

AVCO CORPORATION, on behalf	:	IN THE COURT OF COMMON PLEAS OF
of its TEXTRON LYCOMING DIVISION,	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	JURY TRIAL DEMANDED
	:	
vs.	:	NO. 03-00,810
	:	
INTERSTATE FORGING	:	CIVIL ACTION – LAW
INDUSTRIES, INC.,	:	
CITATION WISCONSIN	:	
FORGING, LLC,	:	
CITATION CORPORATION	:	L1035 RULE

Date: September 30, 2003

STATEMENT TO CLARIFY THE RECORD AND ORDER

Background

This Statement and Order is entered in relation to the argument made before this Court on the record August 27, 2004. At the time of argument counsel for Defendant, J. David Smith, Esquire, argued to the Court that its response to the summary judgment was timely filed in accordance with the provisions of Lycoming County Local Rule of Civil Procedure L1035 by virtue of the fact that documents in support of opposition were attached to and made a part of Brief of Defendants filed August 23, 2004. The text of Rule L1035 that Attorney Smith argued to the Court supported his position was the provision that affidavits and other documents supporting or opposing motions for summary judgment should be filed not later than seven days prior to oral argument. Therefore, Attorney Smith argued, the documents filed August 23, 2004 were filed timely.

This Court interrupted Mr. Smith’s argument to advise counsel that the Local Rule referred to was no longer in effect as a rule of local practice based upon the provisions of Pennsylvania Rule of Civil Procedure 1035.3, which requires that responses to summary

judgment motions be filed within thirty days after the service of the motion. The Court stated that the Pennsylvania Rule being passed in 1996 was basically recognized and put into practice by local counsel and the court in approximately 1998 on the basis the local rule had been superceded by the state rule. This Court also advised Attorney Smith and all other counsel present on the record that the Rule L1035 of Lycoming County local civil rules had been rescinded and/or modified to conform to the state rule so that responses had to be filed within thirty days of the date of service of the motion. At that time Attorney Smith argued to the Court that his latest copy of the Lycoming County Civil Rules and in fact the Lycoming County Law Association website which contains the latest version of the court rules (www.lycolaw.org) still stated under Rule L1035 that the documents were filed timely if filed seven days prior to argument. This Court responded to Mr. Smith that it did not believe that those provisions were still in existence in the current publication. The Court, following argument searched the website and found Mr. Smith was not in error as the website statement of Rule L1035 had not been changed but was as suggested by Mr. Smith.

Therefore, this Statement is now entered to correct the record appropriately and to state an appropriate public apology to Attorney Smith in the following regards:

1. The Lycoming County Law Association Website www.lycolaw.org, which is relied upon by the Court and cited by the Court to counsel to have the current version of Local Rules, did, in fact, as of August 27, 2004 have published Rule L1035 in the form as stated by Attorney Smith.

2. The Court has not as of the time of entering this Order been able to verify the status of printed publications as may be found at the Administrative Office of

Pennsylvania Courts Legislative Reference Bureau, and Pennsylvania Civil Rules Committee as to the status of Rule L1035.

3. The text of Rule L1035 was rescinded by Order of Court dated April 1, 2003, filed to #03-00,578 in the Court of Common Pleas of Lycoming County on April 8, 2003 and appropriately published thereafter, including the Pennsylvania Bulletin on April 26, 2003, becoming effective therefore on May 26, 2003; however, for some unknown reason Rule L1035 was not thereafter removed from the Website version of the Lycoming County Civil Rules.

Accordingly, it is ORDERED and DIRECTED that this Court will not exercise its discretion under Pa.R.C.P. L1035.3 to enter summary judgment against Defendants on the basis that the response was not filed within thirty days after service of the motion. In this regard the Court notes that the summary judgment motion was filed on July 14, 2004 and Plaintiffs were served the same date and that the response was due August 13, 2004. This Court had entered a Scheduling Order filed July 27, 2004 directing argument to be held August 27th and stating that briefs were to be filed by Defendants seven days prior to argument, noting that Plaintiff's brief had already been filed as of the time of the entry of the Scheduling Order. Apparently by agreement of the parties the brief filed by Defendants on August 23rd was deemed timely because of an extension granted to Defendants by Plaintiff.

This ruling of the Court is not intended to dispose of the arguments advanced on behalf of Plaintiff that under Rule L1035.3 summary judgment should be entered against Defendants due to a lack of a proper response, because a brief is not a proper response, the exhibits attached to a brief do not qualify as a response, and, the exhibits which were attached

to the brief are not proper record evidence which complies with the requirements of Pa.R.C.P. 1035.1 and 1035.3. Those issues not addressed in this Order will be addressed at a subsequent ruling of this Court.

BY THE COURT,

William S. Kieser, Judge

cc: Benjamin E. Landon, Esquire
Martin E. Rose, Esquire
Rose Walker, L.L.P.; 1701 N. Market Street, Suite 200; Dallas, TX 75202
Bruce McKissock, Esquire
McKissock & Hoffman; 1700 Market Street, Suite 3000; Phila., PA 19103-3930
Carlton B. Cantrell, Esquire
Cantrell & Cantrell, P.C.; 1204 Sam Houston Ave., Huntsville, TX 77340
J. David Smith, Esquire