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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Complaints of S.G.)
Foods, Inc.; Miles Management Corp., et al.;)
Allianz US Global Risk Insurance Company,)
et al.; and Lexington Insurance Company, et)
al.,)

Complainants,)

Case Nos. 04-28-EL-CSS
05-803-EL-CSS
05-1011-EL-CSS
05-1012-EL-CSS

v.)

The Cleveland Electric Illuminating)
Company, Ohio Edison Company,)
Toledo Edison Company, and)
American Transmission Systems, Inc.,)

Respondents.)

**RESPONDENTS' FOURTH MOTION TO COMPEL DISCOVERY FROM THE
LEXINGTON COMPLAINANTS**

Respondents, pursuant to Rule 4901-1-23, Ohio Administrative Code, respectfully move for an Entry ordering the Complainants in Case No. 05-1012 ("Complainants") to produce for deposition three of their insureds whose claims allegedly give rise to Complainants' subrogation rights: Ted Marks, Freddy Robinson and Tabitha Stephens. As demonstrated in the attached Memorandum in Support, documents produced by Complainants suggest that the insurance claims of these three insureds are not related to the August 14, 2003 outage. Complainants cannot rest their subrogation rights in this action upon claims that have nothing to do with the outage. In fact, Complainants have already agreed to dismiss other non-outage related claims.

Respondents noticed the deposition of three insureds who Complainants still assert have outage-related claims, notwithstanding documentation indicating otherwise. Complainants have

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refused to produce these individuals. Respondents should be permitted to take additional discovery to demonstrate that these three claims should be dismissed. Therefore, Complainants should produce these insureds for depositions.

Efforts by counsel to resolve this discovery dispute are summarized in the Affidavit of Counsel, attached to the accompanying Memorandum in Support as Exhibit A.

July 5, 2007

Respectfully submitted,



David A. Kutik (Trial Counsel)

Lisa B. Gates

Meggan A. Rawlin

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Attorneys for Respondents

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S.G.)
Foods, Inc.; Miles Management Corp., et al.;)
Allianz US Global Risk Insurance Company,)
et al.; and Lexington Insurance Company, et)
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v.)

The Cleveland Electric Illuminating)
Company, Ohio Edison Company,)
Toledo Edison Company, and)
American Transmission Systems, Inc.,)

Respondents.)

**MEMORANDUM IN SUPPORT OF RESPONDENTS' FOURTH MOTION TO
COMPEL DISCOVERY FROM THE LEXINGTON COMPLAINANTS**

Because Complainants are subrogees, they have no greater rights to bring this claim than their insureds. (See Mar. 7, 2006 Entry at ¶ 53.) Therefore, Complainants may bring this suit only to the extent they paid insurance claims arising from the August 14, 2003 outage. (See May 24, 2007 Entry at ¶ 6(a) (noting that to be proper subrogees, Complainants "must have paid an insurance claim resulting from the alleged inadequate service in these proceedings to the insureds").) Complainants cannot bring suit on behalf of insureds whose insurance claims have nothing to do with the outage.

After receiving claim files, Respondents pointed out that claims of a number of their insureds were not related to the outage. (See Letter from M. Whitt. to D. Galivan dated Mar. 15,

2007, attached as Exhibit MAW-1.) In response, Complainants agreed to dismiss 34 insureds from this case, leaving in this case three other insureds whose insurance claims do not appear to be related to the August 14, 2003 outage, as reflected by the insureds' claim files.¹ (Letter from D. Galivan to M. Whitt dated Apr. 6, 2007, attached as Exhibit MAW-2.) These three insureds are Ted Marks, Freddy Robinson and Tabitha Stephens.² (See Exhibit MAW-3, which includes NATIONCLAIM 01137 (portion of Marks claim file referring to damage caused when toilet overflowed), TRVCLM00421 (portion of Robinson claim file referring to damage caused by neighbor's garage fire and an "electric short" but describing insured's garage as a "total loss prior to the fire") and NATIONCLAIM 00504 (portion of Stephens claim file noting only that "[d]amage is electrical nature").)

