

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**  
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**CIVIL TRIAL DIVISION**

SHENANDOAH STEEL CORPORATION : JULY TERM, 2001  
v. : No. 4184  
FLETCHER-HARLEE CORPORATION : Commerce Program  
SHENANDOAH STEEL CORPORATION : DECEMBER TERM, 2002  
v. : No. 3268  
SAFECO INSURANCE COMPANY :  
OF AMERICA

.....

**FINDING**  
**MEMORANDUM OPINION**

**Albert W. Sheppard, Jr., J. .... March 18, 2005**

AND NOW, this 18<sup>th</sup> day of March 2005, upon consideration of all matters of record and after a three-day bench trial and review of the trial exhibits and consideration of trial and post-trial submissions of counsel, this court finds for the plaintiff, Shenandoah Steel Corporation and against the defendants, Fletcher-Harlee Corporation and Safeco Insurance Company of America, as follows:

1. \$19,193.00 Towamencin Contract, and
  2. \$67,097.00 Unionville Contract,
- for a total amount of \$86,290.00.

This court acknowledges that it had considerable difficulty arriving at a fair value for the liability of defendants. A brief exposition of the court’s rationale is provided to give counsel and the parties a basis to evaluate the court’s decision.

As to Towamencin, the amount of \$19,193.00 was deemed to be undisputed. As to Unionville, the starting point was the schedule submitted by counsel for Shenandoah by letter dated February 11, 2005. The court accepted the following items of claimed damage:

Cost of Steel	\$ 300,000.	
Erection – as billed and actually done	\$ 115,000.	
Change Orders	\$ 14,729.	(Decking)
	\$ 10,405.	
	\$ 4,162.	(Keystone x-18, x-19, x-10, x-11, x-12)
Shenandoah labor	\$ 3,192.	
Costs pre-erection - - storage and delivery		
Subtotal (1)	<u>\$ 448,303.</u>	

The claimed damages rejected by the court were: Trailer costs (\$1,800.), Keystone bill re: pre-delivery time costs<sup>1</sup> (\$5,000.), Winter premium (\$12,500.), Administrative costs excessive management needs (\$12,000.) and Excessive site visits (\$9,600.)

From the subtotal shown above the court deducted the payments from Fletcher in the amount of \$294,376. Thus,

	\$ 448,303.
	<u>\$ 294,376.</u>
Subtotal (2)	\$ 153,927.

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<sup>1</sup> The court accepts Fletcher’s position that this cost should be subsumed in the basic Contract.

Next, the court tried to discern the appropriate value for the claimed backcharges. The court accepted that value set forth in the letter brief from counsel for Fletcher relative to those backcharges imposed against Fletcher by the owner for Section “C” erection work in the amount of \$56,830. The proper value for backcharges attendant to the work of Powell is, in the court’s view, very difficult to ascertain. It is submitted that the amount claimed by defendant is too high. Unfortunately, the contractor coming in at the conclusion of the project can charge more than would normally be acceptable.<sup>2</sup> The testimony did not help in determining how much work, specifically, was left to be accomplished. In reviewing the documents, the court accepted plaintiff’s exhibit P-31 to be instructive. There, Mr. Hallal valued the incompleting work at approximately \$30,000.

Thus, taking the \$56,830. plus \$30,000. as the backcharges results in:

	\$ 153,927.	
	\$ <u>86,830.</u>	backcharges
or	\$ 67,097.	due and owing on the Unionville Contract

The court acknowledges the argument made by plaintiff’s counsel for the imposition of interest (penalty) and counsel fees pursuant to the statute. The court after considerable reflection denies those claims; however, it does not do so lightly or in a cavalier way. Fletcher likely overreached when it held the Towamencin funds hostage. But, when viewing the situation as a whole and given this court’s view that both parties to this litigation may be thought of as having sustained losses at the end of the day, it is submitted that it would not be provident to order the payment of a statutory penalty and counsel fees.

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<sup>2</sup> The court believes that neither Fletcher nor Shenandoah were treated fairly by the parties up-stream when viewing the project as a whole. Unfortunately, this court has been confronted with this kind of unfair situation in other construction cases. It leaves the court with an unwelcome feeling of impotency, unable to do the right thing no matter how badly the court wants to.

The court compliments counsel on their preparation and presentations and thanks counsel for their courtesies.

**BY THE COURT,**

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**ALBERT W. SHEPPARD, JR., J.**