

THOMAS G. MICHALEK
Attorney at Law
4 West Manilla Avenue
Pittsburgh, Pennsylvania 15220-3310
(412) 922-3331
Facsimile (412) 922-2292
e-mail: tgm@greentreeelaw.com

August 24, 2011

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RECEIVED
2011 AUG 26 AM 9:35
PA P.U.C.
SECRETARY'S BUREAU


Re: James McGaffin v. Pennsylvania-American Water Company
Docket No. C-2011-2251435

Dear Secretary Chiavetta:

Enclosed for filing is Complainant's Reply to New Matter of Respondent, Pennsylvania-American Water Company. A true and correct copy has been served on the Respondent.

Thank you for your attention to this filing.

Yours truly,



Thomas G. Michalek

TGM:jao
enclosure

cc: Mr. and Mrs. James McGaffin
Michael A. Gruin, Esq.
Dana Pirone Carosella, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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SECRETARY'S BUREAU

JAMES MCGAFFIN :
Complainant :
v. :
PENNSYLVANIA-AMERICAN :
WATER COMPANY :
Respondent :

Docket No. C-2011-2251435

**REPLY TO NEW MATTER OF RESPONDENT,
PENNSYLVANIA-AMERICAN WATER COMPANY**

AND NOW comes the Complainant, James McGaffin, by and through his attorney, Thomas G. Michalek, Esquire, hereby responds to the New Matter of Respondent, Pennsylvania-American Water Company as follows:

10. Complainant, James McGaffin, incorporates Paragraphs 1 through 9 of his formal Complaint as though fully set forth herein.

11. Michael E. Gruin is identified as counsel of record on the pleading filed by Pennsylvania-American Water Company ("PAWC"). No further response is required.

12. Contrary to the PAWC's New Matter, the mainline break on November 29, 2009 occurred on, not "in the vicinity of", McGaffin's property. While the break was repaired on November 30, 2009, PAWC has failed and refused to repair much of the damage caused by the mainline break, and/or negligently performed the minimal repairs that it did undertake.

13. McGaffin is without knowledge as to the Company's practice, but Travelers did participate in some aspects of the damage evaluation and partial repairs.

14. Denied as stated. Complainant was first contacted by Travelers on December 11, 2009.

15. Denied. Complainant has no record of a Travelers representative visiting the property shortly after the water main break. Further, no water was ever present in the habitable portion of the garage, which was attributable to the water main break. Since no one from Travelers was present during the water main break, there is no basis for the allegation as to the appearance of where most of the water flowed. The carpet was suggested by a DRS representative on December 11, 2009 for installation in Complainant's finished gameroom area. The carpet was installed the week of December 21, 2009.

16. Denied. Complainant has not, to this date, made a claim as to structural damage to his house. Rather, in early April, 2010, after nearly 4 months of no contact, Travelers called and requested permission for its engineer to visit Complainant's home to assist in analyzing where remediation was necessary. Permission was granted.

17. Denied as stated. The inspection was conducted on April 23, 2010 and the subsequent report was dated May 10, 2010. The report specifically states that the engineer was commissioned to inspect "distresses to McGaffin's concrete pavements". The report does not make any reference to inspection of Complainant's home for structural damage.

18. Denied as stated. Following a review of the report, Complainant immediately requested a meeting to clarify the numerous ambiguous and/or inaccurate statements in the report. The Company representative and the engineer refused to discuss the terms of the report. However, at Complainant's request, the Company representative directed its contractor to open or otherwise remove the concrete sill of the overhead garage door to explore the possible cause of the settlement of concrete slabs both inside the garage and at the garage apron, beyond the sill. The Company

agent also reluctantly directed the contractor to cut and remove a portion of the driveway slab at the southwest corner of the house and to repair or replace the adjacent, distressed stone retaining wall.

19. Denied as stated. The referenced heavy rain occurred during the week of June 2, 2010. Complainant contacted DRS to inform them that water was, again, seeping into the front of the house, from under the house, as a result of the water main break, which redirected the subsurface water flow to location(s) beneath his home, rather than its prior path of flow.

20. Denied as stated. On May 10, 2010, prior to the issuance of the inspection report by the engineer, Complainant had been contacted by a subcontractor of DRS, who requested permission to perform an exterior, exploratory inspection beneath the front entry of Complainant's home, for the purpose of devising a solution to the continuing leakage of water into the home. On June 10, 2010, the subcontractor dispatched a crew, which excavated to the top of the foundation wall footer. Complainant requested that they dig to the base of the footer, but was told that they were not authorized to do so. The excavation was backfilled the following morning, but the concrete entry slab was not replaced until several months later, and then, in a shoddy and less than professional manner. Based on Complainant's examination, at the time, the parging installed when the house was originally constructed was intact and no new or replacement parging had been applied by the subcontractor.

