

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

THOMAS OLUP :
 :
-vs- : No. C-2011-2247941
 :
PENNSYLVANIA-AMERICAN WATER :
COMPANY :

**EXCEPTIONS OF COMPLAINANT,
THOMAS V. OLUP**

History of the Proceedings

This appears to be a *partial history* of the proceedings as set forth in Paragraphs 1 and 2, Page 1 into Page 2. (See docket entries)

Page 2, Paragraph 2

An original Telephonic Hearing was directed and scheduled by the PUC on November 30, 2011. The Respondent [PAWCO] requested an in-person hearing. The Complainant objected to an in-person hearing due to the prejudice of obtaining Complainant’s witnesses in an in-person hearing, as well as the inconvenience to eye witnesses being able to schedule their appearances at an in-person hearing. The Court ruled in favor of PAWCO and granted the in-person hearing. Subsequently, at least four witnesses were not able to give in-person testimony, rather than telephonic testimony.

Page 2, Paragraph 4

Claimant questions that the Court gave “Full Consideration of the record in this case.”

Findings of Fact

Page 2, No.1. Thomas V. Olup is a former registered Professional Engineer in and of the Commonwealth of Pennsylvania, the State of Ohio, and the State of West Virginia. The Complain-

ant is the present owner of 719 Agnew Road. He functioned and had a Durable Power of Attorney for his in-laws. The Complainant had approximately 10 years in handling the planning, design, and construction of water distribution for the Steel Valley Communities. He has over 50 years of experience and was called upon by PAWCO, field forces, and supervisors to assist in finding mainlines and breaks and leaks at 719 Agnew Road, Lane Way and Abel Avenue in the recent past in Baldwin Borough. (N.T. 11-12)

No. 2. Allegedly – a “portion” of the line was included in two work order numbers. Based on those work orders (of PAWCO) a *portion* of the line was constructed in 1937. However, Mr. Macek was not an eyewitness to the installation of the line, only reading and interpreting the paperwork (work order).

No. 3. Defense Attorney Gruin utilized Exhibits 1 through 8 for identification, not just No. 1 [Again, it should be noted that a *telephonic* hearing was originally scheduled for November 30, 2011. The defense for PAWCO requested an in-person hearing to accommodate one witness, and that request was granted by Order of Court. The Claimant objected to the in-person hearing due to the prejudice of not being able to avail some four to six eyewitnesses to damages of the homes and the environs along Agnew Road. See Footnote No. 3 to the Initial Decision.

No. 4. Notes of Testimony 112. The examination by Defense Attorney Gruin of the witness M. Macek does not reflect any of these statements.

N.T. 124 – Cross-examination by Claimant’s Attorney Olup of the witness/employee of PAWCO M. Macek does not reflect any mention that the “rupture was repaired by isolating the leak.” The piece that was cut out was approximately four or five feet long. The split in the pipe was probably 18 to 20 inches.

N.T. 133 – Cross-examination of Witness M. Macek by Attorney Olup – Witness Macek reiterates an 18- to 24-inch gash in this line.

No. 5. N.T. 129 – Cross-examination of Witness M. Macek reflects that he (Macek), not the repair crew – had observed that the pipe had tuberculated to a point that maybe a six- or seven-inch area inside was available.

No. 6. N.T. 140 – Cross-examination of Witness Jasun Stanton [PAWCO] relative to the claimed “useful life” – the recommended standard for useful life of cast iron is 70 to 100 years, plus, is irrelevant. Further, the facts presented by PAWCO’s own documentation and leak reports emphatically indicates that this line (Agnew Road) was a derelict line that in no way had this so-called “theoretical” useful life. The facts show that this line’s useful life was actually closer to 30 to 40 years.

Further, quoting that PAWCO has mains that are over a hundred years old in other locations in their system is *completely irrelevant*. We are talking about, specifically, the line in Agnew Road and the specific documentation of continuing leaks and breaks at this location, not theoretical and generalized useful lives. Why not quote that cast iron lines have survived in the “old world” for some 300 years? To carry it to its absurdist conclusion, it is irrelevant to compare the likes of the City of Paris to this line – along Agnew Road – with its continued repairs, leaks and breaks, making it “derelict.” Further, the Court (Judge Long – N.T. 140) questions on N.T. 139, well “useful life” is a technical term. Further, on N.T. 140 Judge Long states “and that is beyond my legal ability,” [relative to “useful life”].

