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December 15, 2011

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

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

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Pennsylvania-American Water Company is an original of its Motion for Partial Summary Judgment in this matter. This document has been e-filed at the Pennsylvania Public Utility Commission's website. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE

  
Michael A. Gruin

Encl.

cc: Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton  
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES MCGAFFIN  
Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY  
Respondent

Docket No. C-2011-2251435

**NOTICE TO PLEAD**

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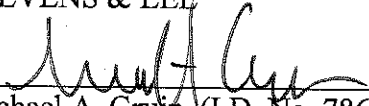
**To: Thomas Michalek, counsel for James McGaffin**

You are hereby notified to file a written response to the attached Motion for Partial Summary Judgment of Pennsylvania-American Water Company within twenty (20) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed Motion within twenty (20) days of service, the facts set forth by Pennsylvania-American Water Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as Answers to Motions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned counsel for Pennsylvania-American Water Company. Failure to respond to this Motion could result in the dismissal of your case.

STEVENS & LEE

  
Michael A. Grun, (I.D. No. 78625)

17 N. 2<sup>nd</sup> St., 16<sup>th</sup> Fl

Harrisburg, PA 17101

Tel. (717) 255-7365

Fax (610) 988-0852

COUNSEL FOR PENNSYLVANIA  
AMERICAN WATER COMPANY

DATE: December 15, 2011

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES MCGAFFIN  
Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY  
Respondent

Docket No. C-2011-2251435

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**PENNSYLVANIA-AMERICAN WATER COMPANY'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Pennsylvania-American Water Company ("Respondent" or "Company"), pursuant to 52 Pa. Code § 5.102(c), files this Motion requesting partial dismissal of the Complaint of James McGaffin ("Complainant"). As set forth below, the Complainant's claims related to the Company's proposed rate increase and his claims for damages should be dismissed as a matter of law. In support thereof, the Company avers as follows:

**I. BACKGROUND**

1. On July 13, 2011, the Company was served with the Complainant's Formal Complaint. A copy of the Complainant's Formal Complaint is attached hereto as Exhibit 1.

2. The Complaint indicates that the Complainant opposes the Company's proposed rate increase.

3. The Complaint also seeks various relief related to a water main break that occurred near the Complainant's home on November 29, 2009. Specifically, the Complainant requests that the Company restore his property to its pre-November 29,

2009 condition and market value, and requests that the Company replace the water distribution mains on Reed and Conroy Drives in Green Tree, Pennsylvania.

4. On August 1, 2011, the Company filed its Answer and New Matter to the Complaint. A copy of the Company's Answer and New Matter is attached hereto as Exhibit 2.

5. The Company's Answer and New Matter stated that the Company's proposed rate increase was pending before the Commission at Docket No. R-2011-2232243, and averred that the rate case docket was the proper venue for the Complainant to lodge any objections to the proposed rate increase. The Answer and New Matter also averred that the main break in question was repaired by the Company on November 30, 2009, and that the Company's insurance company (Travelers Insurance) had opened a damages claim on behalf of the Complainant in connection with the damage caused to his house by the main break on November 29, 2009. The Company also averred that crews from the restoration company Disaster Restoration Services had completed the repairs to the Complainant's house that were necessitated by the main break and subsequent water damage, and that Travelers Insurance had paid approximately \$34,000 for the repair work performed by Disaster Restoration Services.

6. On August 24, 2011, the Complainant filed his Reply to New Matter, a copy of which is attached hereto as Exhibit 3.

7. An evidentiary hearing is scheduled for January 31, 2011 in this matter.

8. The Commission's regulations at 52 Pa. Code 5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. The presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions

and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

9. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406(Pa. Super. 1983).

10. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission, 563 A.2d. 557 (Pa. Cmwlth. 1989).

11. The pleadings in this case reveal that Pennsylvania-American Water Company is entitled to partial judgment as a matter of law on two issues. First, to the extent that the Complainant seeks to oppose the Company's rate increase, the Complaint should be dismissed because the Commission has recently approved the Company's proposed rate increase and dismissed all protests to the proposed increase. Secondly, to the extent that the Complaint seeks compensation or monetary damages from the Company, the Complaint should be dismissed because it is well settled that the Commission does not have the power or jurisdiction to award monetary damages for the actions of a utility company. See Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1977). Furthermore, the Complainant has initiated a civil action against the Company to request monetary compensation for the damages he allegedly

incurred as a result of the Company's water main break, and as such, the Complainant's claims for damages are barred by the doctrine of *lis pendens*.

## **II. CLAIMS RELATED TO THE COMPANY'S RATE INCREASE**

12. On April 29, 2011, the Company filed a request to the Commission for approval for a residential rate increase. The Company's rate case was docketed by the Commission at Docket No. R-2011-2232243. Various individuals and entities filed formal complaints against the proposed rate increase. Mr. McGaffin was not one of the parties who filed a formal complaint in the rate case docket.

13. The Company's proposed rate increase and the associated formal complaints were assigned to Administrative Law Judges Angela Jones and Eranda Vero for disposition. Multiple public input hearings were held, and written testimony was submitted by the Company and various protestants.

14. On October 6, 2011, a Joint Petition for Settlement of Rate Investigation was filed and served. By Recommended Decision dated October 27, 2011, ALJs Jones and Vero recommended that the Joint Petition be approved and adopted.

15. By Order entered on November 10, 2011, the Commission adopted the Recommended Decision of ALJs Jones and Vero, dismissed all of the formal complaints against the proposed rate increase, and approved the rates, terms and conditions set forth in the Joint Petition for Settlement of Rate Investigation.

