

NO. 1 CONTRACTING CORPORATION
VS.
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION

Mark Seiden, Esquire (Out-of-State)
C. Grainger Bowman, Esquire (In-State)
Bruce N. Mundorff, Assistant Counsel

Docket No. 805

CLOSED

 JUN 30 1991

July 31, 1989 Acceptance of Service of Opinion and Order dated July 27, 1989 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant July 28, 1989.

August 2, 1989 Acceptance of Service of Opinion and Order dated July 27, 1989 received from attorney for Plaintiff (Mark Seiden, Esquire). Receipt of same acknowledged by attorney for Plaintiff July 31, 1989.

April 30, 1991 The Board rendered an Opinion and made the following Order: "AND NOW, this 30th day of April, 1991, this case is marked settled and discontinued with prejudice. The Rule to Show Cause is hereby rendered **ABSOLUTE**." Copies forwarded to attorneys for Plaintiff and attorney for Defendant.

May 2, 1991 Acceptance of Service of Opinion and Order dated April 30, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant May 1, 1991.

May 8, 1991 Acceptance of Service of Opinion and Order dated April 30, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 3, 1991.

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June 12, 1986 Deposition of Jack Lifschitz filed by attorney for Plaintiff.

June 12, 1986 Deposition of John M. Mack filed by attorney for Plaintiff.

June 12, 1986 Deposition of Al Bauer filed by attorney for Plaintiff.

June 13, 1986 Hearing held in Board's Court Room at 10 a.m.

June 13, 1986 Copies of testimonies of hearings held June 3, 4, 5 and 6, 1986 forwarded to attorney for Defendant.

June 17, 1986 Hearing held in Board's Court Room at 10 a.m. Case settled.

June 17, 1986 Acceptance of Service of testimonies for hearings held June 3, 4, 5 and 6, 1986, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant: June 16, 1986.

June 18, 1986 Testimonies of hearings held June 10, 11, 12 and 13, 1986 filed.

June 19, 1986 Testimony of hearing held June 17, 1986 filed.

June 24, 1986 Copies of testimonies of hearings held June 10, 11, 12, 13 and 17, 1986 forwarded to attorney for Defendant.

June 25, 1986 Acceptance of Service of testimonies for hearings held June 10, 11, 12, 13 and 17, 1986 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 24, 1986.

July 27, 1989 The Board rendered an Opinion and made the following Order: "AND NOW, this 27th day of July, 1989, a Rule is issued upon Plaintiff, Mc. 1 Contracting Corporation, to Show Cause, if any, why this case should not be marked settled and discontinued with prejudice. Said Rule shall become Absolute within Thirty (30) days of the Date of this Order if there is a failure to respond or give adequate reason for opening up the matter for additional testimony on the merits of the Claim." Copy forwarded to attorneys for Plaintiff and attorney for Defendant.

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Bruce N. Mundorff, Assistan: Counsel

Docket No. 805

CLOSED

FILED IN 80-2

FORM 30-FR

May 27, 1986	Acceptance of Service of Opinion and Order dated May 16, 1986, (Motion for Protective Order) received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 23, 1986.
May 27, 1986	Acceptance of Service of Opinion and Order dated May 16, 1986, (Motion to Compel Oral Depositions) received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 23, 1986.
May 27, 1986	Acceptance of Service of Opinion and Order dated May 16, 1986, (Motion for Sanctions) received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 23, 1986.
June 3, 1986	Hearing held in Board's Court Room at 10 a.m.
June 4, 1986	Hearing held in Board's Court Room at 10 a.m.
June 5, 1986	Hearing held in Board's Court Room at 10 a.m.
June 6, 1986	Hearing held in Board's Court Room at 10 a.m.
June 10, 1986	Hearing held in Board's Court Room at 10 a.m.
June 10, 1986	Testimonies of hearings held June 3, 4, 5 and 6, 1986 filed.
June 11, 1986	Hearing held in Board's Court Room at 10 a.m.
June 12, 1986	Hearing held in Board's Court Room at 10 a.m.
June 12, 1986	Deposition of Neill J. Dekker filed by attorney for Plaintiff.
June 12, 1986	Deposition of Gerald Flynn filed by attorney for Plaintiff.
June 12, 1986	Deposition of John H. Shetron, Jr. filed by attorney for Plaintiff.
June 12, 1986	Deposition of Kenneth R. Meussner filed by attorney for Plaintiff.