Subsequently, Respondents noticed depositions of these three insureds regarding whether their insurance claims were outage-related. (See Notice of Dep. dated Apr. 19, 2007, attached as Exhibit MAW-4.) After not receiving a response for over a month, Respondents again requested dates for the three depositions. (See Email from M. Whitt to D. Galivan dated May 22, 2007, attached as Exhibit MAW-5.) In response, Complainants indicated that they wished to discuss the three depositions. (See Email from D. Galivan to M. Whitt dated May 25, 2007, attached as Exhibit MAW-6.) However, Complainants have not responded to subsequent requests by Respondents to initiate such a discussion. (Exhibit A, ¶ 8; Email from M. Whitt to A. Endelman dated July 2, 2007, attached as Exhibit MAW-7.)

Because Complainants' standing as proper subrogees depends on proving that their insureds' damage arose from the August 14, 2003 outage, information regarding whether an

¹ Complainants also refused to dismiss a fourth insured, Robert Frantz, but subsequently dismissed him because he is not a customer of Respondents.

² Ms. Stephens is also referred to as "Tabitha Vecchio." (See NATIONCLAIM 00503, attached as Exhibit MAW-3.)

insured's claim is related to the outage is relevant and discoverable. Respondents are entitled to discovery as to the three insureds at issue here for this reason. Because they bring this suit as subrogees of their insureds, Complainants should be ordered to produce for deposition Ted Marks, Freddy Robinson and Tabitha Stephens.

III. CONCLUSION

The three depositions noticed by Respondents on April 19, 2007 pertain to information that is relevant and discoverable. Therefore, Complainants should be ordered to produce for deposition Ted Marks, Freddy Robinson and Tabitha Stephens at a time to be agreed by counsel.

July 5, 2007

Respectfully submitted,



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Meggan A. Rawlin

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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Compel Discovery and Memorandum in Support of Motion to Compel Discovery was served by facsimile (without exhibits) and U.S. Mail (with exhibits) to the following persons this 5th day of July, 2007.

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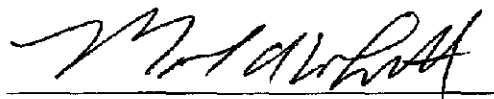
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Mark A. Whitt
An Attorney for Respondents

EXHIBIT A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S.G.)	
Foods, Inc.; Miles Management Corp., et al.;)	
Allianz US Global Risk Insurance Company,)	
et al.; and Lexington Insurance Company, et)	
al.,)	
)	
Complainants,)	Case Nos. 04-28-EL-CSS
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v.)	
)	
The Cleveland Electric Illuminating)	
Company, Ohio Edison Company,)	
Toledo Edison Company, and)	
American Transmission Systems, Inc.,)	
)	
Respondents.)	

AFFIDAVIT OF COUNSEL

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

Mark A. Whitt, being first duly sworn, states as follows:

1. I am a partner in the law firm of Jones Day and one of the counsel for Respondents.
2. On March 15, 2007, Respondents identified 38 of Complainants' insureds whose claims did not appear to be related to the August 14, 2003 outage, based on a review of the relevant claim files. The attached Exhibit MAW-1 is a true and correct copy of this letter.
3. On April 6, 2007, Respondents agreed to dismiss 34 of the 38 non-outage related claims. Respondents asserted that the Marks, Robinson and Stephens claims are related to the

outage, and they refused to dismiss them. The attached Exhibit MAW-2 is a true and correct copy of this letter.

4. Complainants have produced claims files for most of the insureds listed in the attachments to the Complaints. I supervised the review of these claims files. Complainants' production included claim files for the claims of Ted Marks, Freddy Robinson and Tabitha Stephens. Portions of those claim files are attached collectively as Exhibit MAW-3.