16. There is a strong presumption that "the preexisting Commission approved rates are just and reasonable." Duquesne Light Company v. Pennsylvania Public Utility Commission, 715 A.2d 540, 545 (Pa. Cmwlth. 1998).

17. To overcome the presumption, Complainant must demonstrate the existence of “recent significant changes in circumstances in the interim.”

Schellhammer v. Public Utility Commission, 629 A.2d 189, 193 (Pa. Cmwlth. 1993).

18. In the absence of such a showing of “recent significant change in circumstances” by Complainant, the prior commission rate determination remains conclusive under Section 316 of the Public Utility Code, 66 Pa.C.S. §316.

19. Section 316 of the Code provides that “[w]henver the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby....”

20. Neither the Complaint nor the Reply to New Matter filed by the Complainant contain any assertion of recent significant changes in circumstances that would allow Complainant to overcome the presumption that the Company’s rates are just and reasonable.

21. The Commission approved the Company’s rates, as set forth in the Joint Petition for Settlement of Rate Investigation its Order entered November 10, 2011.

22. The Commission’s approval is *prima facie* evidence of the reasonableness of the Company’s rates. 66 Pa.C.S. §316; Duquesne Light Company, at 545. Therefore, under Section 316 of the Public Utility Code, the Commission’s approval of Company’s rates, as set forth in the Joint Petition for Settlement of Rate Investigation is conclusive and binding.

23. For these reasons, Complainant’s opposition to the Company’s rate increase should be dismissed as a matter of law.

### III. CLAIMS FOR DAMAGES

24. The majority of the Complaint relates to damage to the Complainant's home that was allegedly caused by a water main break which occurred on November 29, 2009. The Complaint details the specific damages that the Complainant believes were caused by the water main break, and outlines the remediation work that was performed by Disaster Restoration Services as well as the Complainant's interactions with Travelers Insurance and Disaster Restoration Services. The Complainant alleges that the remediation work performed by Disaster Restoration Services was incomplete and/or improperly performed. The Complaint also avers that the Company's insurer made a cash settlement offer to the Complainant that was not acceptable to the Complainant. *See Generally, Complaint, Paragraph 4.*

25. For Relief, the Complaint requests that the Company be ordered to "fulfill its obligations to provide services in a safe and reliable fashion; to step up to the table, stop hiding behind Travelers and restore my property to its Pre-November 29, 2009 condition and real time market value". The Complainant also requests an Order from the Commission directing the Company to replace certain water distribution mains in Green Tree, Pennsylvania. *See Complaint, Paragraph 5.*

26. As set forth in the Company's Answer and New Matter, the Company opened an insurance claim with the Company's insurance company (Travelers Insurance), consistent with the Company's practice in situations where customers allege that water main breaks cause water damage to their homes. *See Answer and New Matter, Paragraph 13.*

27. The Company's Answer and New Matter details the remediation work that was performed by Disaster Restoration Services at the direction of Travelers Insurance.

28. As set forth in paragraph 25 of the Answer and New Matter, Travelers estimates that approximately \$34,000 worth of repairs have been performed on the Complainant's house by Disaster Restoration Services. Furthermore, the Answer and New Matter states that Travelers sent the Complainant a settlement offer for the outstanding damage to his home, and asked the Complainant to confirm his satisfaction with the settlement and sign a release, but the Complainant has refused to do so.

29. The Complainant's Reply to New Matter confirms that the Complainant has rejected the settlement offer that made to him.

30. The Commission certainly retains the jurisdiction to rule on the Complainant's safety and reliability concerns, and the Company is fully prepared to demonstrate that it acted properly with respect to the maintenance of its distribution lines and its actions in repairing the water main break. However, it is well-settled that the Commission does not have the jurisdiction to award monetary or punitive damages against a utility company. For this reason, the Complainant's Complaint should be dismissed to the extent that it seeks compensation for damages that he allegedly sustained as a result of the water main break.

31. While the Complainant characterizes his Complaint as seeking an Order directing the Company to make repairs to his home, it is clear that the Complainant is seeking an award of monetary damages as compensation for the repairs that were allegedly necessitated by the water main break and for loss of market value. The pleadings in this matter demonstrate that there has been ongoing communication between the Complainant and the Company's insurance company regarding the extent of damages to the Complainant's house and the amount of restoration that is needed. At bottom, the Complainant is not satisfied with the amount of remediation work that has been

performed, and has does not believe that the insurance company has offered him sufficient payment for the damages that he allegedly incurred.

32. Pennsylvania-American Water Company is a regulated water utility. Clearly, it is not in the business of repairing homes and property. Therefore, to the extent that the Complainant is seeking an Order directing the Company to remediate his home, such an Order would necessarily involve the Company either compensating the Complainant, or paying to retain the services of a housing contractor to perform the remediation.

33. The fact that the Complainant is seeking monetary damages from the Complainant is confirmed by the fact that the Complainant has filed a Civil Action against the Company in the Court of Common Pleas of Allegheny County, a copy of which is attached hereto as Exhibit 4 and which is publicly available.

34. It is well settled that the Commission does not have the power or jurisdiction to award monetary damages for the actions of a utility company. See Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1977). As such, it is evident that one of the reliefs requested by the Complainant (restoration and/or money damages) is beyond the power of the Commission to Order. Therefore, the Complaint is legally insufficient to the extent that it seeks compensation from the Company and/or its insurer, and the Counts of the Complaint which seek such relief should be dismissed.

35. Furthermore, the Complainant's claim for "restoration" of his house (i.e., damages), is barred by the doctrine of lis pendens. The purposes of recognizing the doctrine of lis pendens are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. "The law is quite

clear that lis pendens is a valid defense when the parties, the causes of action and the relief sought are the same in both actions (citations omitted).” Procacina v. Susen, 301 Pa.Super. 392, 394, 447 A.2d 1023, 1025 (1982).