(Signature)

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Mark Seidel, Esquire (Out-of-State) by
C. Grainger Bowman, Esquire (In-State)
Bruce M. Mandorff, Assistant Counsel

Docket No. 805

CLOSED

May 19, 1986 Copies of Opinions and Orders dated May 16, 1986: I. Motion to Compel Answers to Interrogatories, B. Motion for Protective Order, C. Motion to Compel Oral Deposition and D. Motion for Sanctions forwarded to attorney for Plaintiff, Mr. Bowman and attorney for defendant.

May 19, 1986 Acceptance of Service of Order dated May 9, 1986, received from Plaintiff. Receipt of same acknowledged by Plaintiff May 15, 1986.

May 21, 1986 Acceptance of Service of Order, dated May 9, 1986, received from Mr. Bowman. Receipt of same acknowledged by Mr. Bowman May 16, 1986.

May 21, 1986 Acceptance of Service of Opinion and Order dated May 16, 1986, (Motion to Compel Answers to Interrogatories) received from defendant. Receipt of same acknowledged by defendant May 20, 1986.

May 21, 1986 Acceptance of Service of Opinion and Order dated May 16, 1986, (Motion for Protective Order) received from defendant. Receipt of same acknowledged by defendant May 20, 1986.

May 21, 1986 Acceptance of Service of Opinion and Order dated May 16, 1986, (Motion to Compel Oral Depositions) received from defendant. Receipt of same acknowledged by defendant May 20, 1986.

May 21, 1986 Acceptance of Service of Opinion and Order dated May 16, 1986, (Motion for Sanctions) received from defendant. Receipt of same acknowledged by defendant May 20, 1986.

May 23, 1986 Answers to Claimant's Interrogatories Addressed to Defendant Department of Transportation, Commonwealth of Pennsylvania - Second Set filed by attorney for defendant. Copy forwarded to attorney for plaintiff by attorney for defendant.

May 27, 1986 Acceptance of Service of Opinion and Order dated May 16, 1986, (Motion to Compel Answers to Interrogatories) received from plaintiff. Receipt of same acknowledged by plaintiff May 23, 1986.

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Bruce M. Mundorf, Assistant Counsel

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CLOSED

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May 14, 1986 Acceptance of Service of Order, dated May 9, 1986, received from defendant. Receipt of same acknowledged by defendant May 13, 1986.

May 16, 1986 The Board rendered an Opinion and made the following Order: "AND NOW, to wit this 16th day of May, 1986, Plaintiff's Motion to Compel Answers to Interrogatories is DENIED."

May 16, 1986 The Board rendered an Opinion and made the following Order: "AND NOW to wit this 16th day of May, 1986, upon consideration of Plaintiff's Motion for Protective Order is hereby ORDERED and DECREED that said Motion is DENIED. It is further ORDERED and DECREED that Plaintiff shall file full and complete Answers to all Interrogatories with this Board and Counsel for Defendant within seven (7) days hereof."

May 16, 1986 The Board rendered an Opinion and made the following Order: "AND NOW to wit this 16th day of May, 1986, upon consideration of Claimant's Motion to Compel Oral Deposition of Defendant's Expert Witnesses, said Motion is DENIED. It is further ORDERED and DECREED that upon Motion, at the trial hereof, the Commonwealth shall be limited in the presentation of its case consistent with the above Opinion."

May 16, 1986 The Board rendered an Opinion and made the following Order: "AND NOW, this 16th day of May, 1986, it is ORDERED and DIRECTED that the Motion to Disqualify the law firm of Hynes, Diamond & Reidy, P.C. from either representing either directly or indirectly the Plaintiff herein is DENIED. That the Motion to restrict Plaintiff from introducing any evidence or testimony based on or derived from the 1980 work product of Curt Shellhammer at the trial of this matter is DENIED. That the cost of the Department's expert analysis of the actual 1975 bid documents shall not be imposed by this Order on the Plaintiff. In the event a hearing is directed to determine this issue, then, and only upon showing that there was a purposeful intent upon New York City's trial counsel's effort to mislead the Commonwealth, then and only then shall a determination be made as to the responsibility of the Plaintiff and the amount, if any, to be assessed upon Plaintiff. Cost of this Motion - each party to bear their own cost on this Motion."

