

OWNER OR REPUTED OWNER	DESCRIPTION	APPROXIMATE UPSET PRICE
WAYNESBORO BOROUGH (CON'T)		
STONER, Lewis C. & Anna M.	25 5B-49-94 227 Wayne Avenue	1,225.93
WAGAMAN, Paul L.	26 5C-14-85 420 W. Fifth Street	1,918.50
WOODRING, Lester F. & Julia F.	26 5C-47-36-LO TR 1963 Atlas	569.48
WOODRING, Lester F. & Steven L.	26 5C-47-36 S. Church Street	151.90
WOODRING, Patricia Ann	26 5C-7-35 116 Hamilton Avenue	643.81
WEST END SHIPPENSBURG BOROUGH		
ADAMS, George Jr. & Gladys L.	27 6A-24-31 224 Lurgan Avenue	1,373.51
GILBERT, Earl E. & Betty G.	27 6B-25-5 26 Lurgan Avenue	1,653.88
MILLER, David L. Jr.	27 6B-33-2B 825 W. King Street	8,614.20
REYNOLDS, Philip P.	27 6A-40-3 835 W. King Street	1,024.14

ELIZABETH B. CARSON, Plaintiff vs. WEST PENN POWER COMPANY, a Pennsylvania corporation, ALLEGHENY POWER SERVICE CORPORATION, a Maryland corporation, and the BOROUGH OF WAYNESBORO, a Pennsylvania municipality, Defendants, Civil Action - A.D. 1994 - 316

Carson v. West Penn Power et al.

Admissions- Liability- Pleading

1. Where a party clearly admits liability through the statement of a duly authorized agent, the court will allow the plaintiff to plead the admission, even where the admission is contained within an offer of compromise, if the admission is separable from the offer.

Jan G. Sulcove, Esq., Attorney for Plaintiff

Richard J. Walsh, Esq., Attorney for Defendants

Walker, P. J., July 26, 1996

OPINION AND ORDER

Factual and Procedural Background

This case arises out of injuries plaintiff received as a result of a fall on the sidewalk in front of the electrical substation on East Main Street, Borough of Waynesboro, on September 29, 1993. Plaintiff filed a complaint in this matter on February 15, 1996 alleging *inter alia* that West Penn Power Company and Allegheny Power Service Corporation were negligent with regard to the maintenance of the sidewalk.

Defendants filed preliminary objections to two portions of the complaint, the first portion of the complaint was dealt with by a prior order. This preliminary objection concerns a motion to strike paragraph 14 of plaintiff's complaint which alleges that West Penn Power admitted liability in a letter dated October 6, 1995.

Discussion

The central question in this preliminary objection is whether or not the statement made by an agent of the company is to be treated as an admission for purposes of establishing liability in the pleading. The relevant excerpt from the letter which is dated October 6, 1995 and signed by D.M. Hartung, Claims

Representative, states "West Penn Power is aware of our liability in this matter, and it is uncontested; however, damages are a issue." Defendants rely upon a case of *Smith v. Leflore*, 293 Pa.Super. 149, 437 A.2d 1250 (1981). The *Smith* case dealt with an appeal from a denial of a motion for a new trial in a paternity suite. The *Smith* case reaffirmed that in general offers to compromise are not admissible, *Smith* at 153, 437 A.2d at 1252 and that offers of compromise which contain no explicit admission on the part of the alleged party are not admission of liability. *Id.*

The *Smith* case, however, was followed by a Pennsylvania Supreme Court case. *Rochester Machine Corp. v. Mulach Steel Corp.*, 498 Pa. 545, 449 A.2d 1366 (1982). The *Rochester Machine* case surveyed in detail the state of Pennsylvania's Law of Evidence relating toe offers of compromise and admissions, and after reviewing the precedent, the court announced the following:

We recognized the public interests as furthered by encouraging parties to settle disputes without invoking the judicial process. However, if in the course of such negotiations a party makes a clear, unequivocal admission, without qualifying it as a hypothetical admission for purposes of compromise, and, in the context and circumstances surrounding the offer it cannot be inferred that the admission is inextricably connected to an offer to compromise, it is admissible.

Rochester Machine at 555-556, 449 A.2d at 1371.

This clear direction by the Pennsylvania Supreme Court make the decision in this case fairly simple. The statement is clearly separable from any offer of compromise contained within the letter. West Penn Power through its agent clearly has abandoned the liability issue. This had nothing whatsoever with the rest of the letter dealing with the amount of damages. The end of the sentence itself quoted above says damages are at issue. Finally, there appears to be nothing hypothetical about this admission stating that the defendant is aware of the liability. Therefore, the admission is not only admissible as evidence. It is also clearly

relevant and pertinent in the pleadings and therefore, the preliminary objection to it must be overruled.

ORDER OF COURT

July 26, 1996, defendants' motion to strike paragraph 14 of the plaintiff's complaint is overruled.