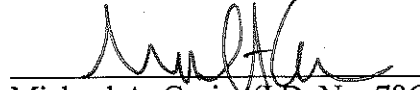
36. In the instant case, the identity of the issues, parties and relief is the same in both the Complainant’s Formal Complaint before the Commission and the Complainant’s Civil Action in Allegheny County. In both cases the Complainant is seeking relief against Pennsylvania-American Water Company for damages to his house which were allegedly incurred as a result of the November 29, 2009 water main break. For these reasons, the Complainant’s request for monetary damages against the Company should be dismissed pursuant to the doctrine of lis pendens.

**REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, Respondent Pennsylvania-American Water Company respectfully requests that your Honorable Commission grant the within Motion and dismiss the Complainant’s claims regarding the Company’s rate increase and the claims which seek an Order of damages against the Company, and clarify that the hearing scheduled for January 31, 2011 is limited to the service, safety, and reliability issues raised by the Complaint.

Respectfully submitted,

STEVENS & LEE

  
Michael A. Gruin (I.D. No. 78625)  
17 N. 2<sup>nd</sup> St., 16<sup>th</sup> Fl  
Harrisburg, PA 17101  
Tel. (717) 255-7365  
COUNSEL FOR PENNSYLVANIA  
AMERICAN WATER COMPANY

DATE: December 15, 2011



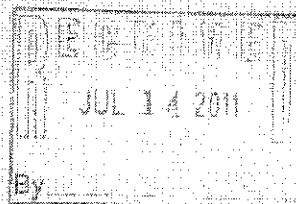
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

DATE SERVED: July 13, 2011

C-2011-2251435

PENNSYLVANIA AMERICAN  
WATER COMPANY  
KATHY PAPE, PRESIDENT  
800 WEST HERSHEY PARK DRIVE  
HERSHEY, PA 17033



Dear Mrs. Pape:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by James McGaffin. To defend yourself against the claims stated in the complaint, you must respond within twenty (20) days of the above date served by filing with the Commission, in writing, an Answer in accordance with 52 Pa. Code Section 5.61, either personally or through your attorney. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days of the above date served.

IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN TWENTY (20) DAYS OF THE ABOVE DATE SERVED, THE CLAIMS AGAINST YOU MAY BE DEEMED ADMITTED, THE CASE MAY GO FORWARD IN YOUR ABSENCE, AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

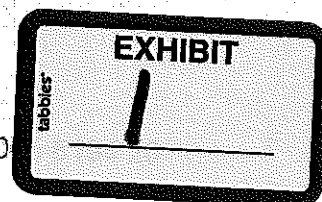
A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

9171 9690 0935 00



July 13, 2011

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
P.O. Box 186  
Harrisburg, PA 17108  
(800) 692-7375

Very truly yours,

A handwritten signature in cursive script that reads "Rosemary Chiavetta". The signature is written in black ink and is positioned above the typed name.

Rosemary Chiavetta  
Secretary

al

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: July 13, 2011

JAMES McGAFFIN  
Complainant

v.

PENNSYLVANIA AMERICAN WATER  
COMPANY  
Respondent

Complaint Docket  
No: C-2011-2251435

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FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

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TO: PENNSYLVANIA AMERICAN WATER COMPANY

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265**, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. **The date served is the mailing date appearing at the top of this Notice.** Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

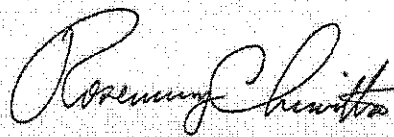
2. If you fail to either satisfy or settle this complaint, or to file an answer or other responsive pleading within twenty (20) days of the date served, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section

101, et seq. If you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy or settle this complaint, you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq. If you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq. If you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



Rosemary Chiavetta  
Secretary

(SEAL)

Certified Mail  
Return Receipt Requested

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

COPY

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name James J. McGaffin

Street/P.O. Box 137 REED DRIVE Apt #

City PITTSBURGH State PA Zip 15205-4305

County ALLEGHENY

Daytime Telephone Number Where We Can Contact You: (412) 922-8310

E-mail Address (optional): jimcgaffin@verizon.net

Utility Account Number 24-1711125-5 (from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

RECEIVED

JUN 23 2011

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

Pennsylvania American Water

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(e.g., taxi, moving company, limousine)

TELEPHONE (local, long distance)

4. COMPLAINT (check one)

A. In general, what is your complaint?

I want to oppose the company's proposed rate increase.

- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.

Other (explain).

B. State the facts of your complaint.

*My wife and I are the owners of a modest ranch home at the above address. On the evening of November 29, 2009, the Pennsylvania American Water (hereinafter referred to as PAWC) water distribution main in front of our home ruptured resulting in: Water flow over and under the ground surface to the front wall of our home, penetrating the backfill of the foundation wall resulting in settlement of the backfill. Subsurface water flow made its way to and beneath the dwelling foundation from front to rear causing: extensive voids under the basement floor slab; distress to the overhead garage door sill, at the rear of the dwelling; and, localized settlement of the garage floor plus exterior slabs immediately adjacent to the overhead garage door. At the peak of water pressure under the basement floor, the water forced its way from below the slab up and through a portion of the seam between the basement floor slab and the interior face of the front foundation wall.*

*Exterior flows passing overland and immediately below the surface resulted in, among others, major distress to the driveway retaining wall and the wash-out of the granulated slag paving base under multiple, if not all, concrete driveway, patio and walkway panels, causing minor to moderate horizontal and vertical movement.*