5. On April 19, 2007, Respondents noticed depositions of Ted Marks, Freddy Robinson and Tabitha Stephens. The attached Exhibit MAW-4 is a true and correct copy of this deposition notice. Complainants have not provided dates for these depositions.

6. On May 22, 2007, I sent an email to Daniel G. Galivan, counsel for Complainants, requesting dates for the three depositions noticed on April 19. The attached Exhibit MAW-5 is a true and correct copy of this email.

7. On May 25, 2007, Daniel G. Galivan, counsel for Complainants, sent an email to me stating that he was "amenable" to discussing the depositions. The attached Exhibit MAW-6 is a true and correct copy of this email.

8. I spoke with Mr. Galivan in person on June 5, 2007, at which time I again indicated that Respondents wished to take these three depositions. I left messages with Mr. Galivan on at least two occasions subsequent to June 5. I also spoke with Complainants' counsel Alyssa Endelman about these depositions on June 27, 2007, and I sent a follow-up email to Ms. Endelman on July 2, 2007, a true and correct copy of which is attached as Exhibit MAW-7. To date Complainants have not provided dates for these depositions.

Mark A. Whitt

Mark A. Whitt

Sworn to before me

this 5th day of July, 2007.

Deborah A. Ellis

Notary Public



DEBORAH A. ELLIS
Notary Public, State of Ohio
My Commission Expires 8/28/09

EXHIBIT MAW-1

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034569-685046

March 15, 2007

VIA FACSIMILE AND U.S. MAIL

Alyssa Endelman, Esq.
Grotefeld & Denenberg, LLC
21 E. Long Lake Road
Suite 200
Bloomfield Hills, MI 48304

Re: Lexington Insurance Co., et al. v. First Energy Corp., et al.
Case No. 05-1012-EI-CSS

Dear Alyssa:

I am writing to follow up on several discovery issues arising from our review of the claim files sent to us by your office, as well as outstanding issues concerning Complainants' supplemental discovery responses. We would appreciate a response to this letter by March 30, 2007.

Missing Claim Files

We do not have claim files for the following three individuals: Aimee Kelly (Frankenmuth), William Kreitzer (Nationwide) and Barry/Barbara Miller (Allied Insurance Co.). Please let us know whether Complainants' intend to pursue claims on behalf of these individuals. If so, please provide the claim file.

Non-Outage Related Claims

We have identified a number of claims that, based on the claim file, either have no connection at all to the August 14, 2003 outages, or there is insufficient information in the claim file to determine whether there is any connection between the claim and the outage. The Nationwide files, in particular, include a number of questionable claims. Please review the following Nationwide files: Jeffrey Tuller, Reynaldo Serrano, Robert Frantz, John Carpas, Rolland Rothacker, Richard Irwin, Gerald McClintic, Douglas Hutchings, Vince Beal, Its Greek To You, Barton Kulish, James Morelli, Troy Hanley, Charles Robison, Darrell Reid, James Dunfee, Gary Yost, Phyllis Cohen, Tabitha Stephens, Jack Husch, Charles Udischas, Thomas Kuhlman, Aaron Smith, Theresa Felton, Cathy Neal, Mark Josefczyk, Brad Speakman, Rose Fabian, Jon Walton, Trish Tavernier, Ted Marks, William Buchanan, Richard Kups, Shirley Merritt, Tyler Clark, and Joseph Sainato. In addition to the Nationwide files, the claims on behalf of Mike Wade (Frankenmuth) and Freddie Robinson (Travelers) also appear to have no

Alyssa Endelman, Esq.

March 15, 2007

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connection to the August 14 outages. If you disagree with our assessment of these claims, please provide information documenting a connection between the claims and the outage. If you agree with our assessment, please confirm that Complainants will not be pursuing claims on behalf of these individuals.

Also, the Nationwide document production contains a claim file for John Lewis involving a lost ring. (See NATIONCLAIM 01036.) In addition to the fact that this loss has nothing to do with the outage, Mr. Lewis is not listed as an insured in Exhibit N to the Lexington Complaint. Please confirm that Complainants will not pursue recovery for the John Lewis claim.