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~~Terry R. Dessert, Esquire~~
Mark Seider, Esquire (Out-of-State) by
C. Grainger Bowman, Esquire (In-State)
Bruce M. Mindorf, Assistant Counsel

Docket No. 805

CLOSED

March 18, 1986 Answer to Claimant's Motion to Compel Oral Depositions of Defendant's Expert Witnesses filed by attorney for defendant. Copy forwarded to attorney for plaintiff by attorney for defendant.

April 4, 1986 Defendant's Continuing Interrogatories to Plaintiff - First Set filed by attorney for defendant. Copy forwarded to attorney for plaintiff by attorney for defendant.

April 7, 1986 Claimant's Interrogatories Addressed to Defendant, Department of Transportation, Commonwealth of Pennsylvania - Second Set filed by attorney for plaintiff. Copy forwarded to attorney for defendant by attorney for plaintiff.

April 18, 1986 Deposition of Howard Winters and Deposition of A. Roman filed by attorney for defendant.

May 9, 1986 Claimant's Motion for a Protective Order and proposed Protective Order filed by attorney for plaintiff. Copy forwarded to attorney for defendant by attorney for plaintiff.

May 9, 1986 Motion For Permission To Depose Witness By Telephone For Testimony To Be Used At Trial and proposed order filed by attorney for defendant. Copy forwarded to attorney for plaintiff by attorney for defendant.

May 9, 1986 Defendant: Commonwealth of Pennsylvania, Department of Transportation's Motion For Sanctions Pursuant to Pa.R.C.P. 4019 and proposed Order filed by attorney for defendant. Copy forwarded to attorney for plaintiff by attorney for defendant.

May 9, 1986 Proposed Order relative to Motion For Permission to Depose Witness By Telephone For Testimony To Be Used At Trial executed by Judge Pace, Chief Administrative Judge as follows: "AND NOW, this 9th day of May, 1986, it is hereby ordered that the Defendant, Commonwealth of Pennsylvania, Department of Transportation is permitted to take the telephone deposition of Mike Fink, for testimony to be used at trial pursuant to Pa. R.C.P. 4020(a)(3)(b)."

May 13, 1986 Copies of Order dated May 9, 1986 forwarded to attorney for plaintiff, attorney for defendant and Mr. Bowman.

Handwritten signature

CLOSED



February 24, 1986 (continued) On March 19, 1986 and continue until said depositions are complete. It is further ORDERED that the Plaintiff shall make available for depositions by the Commonwealth of Pennsylvania the following individuals: Messrs. Roman, Waters and Gilroy. Said depositions shall commence immediately after the depositions hereinbefore taken of the individuals of Blauvelt Engineering and shall continue until completed. In no event shall the hearing date scheduled herein be postponed. Copies forwarded to attorney for plaintiff and attorney for defendant.

February 27, 1986 Acceptance of Service of Opinion and Order dated February 24, 1986 received from defendant. Receipt of same acknowledged by defendant February 26, 1986.

February 27, 1986 Acceptance of Service of Opinion and Order dated February 24, 1986 received from plaintiff. Receipt of same acknowledged by plaintiff (C. Grainger Bowman) February 26, 1986.

February 28, 1986 Acceptance of Service of Opinion and Order dated February 24, 1986 received from plaintiff. Receipt of same acknowledged by plaintiff (Mark Seiden) February 26, 1986.

March 4, 1986 Hearing scheduled for June 1 through June 6, 1986; June 10 through June 13, 1986, as well as June 17 through June 20, 1986, if necessary, in Beard's Court Room at 10:00 a.m.

March 5, 1986 Claimant's Motion to Compel Further Answers to Interrogatories and Proposed Order filed by attorney for plaintiff. Copy forwarded to attorney for defendant by attorney for plaintiff.

March 13, 1986 Claimant's Motion to Compel Oral Depositions of Defendant's Expert Witnesses filed by attorney for plaintiff. Copy forwarded to attorney for defendant by attorney for plaintiff.

March 17, 1986 Answer of Defendant Commonwealth of Pennsylvania, Department of Transportation to Claimant's Motion to Compel Further Answers to Interrogatories filed by attorney for defendant. Copy forwarded to attorney for plaintiff by attorney for defendant.