*Although the above incident was the first known incursion of water into our basement, we did experience seven subsequent weather related incursions between December 9, 2009 and June 5, 2010.*

*I understand the PAWC process for handling damage claims, is as follows:*

- PAWC is self insured to some degree.*
- It is PAWC decision to contract with Travelers Insurance to evaluate claims and make determinations for it. Travelers Insurance Claims Representative Giovanni DePaola has been assigned to my claim (hereinafter referred to as "AGENT")*
- PAWC retains control of those decisions by having its Greater Pittsburgh Area 'Organizational Risk Management Specialist', Linda Yarbrough, oversee and direct this process in the Greater Pittsburgh Area (hereinafter referred to as "SPECIALIST")*

*In early April 2010, after months of the AGENT foundering with indecision, I gave my approval to his calling in his Engineer to help analyze the underlying cause of distress to my property.*

On April 23, 2010, Daniel Greico, Jr. P.E. (hereinafter referred to as "ENGINEER") visited my home to examine areas which experienced visible distress during or after the November 29, 2009 Water Line Rupture.

On May 20, 2010, I received the ENGINEER's Report Dated May 10, 2010, via USPS, from the AGENT. The report, upon reading, was devoid of facts but provided multiple ambiguous and misleading statements of opinion plus untrue descriptions of conditions which neither the photos, attached to the report, nor in-situ conditions support. I requested a meeting with the AGENT to review the report's content and clarify where the ENGINEER's observations were made.

On June 29, 2010, the AGENT brought with him the ENGINEER, for that meeting. I then requested the withdrawal of the report for correction of ambiguous, misleading and untrue statements, The ENGINEER made it abundantly clear that his report would not be changed or retracted.

On July 9, 2010, the AGENT's Restoration Contractor removed the Overhead Garage Door Sill and discovered an extensive yet latent void under the Garage floor.

On July 13 or 14, 2010, the latent void was viewed and discussed between myself and the AGENT. At that time, I presented Street Opening Permits issued to PAWC by Green Tree Borough for repair of several prior water main leaks in close proximity to my home. The discussion yielded only one viable solution to arresting water flow under my home. According to the AGENT, he did not have the authority to authorize that work but committed to getting someone, who did have that authority, out to meet with us.

On July 27 or 28, 2010, I contacted the AGENT by phone for a status report. I was told that he consulted with the SPECIALIST and that PAWC, "as a matter of policy, does not approve preventative work and the diversion of water (emanating from the PAWC underground network) would fall in that category".

On August 16, 2010 Restoration of the Driveway retaining wall and front yard regradeing resumed. The AGENT's Contractor attempted to install the retaining wall with precast masonry units manufactured in a minimum of two different lots and procured at multiple suppliers. The result was a wall which was a mix of non-compatible colors and shapes which did not fit together with the expected alignment and color consistency. Obviously, the wall underwent a second replacement.

On August 22, 2010 I returned from a business trip to California to discover an attempt by AGENT to feign the filling of the void under the garage floor.

Week of August 29, 2010, replacement of concrete at the Overhead Garage Door sill and the front entry slab (stoop) was attempted without establishing proper lines and grade and formwork for same. The result is a wavy form and warped surface required to mate up with other surfaces distressed by the events of November 29, 2009.

On August 10, 2010, an attempt was made to utilize "Mud-Jacking" equipment to fill voids under the garage floor and level select exterior slabs. That aggressive attempt, by inexperienced operators, failed to level the exterior slabs; overfilled the under floor areas to the point where floor drainage has been lost; and, expanded the scope of distress to additional exterior concrete panels.

After first committing to replacement of the concrete panels, affected by this failed operation, I received a call from the AGENT retracting that commitment.

On October 21, 2011, I received the AGENT's letter dated October 18, 2010 requesting my acceptance of a cash settlement which reflects less than 20% of the remediation effort required to return my home and property to its Pre-November 29, 2009 condition and market value.

5. RELIEF

*I want the PUC to order the PAWC to fulfill its obligation to provide its services in a safe and reliable fashion; to step up to the table, stop hiding behind Travelers Insurance and restore my property to its Pre-November 29, 2009 condition and real time market value.*

*I want the PUC to order the PAWC to replace the water distribution mains on Reed and Conroy Drives, Green Tree Pennsylvania, which have experienced nine breaks since 2002. (See map titled "Reed Drive 2002 thru 2010 Water Line Repairs" attached as Page 6). Notations on that map designate Street Opening Permits as issued by Green Tree Borough to PAWC for Repair of Water Leaks.*

6. PROTECTION FROM ABUSE

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO \*

7. PRIOR UTILITY CONTACT

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations) \*

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name Thomas G. Michalek

Street 4 West Manilla Avenue

City Pittsburgh State Pennsylvania Zip 15220-3310

Area Code/Phone Number (412)-922-33<sup>3</sup>21

E-mail Address (if Known) tgm@greentree<sup>3</sup>law.com

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I James J. McGaffin, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

James J. McGaffin  
(Signature)

June 23, 2011  
(Date)