21. Denied as stated. Rather, because Complainant and the prior owner of the home had never had seepage into the home prior to the water main break, Complainant wanted assurances from PAWC that subsurface water, from any source, would be permanently arrested. The Company's representative solicited suggestions from Complainant as to how this might be accomplished. After discussing several options, the Company's representative and Complainant agreed that a diversion trench, with under drain, would be the least costly and most effective method

of addressing the continuing problem.

22. Denied. The alleged sequence of events is entirely wrong. See Paragraph 18 above.

23. Denied as stated. Again, the alleged sequence is entirely wrong. It is admitted that the Company's contractor found a 5" void under the concrete slab in the garage. A limestone/cement slurry, not concrete, was used in an attempt to fill the void and level the concrete slabs. Since this work was performed, water no longer flows to the garage floor drain. The Company has failed and refused to repair this faulty work.

24. Denied. Travelers never provided such notice. Rather, on September 20, 2010, Complainant provided a list of [17] open issues. Neither the Company nor Travelers have ever responded to the letter.

25. Denied. Complainant has no idea what Travelers has spent and on at least three separate occasions has requested a detailed listing of the "estimated" expenditures. The Company has promised such list, but never provided it. On October 25, 2010, Complainant specifically rejected PAWC's offer because it did not even cover the cost to repair the improperly performed work, let alone the other issues and damages that PAWC has refused to address.

26. The Complainant is not alleging any problems that were known to exist or were discovered prior to the water main break on November 29, 2009.

27. It is denied that laches is applicable.

28. It is denied that estoppel is applicable.

29. Denied. The claim is based upon facts, many of which are admitted by PAWC, which establish a cause of action upon which relief can be granted.

30. The Commission has the power and authority to direct PAWC to repair all damages caused by the water main break and to repair or replace improperly performed repairs already performed.

31. Admitted.

32. Admitted.

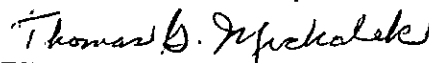
33. Lis pendens is not a grounds for dismissing an action or cause of action.

Rather, it is intended to delay one action until the completion of a prior pending matter.

34. Admitted.

Wherefore, Complainant respectfully requests the Honorable Commission issue an Order directing Pennsylvania-American Water Company to repair all existing damage and repair and/or replace all damage to Complainant's home cause by or resulting from the water main break on the property known as 136 Reed Drive, Green Tree Borough, Allegheny County, Pennsylvania.

Respectfully submitted,



Thomas G. Michalek, Esquire

Pa. ID No. 19864

4 West Manilla Avenue

Pittsburgh, PA 15220

Tel. 412-922-3331

Fax 412-922-2292

tgm@greentrelaw.com

Counsel for James McGaffin, Complainant

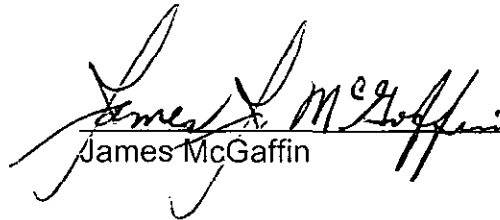
Date: AUGUST 24, 2011

VERIFICATION

I, James McGaffin, have read the foregoing Reply to New Matter of Respondent, Pennsylvania-American Water Company and verify the statements and facts contained therein are true and correct to the best of my knowledge, information and belief.

I understand that this statement and verification is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date: 8-24-2011


James McGaffin

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

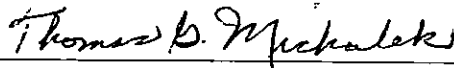
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|-----------------------|---|---------------------------|
| JAMES MCGAFFIN | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2011-2251435 |
| | : | |
| PENNSYLVANIA-AMERICAN | : | |
| WATER COMPANY | : | |
| Respondent | : | |

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply to New Matter of Respondent, Pennsylvania-American Water Company upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Michael A. Gruin, Esquire
Stevens & Lee
17 N. 2nd Street, 16th Floor
Harrisburg, PA 17101

Dana Pirone Carosella, Esquire
Stevens & Lee
1818 Market Street, 29th Floor
Philadelphia, PA 19103



Thomas G. Michalek, Esquire
Pa. ID No. 19864
4 West Manilla Avenue
Pittsburgh, PA 15220
Tel. 412-922-3331
Fax 412-922-2292
tgm@greentrelaw.com

Counsel for James McGaffin, Complainant

Date: AUGUST 24, 2011



Thomas G. Michalek
Attorney at Law
4 West Marilla Avenue
Pittsburgh, PA 15220

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