No. 7. The Claimant gave extensive testimony that throughout the years he had been an eyewitness that: “I would observe water intrusions coming through their basement areas (through the years).” (N.T. 13)

In 1994, Claimant had observed that PAWCO had only placed a clamp-type of repair on its line in 1994.

Claimant's Exhibit "Q" has some 11 pages of PAWCO's documents, as signed by Philip Tompkins, Supervisor, and F. Catale, Supervisor, under verification by the attorney for PAWCO – Harry J. Zimmer, under date of 01/09/96.

See also the Main Line Breaks, noted at 745 Agnew Road, titled "Pennsylvania American Water Company – Pittsburgh – Main Line Break Report" signed by Philip Tompkins, Supervisor, date of March 28, 1994. It is critical to note that the breaks noted/admitted by PAWCO are: 4/75, 12/78, 4/88.

The Claimant avers that he has observed at least six water intrusions in addition to the two water deluges of 1994 and 2008. (N.T. 14)

The Court should be aware that the Complainant personally observed at least six water intrusions into the basement area of 719 Agnew Road causing massive damages to the homes along Agnew Road by the PAWCO's major derelict line in Agnew Road – throughout the years. See Complainant's complete 11-page Exhibit "Q", which is basically PAWCO's records/documentation and attorney's verification of its derelict mainline and PAWCO's failure and negligence in not maintaining adequate facilities and that it failed to render adequate and reasonable service to its affected customers along Agnew Road. By its own admission, and documentation, the main breaks allegedly started in 1975, continued in 1978, continued in 1988, a deluge in 1994, with a minor clamp repair in 1994, and another deluge in June of 2008.

In fact, this line had an effective and useful life of 38 to 41 years, not a theoretical useful life of 70 to 100 years, plus.

This statement by the employee of PAWCO, Witness Jasun L. Stanton is totally without merit and has no factual basis with the comparison to Complainant's Exhibit "Q" Main Line Break Report. See N.T. 139-140.

The Court should note Employee Stanton's direct testimony at N.T. 148, L. 15: "If it was a two- or three-year time frame, I would classify it as troublesome." The Claimant would certify it as troublesome and derelict, having a short span of five years (1970-1975).

The Court should recognize that Employee Stanton is only giving his "company" opinion, which has no bearing as a factual matter. After all, Mr. Stanton has not and does not even field view actual conditions of repairs or leaks in his own purview as Manager of Field Operations for the Pittsburgh District of Pennsylvania American Water Company.

With all due consideration, Employee Stanton appears to be a desk-bound management employee without any first-hand or eyewitness accountings of field repairs and/or breaks—specifically along the mainline of Agnew Road and the damages caused by PAWCO's derelict line. (N.T. 150)

No. 8. See Complainant's Exhibit "Q"—At the approximate location of 745/741 Agnew Road, PAWCO's mainline has had at least the following mainline breaks: 4/75, 12/78, 4/88, 3/94 and 6/2008. The Complainant has observed at least six inundations to the dwelling at 719 Agnew Road in addition to the deluges of March 1994 and June 2008. (N.T. 14)

No.9. The Complainant, Thomas V. Olup, P.E., registered in the Commonwealth of Pennsylvania, State of Ohio and State of West Virginia, with over 50 years of experience in the consulting engineering profession with at least 10 years of extensive field experience in water distribution, also called upon by field personnel, supervisors and others, to assist in locating and finding major leaks in PAWCO's mainlines, takes exception to Employee Stanton's opinion of what constitutes a "troublesome line" versus a derelict line.

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No. 10. See Complainant's Statement under No. 9 above. Further, that Employee Stanton has/had no direct knowledge nor was he an eyewitness to any or all of the field mainline breaks and/or their impact on the customers' homes and environs along Agnew Road. (N.T. 150)

No. 11. The Complainant states and avers that PAWCO finally recognized and acknowledged that after the mainline break of June 2008 that they had a derelict line, could no longer continually make repairs, and made a "corporate" decision to replace the derelict mainline from Agnew Road/Joseph Street to Agnew Road/Custer Avenue in 2010. This line was not replaced at the end of 2009, as testified to by Employee Staunton at N.T. 140, L. 22.