\_\_\_\_\_  
Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

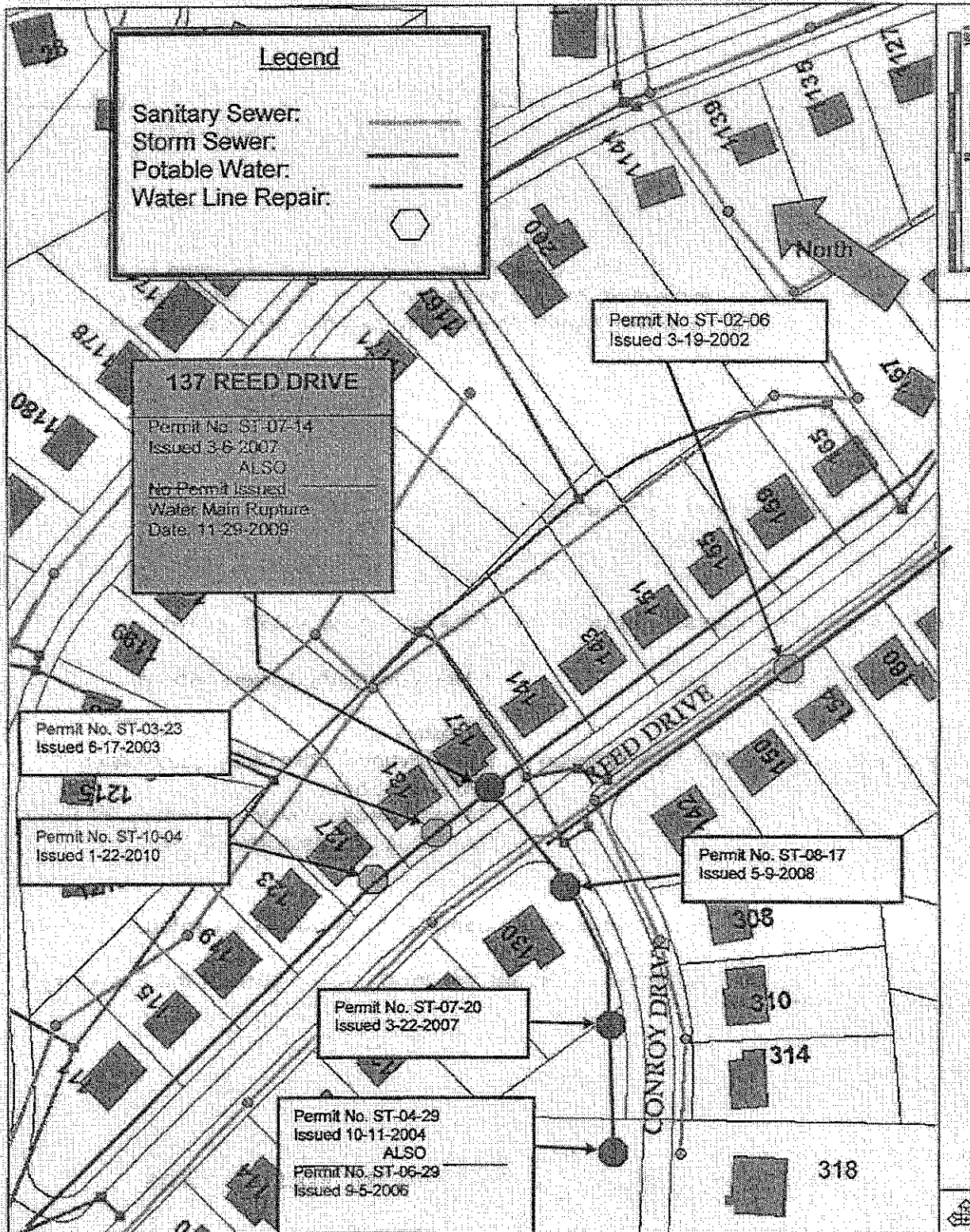
If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
---	--

Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

**Keep a copy of your complaint for your records.**



**Reed Drive 2002 thru 2010 Water Line Repairs**

**RECEIVED**

JUN 28 2011

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES MCGAFFIN  
Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY  
Respondent

Docket No. C-2011-2251435

**NOTICE TO PLEAD**

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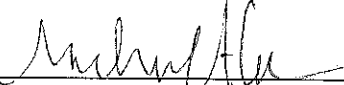
**To: James McGaffin**

You are hereby notified to file a written response to the attached Answer and New Matter of Pennsylvania-American Water Company within twenty (20) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed New Matter within twenty (20) days of service, the facts set forth by Pennsylvania-American Water Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned counsel for Pennsylvania-American Water Company. Failure to respond to this Answer and New Matter could result in the dismissal of your case.

STEVENS & LEE

  
Michael A. Gruin, (I.D. No. 78625)  
17 N. 2<sup>nd</sup> St., 16<sup>th</sup> Fl  
Harrisburg, PA 17101  
Tel. (717) 255-7365  
Fax (610) 988-0852  
COUNSEL FOR PENNSYLVANIA  
AMERICAN WATER COMPANY

DATE: August 1, 2011



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES MCGAFFIN  
Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY  
Respondent

Docket No. C-2011-2251435

---

**ANSWER & NEW MATTER OF RESPONDENT,  
PENNSYLVANIA-AMERICAN WATER COMPANY**

---

Pursuant to 52 Pa Code §5.61, Pennsylvania-American Water Company (“Respondent” or “Company”), by and through its attorneys Stevens & Lee, P.C., hereby responds to the Formal Complaint (“Complaint”) filed by James McGaffin (“Complainant”). In support thereof, the Company avers as follows:

1. Admitted.
2. Admitted.
3. Admitted.

4. A. The Company admits that it has a proposed rate increase pending before the Pennsylvania Public Utility Commission (“Commission”). On April 29, 2011, the Company filed a request to the Commission for approval for a residential rate increase. The Company’s rate case was docketed by the Commission at Docket No. R-2011-2232243 and the rate increase is currently before an Administrative Law Judge for disposition. The Company denies that its proposed rate increase is improper. To the extent that the Complainant wishes to oppose the rate increase or impose conditions on the rate increase, the pending rate case at Docket No. R-2011-2232243 is the appropriate

venue to express the Complainant's concerns. The Company denies that there is a reliability, safety or quality problem with the Company's service, as set forth in detail in subparagraph 4B and the New Matter, below. To the extent that Paragraph 4A contains other allegations, such allegations are denied.

