is denied as stated that suspension of contract time was necessitated as of November 23, 1977. Rather, it is averred that a suspension of work was granted on or about that date, with contract time still running. It is further submitted that the two later suspensions were also suspensions of work, rather than suspensions of time.' The remainder of the original Answer and New Matter is incorporated herein. This Order will in no way amend the above stated hearing schedule." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

April 20, 1983      Hearing held in Pittsburgh State Office Building, Pittsburgh, Pennsylvania, Room 1607, Western District, commencing at 10 a.m.

-OVER-

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**CLOSED**

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PITTSBURGH

April 21, 1983 Hearing held in Pittsburgh State Office Building, Pittsburgh, Pennsylvania, Room 1603, Western District, commencing at 10 a.m.

April 22, 1983 Hearing held in Pittsburgh State Office Building, Pittsburgh, Pennsylvania, Room 1603, Western District, commencing at 10 a.m. Case completed.

May 19, 1983 Testimony of hearing held April 20, 1983 filed. Copy forwarded to attorney for Defendant.

June 22, 1983 Findings of Fact and Conclusions of Law and Argument filed by Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

July 22, 1983 Proposed Findings of Fact Conclusions of Law and Brief filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 7, 1983 Report of Hearing Panel filed.

November 9, 1984 The Board rendered an Opinion and made the following Order: "AND NOW, this 9th day of November, 1984, upon due consideration of the above captioned matter, the Board of Claims hereby finds in favor of the Plaintiff, Mosites Construction Company and against the Defendant, Commonwealth of Pennsylvania, Department of Transportation and directs that the Defendant pay over to Plaintiff all sums withheld as liquidated damages in the amount of \$28,200.00 plus interest at the legal rate of six (6%) percent per annum beginning from July 11, 1979. Each party to bear its own costs."

November 15, 1984 Copies of Opinion and Order dated November 9, 1984 forwarded to attorney for Plaintiff and attorney for Defendant.

December 10, 1984 Copy of Petition for Review as filed in Commonwealth Court filed by attorney for Defendant.

December 14, 1984 Petition for Review received from Commonwealth Court. (No. 3637 C.D. 1984)

January 16, 1985 File transmitted to Commonwealth Court.

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**CLOSED**

April 24, 1986 Copy of Opinion and Order received from Commonwealth Court. Order as follows: "The Order of the Board of Claims, No. 801 dated October 9, 1984, is affirmed."

April 24, 1986 Copy of Order received from Commonwealth Court. Order as follows: "NOW, February 13, 1986, having considered petitioner's application for reargument and reconsideration and respondent's answer thereto, said application is hereby denied. The application includes an assertion that this Court's opinion fails to address the petitioner's contention that the respondent's evidence before the Board of Claims consisted primarily of incompetent hearsay evidence. In response, we are amending the opinion to include a footnote reading as follows: 'DOT also contends that the Board's findings are not supported by legally competent or substantial evidence. We find no merit in this contention. The testimony of Mosites' president and the project manager, both civil engineers, coupled with the correspondence between the parties concerning the contract, the specifications and the delays, constitute legally competent evidence and support the Board's findings.'"

April 24, 1986 File returned from Commonwealth Court.