Discussion (Beginning Page 4)

Paragraph 1. Last Line – Complainant takes strong exception. Further, the Complainant more than met his burden of proof, and his Complaint should be upheld under the facts and the law.

Paragraph 2. The Complainant maintains that the Court did not allow the Claimant to supply his Exhibit "F" as an expert witness, relative to the repair (clamp) in 1994 by PAWCO, and that the repair (clamp) would not stand up to or was insufficient and subsequent breaks would occur in the same continuing locations at 745 and 741 Agnew Road.

Paragraph 3. This is not true. The Court should note Mr. John Stenglein's testimony on the 1994 mainline break at N.T. 96-100. Further, by the Court's Order in favor of PAWCO and over Claimant's objections to an in-person hearing, instead of the originally scheduled telephonic hearing, the Court prejudiced the Claimant in his ability to provide for four to six additional witnesses.

Regarding N.T. 11-12, the Claimant did not retire 30 years ago. Further, the Court, under N.T. 34, has mischaracterized Complainant's actual testimony and is not reflective of what Complainant actually said.

Further, the Judge denied Olup's probable cause report [proposed Exhibit "F"] which directly discussed the clamp repair from 1994.

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Paragraph 1. This is an erroneous conclusion by the Court. The Claimant did have first-hand knowledge of the repair in 1994. Further, the Claimant had, as an expert witness, first-hand knowledge that PAWCO used a clamp/repair, which was inadequate for long-term effect, and that the mainline is and was derelict. The Court ruled against the Claimant relative to the presentation of the exhibit on probable cause. (N.T. 33-34, 83-85) Now the Court is trying to have it both ways.

Paragraph 2, Page 5. The Court had not addressed Exhibit "Q" (11 pages addressing PAWCO's derelict mainline). By PAWCO's own hand – Philip Tompkins, a PAWCO supervisor, had noted at least the several previous breaks of April 1975, December 1978, and April 1988, as well as the deluges of 1994 and 2008. The Claimant avers that there were at least six to eight water intrusions into 719 Agnew Road in addition to the two main deluges. This is and was a derelict line.

Note that within three years from 1975 through 1978, this mainline was more than a "troublesome" line, but rather a derelict line. (N.T. 148, L. 15)

Customers (witnesses) if a telephonic hearing was allowed, were ready and able to give testimony that this line had caused intrusions and damages for some approximately 50 years in or around 725 Agnew Road. Further: Mr. & Mrs. Harms had advised (called) PAWCO about its derelict line in December of 2007 with a "water hammer" and racing meter, and icing conditions in their driveway. These individuals could not give telephonic testimony as ruled by the Court.

Finally, this Court has chosen to gloss over Exhibit “Q” – with its other dates and locations. (The Claimant states that there existed more dates and breaks that were not included and/or indicated by the PAWCO documentation.)

Deposits and/or tuberculation is a standard indication that the mainline is derelict, and should have been replaced well before any “theoretical” useful life by PAWCO. Here was factual continuing proof that the mainline was derelict, and the Court chose not to address its significance, as the PUC has done in previous cases. This was a significant admission by PAWCO, as to the mainline being derelict. (N.T. 129)

For the Court’s use, the definitions of “derelict” and “troublesome” follow:

“Derelict”: Given up by the owner; abandoned; law: a thing voluntarily abandoned; dereliction – a failure in duty; shortcoming [*Webster’s New Collegiate Dictionary*, copyright 1949]

Rundown; dilapidated; dereliction – willful neglect, as of duty or principle; a state of abandonment or neglect [*The American Heritage College Dictionary*, 4th edition, copyright 2002]

“Troublesome”: Provoking worry or anxiety; vexatious; archaic (characterized by disturbance; turbulent; burdensome; bothersome [*Webster’s New Collegiate Dictionary*, copyright 1949]

Causing trouble or anxiety; worrisome, difficult; trying [*American Heritage College Dictionary*, copyright 2002]

Paragraph 3, Page 5. The Court has not recognized the fact that the mainline is and was derelict. From the continuous water intrusions to the homes along Agnew Road, the dates/locations of previous leaks (under PAWCO’s own hand), the anecdotal history of the residents along Agnew Road, the probable cause of PAWCO’s constant repairs – there can be no other rational or factual conclusion that the mainline is and was derelict.