B. Denied. The Company denies that its proposed rate increase is improper. To the extent that the Complainant wishes to oppose the rate increase or impose conditions on the rate increase, the pending rate case at Docket No. R-2011-2232243 is the appropriate venue to express the Complainant's concerns.

The Company admits that on November 29, 2009, the Company sustained a mainline break in the vicinity of 137 Reed Dr., Pittsburgh, PA. Company repair crews repaired the main on November 30, 2009. The Company admits that the main break caused some water damage to the Complainant's home, and an insurance claim was filed with the Company's insurance company (Travelers Insurance). A crew from Disaster Restoration Services completed the repairs to the Complainant's house that were required as a result of the water main break and subsequent water damage. The total amount of the repairs on the Complainant's home performed by Disaster Restoration Services and paid for by Travelers was approximately \$34,000.

The Company denies the Complainant's allegations regarding the contents of the Engineering Report, the extent of the damage caused by the water main break, the scope and quality of the repair work performed at his house, and the remainder of the allegations in Paragraph 4B.

5. The Company denies that the Complainant is entitled to any relief. Any relief that the Complainant seeks regarding the Company's proposed rate increase should

not be considered as part of the present Formal Complaint, for the reasons set forth below in New Matter. With respect to the Complainant's request for additional restoration damages, the Complainant is not entitled to further relief. Travelers Insurance has properly paid for all repairs to the Complainant's house that were required as a result of the water main break. Neither Travelers nor the Company are responsible for damages to the Complainant's home that are not related to the water main break. The Commission is without authority or jurisdiction to award monetary or punitive damages to a Complainant against a utility company, as set forth below in New Matter.

The Company denies that there were nine previous main breaks in the area that the Complainant identifies. The Company routinely obtains permits to perform maintenance work on its lines, and the obtaining of a permit does not mean that a main break has occurred. Complainant's allegations regarding previous main breaks are based on false assumptions and have no basis in fact. The Company denies that replacement of the distribution mains on Reed and Conroy Drives is warranted or necessary, or that such relief should be ordered. To the extent that Paragraph 5 of the Complaint contains additional allegations, such allegations are denied.

6. Paragraph 6 is a statement to which no response is required.
7. Admitted that the Complainant has spoken to Company representatives. To the extent paragraph 7 contains additional allegations, such allegations are denied.
8. Paragraph 8 is a statement to which no response is required.
9. Paragraph 9 is a verification to which no response is required.

**NEW MATTER**

10. Pennsylvania-American Water Company incorporates by reference responses contained in Paragraphs 1 through 9 above as though fully set forth at length.

11. Pennsylvania-American Water Company is represented in this matter by:

Michael A. Gruin (I.D. No. 78625)  
17 North 2<sup>nd</sup> Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
Tel. (717) 255-7365  
Fax (610) 988-0852  
mag@stevenslee.com

Dana Pirone Carosella, Esquire  
Attorney I.D. No. 57221  
Stevens & Lee  
1818 Market Street, 29<sup>th</sup> Floor  
Philadelphia, PA 19103  
215-751-2890/610-371-7978 (fax)  
dpc@stevenslee.com

12. On that on November 29, 2009, the Company sustained a mainline break in the vicinity of 137 Reed Dr., Pittsburgh, PA. Company repair crews repaired the break on November 30, 2009.

13. Consistent with the Company's practice in situations where customers allege that water main breaks cause water damage to their homes, the Company opened an insurance claim with the Company's insurance company (Travelers Insurance).

14. A Travelers representative contacted the Complainant on December 2, 2009 to begin the process of evaluating the repairs that needed to be performed to the Complainant's house.

15. A Travelers representative visited the Complainant's property shortly after the water main break. The representative noted a small amount of water present in the

garage and basement. It appeared that most of the water flowed around the building and down the driveway. As that time, temporary carpeting was installed in the basement for aesthetic reasons, as the Complainant indicated that he planned to have guests for the holiday season.

16. The Complainant alleged to the Travelers representative that the water main break had caused structural damage to his house. As a result of these allegations, Travelers requested that an engineer from Gateway Engineering perform an inspection of the house and prepare a report on the damage to the house.

17. An engineer from Gateway inspected the Complainant's property, and found no structural damage that would have been caused by the water main break.

18. Following the issuance of the report, representatives of the Company, Travelers Insurance, and Disaster Restoration Services met with the Complainant to discuss the report. The Complainant disagreed with the engineering report's findings and continued to allege that further repairs were necessary.

19. Shortly after the meeting, the Pittsburgh area sustained a heavy rain of several inches. The Complainant contacted Disaster Restoration Services and indicated that water was seeping into his basement, and claimed that it was caused by the water main break.

20. Travelers agreed to pay for and install a new front slab for the Complainant's house, and to excavate and parge the front wall of the house.

21. The Complainant then requested that Travelers excavate a ditch across his entire front lawn and put in a French drain system to tie into the local storm sewer. Travelers rejected this request as it was unrelated to the water main break.

22. The Complainant next claimed that a stone wall at his house was cracked, and requested that Travelers repair it. In an effort to satisfy the Complainant, Travelers replaced the wall.

23. The Complainant also alleged that one slab and the apron on his garage had cracked, and requested them to be repaired by Travelers. Travelers indicated that the cracks were not due to the water main break. However, in another attempt to satisfy the Complainant, Travelers agreed to repair the slab and apron. During the course of these repairs, a void was identified under apron. Disaster Restoration Services filled the void with concrete.

24. After making the aforementioned repairs, Travelers informed the Complainant that all repairs related to the water main break had been completed and that no further repairs would be performed.