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CLOSED

Terry R. Bessert, Esquire
Kenneth L. Sable, Esquire

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December 23, 1985 (continued) relief as is just and proper. Dated: December 23, 1985." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

December 23, 1985 The Board made the following Order: "Upon hearing argument by counsel on Plaintiff's Motion that Defendant be required to answer Interrogatories, Defendant having failed to do so pursuant to a request therefore duly served by Plaintiff it is ORDERED that: 1. The Motion of Plaintiff be and it hereby is GRANTED and that Defendant answer all Interrogatories propounded on it. 2. Said Interrogatories be answered by January 8, 1986 or as such other day as is agreed upon by the parties. 3. Plaintiff be awarded the cost of this Motion, including fees and such other and further relief as is just and proper. It appearing that the failure of Defendant to answer the said questions was without substantial justification, it is further ORDERED that the Defendant pay to Plaintiff the sum of XXXXXX (\$0.00) as reasonable expenses incurred in obtaining this Order. It is further ORDERED that should the Defendant fail to answer within the time allowed herein, Sanctions shall be imposed if that the Interrogatories propounded shall be interpreted as answered favorably to the Plaintiff and the Defendant shall not be entitled to introduce into evidence at the trial items favorable to its case which should have been discoverable to the Plaintiff in Answers to Interrogatories. Dated: December 23, 1985." Copies forwarded to attorney for Plaintiff and attorney for Defendant.

January 14, 1986 Defendant's Answers to Interrogatories filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

January 29, 1986 Notice to Take Deposition upon Oral Examination of Mr. J. Shetrol, Mr. K. Muesner, Mr. K. Purkey, Mr. A. F. Bauer, Mr. Joel Hoehlmann, Mr. John Maci, Mr. John Donahue, Mr. Gerald Flynn, Mr. Neill Dykter, Mr. Arnen Boyajia, Mr. Lawrence R. Dubois filed by attorney for Plaintiff.

February 20, 1986 Motion for Protective Order filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 24, 1986 The Board rendered an Opinion and made the following Order: "AND NOW, this 24th day of February, 1986, it is ORDERED that the Defendant shall make available for depositions, J. Sketron, K. Muesner, K. Purkey and H. Thaker at District Office 5-0, Allentown, PA

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~~David B. Disney, Esquire~~
Terry R. Bossert, Esquire
Kenneth L. Sable, Esquire

Docket No. 805

CLOSED

FORM
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April 7, 1982 Complaint and filing fee filed. Amount of Claim: \$6,414,470.87+.

April 15, 1982 Copies of Complaint forwarded to attorney for Defendant and Deputy Attorney General.

August 29, 1985 Answer and New Matter and Counterclaim filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 11, 1985 Claimant's Reply to New Matter and Counterclaim in the Nature of a Setoff of Defendant Commonwealth of Pennsylvania, Department of Transportation filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 11, 1985 Claimant's Interrogatories Addressed to Defendant Department of Transportation, Commonwealth of Pennsylvania - First Set filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 11, 1985 Claimant's Request for Production of Documents and Inspection of Tangible Things Addressed to Defendant, Department of Transportation - First Set filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 18, 1985 Order Requiring Defendant to Answer Interrogatories; Order Requiring Defendant to Produce Documents and Notice to Take Deposition Upon Oral Examination filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 23, 1985 The Board made the following Order: "Upon hearing argument by counsel on Plaintiff's Motion that Defendant be required to produce and permit the inspection and copying by Plaintiff of certain documents in the possession, custody or control of the Defendant, Defendant having failed to do so pursuant to a request therefore duly served by Plaintiff it is ORDERED that: 1. The Motion of Plaintiff be and it hereby is GRANTED and the Defendant produce and permit Plaintiff to inspect and copy requested documents. 2. The said documents be produced at Harrisburg Office of PennDOT or at such other place as is agreed upon by the parties, on January 8, 1986 at 10 a.m. or at such other hour or day as is agreed upon by the parties. 3. Plaintiff may withdraw documents from the possession of Defendant for the purpose of having them photocopied and return them immediately hereafter or the Defendant at his election, may photocopy such documents for Plaintiff at Plaintiff's expense. 4. Plaintiff is GRANTED such other