Mr. Stanton gave only his “opinion” on a “theoretical” case for some cast iron pipes. The Claimant presented “actual” facts, testimony and documents/exhibits, not “theoretical.” Further, the Claimant avers that the Court erred in giving merit and credit to this theoretical approach and not

the actual facts as presented by the Claimant and supported by PAWCO's own documents. The Claimant suggests that the Court should have been a trier of the facts, not theory.

Further, the case concerns a mainline along Agnew Road, not what PAWCO has or has not done throughout its system. Further, a line breaking within three years, then ten years, then six years, then 14 years, and having a history of leaks, intrusions or breaks is *a derelict line*.

It is interesting to note that witness, Mr. Stanton, does not go to the field to observe any leaks or breaks. By definition, his title as Manager of "Field" Operations is an oxymoron. Why not state that in the old world, cast iron pipes are known to last 300 to 500 years? Would then the Court give that similar credibility or afford it relevance? We suspect not. Therefore, this testimony of Mr. Stanton is irrelevant.

At Page 6, Paragraphs 1 and 2. Claimant takes exception to the conclusion of the Court that: "The fact that the Agnew line broke and caused property damage by itself is not enough to conclude that the Company violated Section 1501 (case footnote omitted)." Claimant maintains that this is an outcome-determinative conclusion:

- The continuous breaks in the main along Agnew Road over a 34-year time frame put PAWCO on notice of a derelict mainline nearing the termination of its useful life;
- The 2008 mainline break was the end result of PAWCO's negligence in not previously replacing the line or undertaking any significant repairs to guard against continuous leaks or failures;
- The damages, safety and health issues presented at 719 Agnew Road are the direct result of the 2008 break and derelict mainline (see main Brief of Complainant, Page 9, Proposed Conclusions of Law 10-12).

Thus, Complainant maintains that PAWCO stands in violation of 66 Pa.C.S. §1501.

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Paragraph 3. The Complainant, as a Registered Professional Engineer in the Commonwealth of Pennsylvania, State of Ohio, and State of West Virginia, with over 50 years of experience in the consulting engineering field, takes strong exception to this characterization and portion of the Opinion of the Court.

It is obvious to the Complainant that the Court does not understand that there is no “magic bullet” of specific engineering handbooks, guidelines, or so-called industry standards.

The Complainant further refutes the Court’s Opinion that the Complainant does not have first-hand knowledge of the derelict line. It is ludicrous to infer or opine otherwise as per this paragraph.

Further, the employee/manager of field operations (Mr. Stanton) has no direct or first-hand knowledge of its mainlines in the field. His so-called opinions are derived from the reports and the confines of his office, as well as “theoreticals” as promulgated in the confines of his office, and not seen, observing, monitoring conditions in the real world defined as “in the field.”

Finally, the Court notes: “There is no evidence that it (PAWCO) knew or should have known the line would fail and neglected to undertake corrective action.” (See foregoing Page 6, Paragraph 2)

This conclusion by the Court is totally devoid of any reference to the Claimant’s testimony, facts, and documentary exhibits as presented on January 19, 2012. Therefore, in the opinion of the

Claimant, Claimant finds this Opinion and statement by the Court without merit, not supported by facts, and prejudicial.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Jeffrey T. Olup', written over a horizontal line.

By

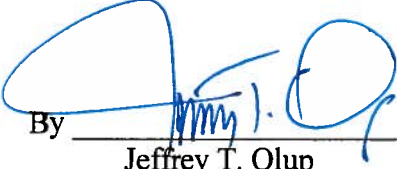
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Exceptions of Complainant, Thomas V. Olup, was forwarded to the following by electronic and first-class mail, postage prepaid as of this date, August 7, 2012:

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