25. Travelers estimates that approximately \$34,000 worth of repairs have been performed on the Complainant's house. Travelers has sent the Complainant a settlement offer for the outstanding damage to his home, and has asked the Complainant to confirm his satisfaction with the settlement and sign a release. To date, Complainant has refused to do so.

26. To the extent that the Complaint is alleging safety, reliability, or quality problems for periods prior to 2008, such claims are barred by the applicable statute of limitations.

27. The Complainant's claims are barred by laches.

28. The Complainant's claims are barred by estoppel.

29. The Complaint fails to state a claim upon which relief can be granted.

30. To the extent that the Complainant seeks an award of monetary damages and/or punitive damages against the Company, such relief is beyond the power of the Commission to order. It is well settled that the Commission does not have the power or jurisdiction to award monetary damages for the actions of a utility company. See *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

31. On April 29, 2011 the Company filed a request to the Commission for approval for a residential rate increase. The Company's rate case was docketed by the Commission at Docket No. R-2011-2232243 and the rate increase is currently pending before an Administrative Law Judge

32. The Complainant's Formal Complaint appears to include a protest related to the Company's proposed rate increase. See Paragraphs 4(A).

33. The Counts in the Complaint regarding the Company's proposed rate increase should be dismissed from this proceeding on the grounds of *lis pendens*. The purposes of recognizing the doctrine of *lis pendens* are to prevent the respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process, and to avoid inconsistent decisions on the same causes of action. "The law is quite clear that *lis pendens* is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions (citations omitted)." *Procacina v. Susen*, 301 Pa.Super. 392, 394, 447 A.2d 1023, 1025 (1982).

34. The Complainant will have the opportunity to voice his concerns over the Company's proposed rate increase in the rate case docket. The Company should not be forced to incur the time and expense of presenting witnesses and testimony on the appropriateness of the proposed rates in this Complaint docket. To allow any customer to

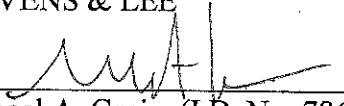
have a separate investigation would result in exactly the wasting of resources and the possibility on inconsistent results *lis pendens* was developed to prevent.

**REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, Respondent Pennsylvania-American Water Company respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,

STEVENS & LEE

  
Michael A. Gruin, (I.D. No. 78625)  
17 N. 2<sup>nd</sup> St., 16<sup>th</sup> Fl  
Harrisburg, PA 17101  
Tel. (717) 255-7365  
Fax (610) 988-0852

Dana Pirone Carosella, Esquire  
Attorney I.D. No. 57221  
Stevens & Lee  
1818 Market Street, 29<sup>th</sup> Floor  
Philadelphia, PA 19103  
215-751-2890/610-371-7978 (fax)  
dpc@stevenslee.com

COUNSEL FOR PENNSYLVANIA  
AMERICAN WATER COMPANY

DATE: August 1, 2011

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES MCGAFFIN  
Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY  
Respondent

Docket No. C-2011-2251435

**VERIFICATION**

I, Jasen Stanton, holding the position of MANAGER FIELD OPERATIONS with Pennsylvania- American Water Company, verify that the answers and the factual allegations contained in the foregoing Answer to Complaint and New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

7/28/11  
Date

Jasen Stanton

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES MCGAFFIN  
Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY  
Respondent

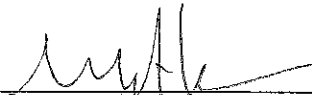
Docket No. C-2011-2251435

**CERTIFICATE OF SERVICE**

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

VIA First Class U.S. Mail

James McGaffin  
137 Reed Drive  
Pittsburgh, PA 15205-4305

  
\_\_\_\_\_  
Michael A. Gruin

DATED: August 1, 2011

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**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.

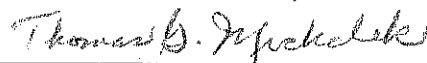
33. Lis pendens is not a grounds for dismissing an action or cause of action.

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@greentree.com](mailto:tgm@greentree.com)

Counsel for James McGaffin, Complainant

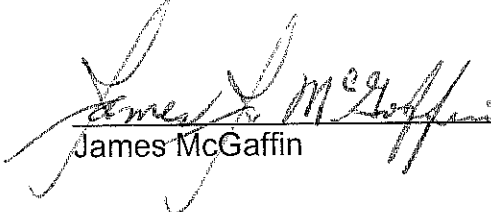
Date: August 27, 2011

**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**

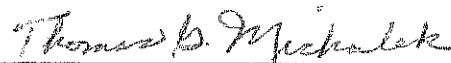
JAMES MCGAFFIN	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2251435
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

**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. 2<sup>nd</sup> Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101

Dana Pirone Carosella, Esquire  
Stevens & Lee  
1818 Market Street, 29<sup>th</sup> 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@greentreeelaw.com](mailto:tgm@greentreeelaw.com)

Counsel for James McGaffin, Complainant

Date: August 24, 2011

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JAMES J. McGAFFIN and  
MARY BETH McGAFFIN,

Plaintiffs

vs.

PENNSYLVANIA-AMERICAN  
WATER COMPANY,

Defendant.

CIVIL DIVISION

No. GD-11-21230

COMPLAINT IN CIVIL ACTION

Code:

Filed on behalf of James J.  
McGaffin and Mary Beth McGaffin,  
Plaintiffs

Counsel of Record for this Party:  
THOMAS G. MICHALEK, ESQ.  
Pa. ID #19864

4 West Manilla Avenue  
Pittsburgh, PA 15220  
412-922-3331

DEPT. OF COURT RECORDS  
CIVIL/FAMILY DIVISION  
ALLEGHENY COUNTY  
11 OCT 17 PM 4:27  
FILED



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES J. McGAFFIN and  
MARY BETH McGAFFIN,  
Plaintiffs,

No. *GD-11-21120*

vs.

PENNSYLVANIA-AMERICAN  
WATER COMPANY,  
Defendant.

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within TWENTY (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**LAWYER REFERRAL SERVICE**  
The Allegheny County Bar Association  
11<sup>th</sup> Floor Kopper Bldg.  
436 Seventh Avenue  
Pittsburgh, PA 15219  
Telephone: (412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES J. McGAFFIN and )  
MARY BETH McGAFFIN, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
PENNSYLVANIA-AMERICAN )  
WATER COMPANY, )  
 )  
Defendant. )

No. GD-11-21230

**COMPLAINT IN CIVIL ACTION**

AND NOW come Plaintiffs, James J. McGaffin and Mary Beth McGaffin, by and through their attorney, Thomas G. Michalek, Esquire, and files the following Complaint in Civil Action against Defendant, Pennsylvania-American Water Company and in support thereof avers the following:

1. Plaintiffs, James J. McGaffin and Mary Beth McGaffin, are married individuals, who at all times pertinent hereto, resided at 137 Reed Drive, Borough of Green Tree, Allegheny County, Pennsylvania.
2. Defendant, Pennsylvania-American Water Company, is a public utility serving residents and businesses in the Commonwealth of Pennsylvania and having its principal office located at 800 West Hershey Park Drive, Hershey, Pennsylvania, 17033 and maintains an office in Washington County, Pennsylvania, located at 300 Galley Road, McMurray, 15317.
3. On November 29, 2009, Defendant's water line, located in the right-of-way on Plaintiffs' property, had a major break in that location, which resulted in significant visible damage to the existing walkway, retaining wall, and concrete driveway and also caused water to

enter into the finished gameroom in Plaintiffs' home for the first time.

4. In the five years prior to the subject water break on Plaintiffs' property, there had been [5] ruptures of the same water line on other nearby properties above the subject property, plus a prior break on the subject property, which continued for a period of time, was finally repaired on or about March 6, 2007.

5. None of the prior breaks in the immediate vicinity had resulted in visible damage or water leaking into the living space.

6. However, in examining the visible damage, due to the November 29, 2009 water main break, Plaintiffs found significant latent damage to Plaintiffs' home, including, but not limited to, a newly depressed area of the concrete garage floor between the overhead door and the floor drain; a void under the garage floor approximately 5 inches deep and extending approximately 9 feet into the garage; an increase of radon gas flow into the home; and potential additional undermining of the concrete floor in the finished gameroom portion of Plaintiffs' basement.

7. Defendant, or its agents or representatives, attempted to perform certain repair or remediation work, but it was performed in less than professional manner and failed to correct the problems created and exposed by the water main break.

8. After several months of failed efforts to get Defendant to properly correct the damage caused by the water main break, at the request of Defendant's representative, Giovanni DePaola, Plaintiff submitted a list of Open Restoration and Repair Items to Mr. DePaola on September 20, 2010.

9. Rather than responding to the list of open items, Mr. DePaola sent a responsive proposal to Plaintiffs dated October 18, 2010. However, the proposal was insufficient to even correct the faulty repair work that had been performed by PAWC or its agents and failed to

address any of the costs associated with the list of repair items submitted to Defendant.

10. The cumulative and continuing effect of the numerous water main breaks, within approximately 100 yards of Plaintiffs' home, has been a redirection of the natural subsurface water flow to locations under Plaintiffs' concrete walkway and driveway; under Plaintiffs' foundation and concrete basement and garage floor; and into Plaintiffs' finished gameroom. This condition and the resulting damage is continuing to increase.

11. As a direct result of Defendant's failure to provide its water service in a safe and reliable manner and/or its negligence in providing such service, Plaintiffs have suffered the following damages to their personal residence:

- a. Improperly repaired 5 inch void under the garage floor and left further untreated voids;
- b. Unaddressed and unrepaired voids under the remainder of Plaintiffs' basement;
- c. Misaligned concrete pads on the driveway and the exterior concrete slabs behind the garage;
- d. Misaligned front stoop and concrete walkway slabs at front entry to home, along with voids under the walkway;
- e. Continuing subsurface water flow under the home causing voids under and up and through a portion of the seam between the basement floor slab and the interior face of the front foundation wall;
- f. Improperly installed replacement retaining wall along the driveway near the front of the home;
- g. Sinking of front yard and rear yard landscaping and grass areas;

- h. Damage to underfloor drains and vent lines;
- i. Other potential undiscovered damage, which are not determinable without further investigation and destructive damage to Plaintiffs' home.

12. Defendant has failed and refused to provide the needed repairs or pay to Plaintiffs the cost of the required repairs.

13. Plaintiffs have suffered damages in excess of \$25,000.00.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant for an amount in excess of \$25,000.00, plus interest and costs.

Respectfully submitted,

*Thomas G. Michalek*

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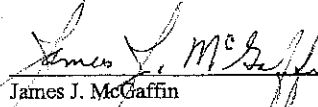
Thomas G. Michalek, Esquire  
Attorney for Plaintiffs

VERIFICATION

I, James J. McGaffin, have read the foregoing Complaint in Civil Action 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: 10/14/2011

  
James J. McGaffin

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES MCGAFFIN  
Complainant

v.

PENNSYLVANIA-AMERICAN  
WATER COMPANY  
Respondent

Docket No. C-2011-2251435

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Motion upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

Thomas G. Michalek  
4 West Manila Ave.  
Pittsburgh, PA 15220

  
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Michael A. Gruin

DATED: December 15, 2011