If you will not agree to dismiss claims on behalf of the individuals mentioned above, I request that you advise me as to dates when these individuals would be available for depositions.

Incomplete/Illegible Documents

We request intelligible copies (i.e., either reproductions from negatives or color photocopies) of the photographs referenced in various reports produced as part of the Republic claim file. Those photographs are located in the following ranges: AIGREP 00645-00659, AIGREP 000667-00721, ALZ REP CLM 01536-01542, ALZ REP CLM 01586-01588, ALZ REP CLM 01687-01712, ALZ REP CLM 01713-01736, ALZ REP CLM 01737-01759, ALZ REP CLM 02368-02509, ALZ REP CLM 02947-02974, ALZ REP CLM 02982-03012, ALZ REP CLM 03015-03019, ALZ REP CLM 03817-03819, ALZ REP CLM 03822, ALZ REP CLM 04203-04225, ALZ REP CLM 04270-04298, ALZ REP CLM 04311-04326, ALZ REP CLM 04333-04348, ALZ REP CLM 04352-04357, ALZ REP CLM 04469-04491, ALZ REP CLM 05929-05939.

Several documents in the productions appear to have missing pages. AIGREP00097 refers to "attached information" that is not attached. AIGREP 00256 is an e-mail that appears to have additional e-mails at the bottom of the chain, but those e-mails are not in the production. AIGREP 01043 indicates that it is "Page 1 of 2," but there is no second page. Please let us know when we can expect the missing pages. Also, please confirm that the memo at AIGREP 01081-82 is a complete copy.

Further, several pages in the document productions are marked "redacted," but the privilege logs you produced do not contain a corresponding explanation for the redaction. (See, e.g., AIGREP 00115-16, AIGREP 00314, AIGREP 00325, AIGREP 00352, AIGREP 00362, AIGREP 00484-87, AIGREP 00730 and AIGREP 00741.) Please let us know when we can expect unredacted copies of all pages redacted in the initial production. Alternatively, please provide a privilege log for these documents. To the extent any privilege claim arises from issues concerning subrogation, Complainants should provide an explanation for the basis of privilege.

We have additional questions about Complainants' privilege logs that we will address in a separate letter.

Alyssa Endelman, Esq.
March 15, 2007
Page 3

Several of the documents in the productions are unreadable. The Matson report exhibits in the Republic files, at ALZ REP CLM 04873-05198, contain words and/or numbers that are too small to read. An e-mail or attachment at ALZ REP CLM 01272-01360 appears to be misformatted and is difficult to read. Also, the handwritten documents at ALZ REP CLM 02857, ALZ REP CLM 02864-66, ALZ REP CLM 02868-70, ALZ REP CLM 02878 and ALZ REP CLM 03555-61 are unreadable. Please provide readable copies of these pages.

Please confirm that the Lexington insurance policy, beginning at AIGREP 00435, is complete. If it is not complete, please provide a complete copy of the Lexington policy, including any amendments.

Republic Damages Information

Respondents' Interrogatory No. 1 (a) and (b) (Republic) asked Complainants to identify, "for each such claim" arising from the outage, "the amount of the claim submitted by the insured" and "the amount actually paid to the insured" by each Complainant. The answer to this interrogatory refers to the claim files. We have reviewed the claim files and it is impossible for us to piece together the information requested. There appear to be numerous claims submitted by this insured (some outage-related and some not), numerous insurance companies involved and multiple versions of schedules, workpapers and spreadsheets regarding the various claims. We have not located a document that provides information directly responsive to the discovery request. Please either refer us to a specific document (or documents) that contains the requested information, or supplement the response to Interrogatory No. 1(a) and (b).

Supplemental Discovery Responses

By letter of February 7, 2007, we requested supplemental responses to Respondents' Interrogatory Nos. 7-12 regarding alleged violations of tariffs, rules, statutes, PUCO orders and industry standards. We do not believe that Complainants' supplemental responses cure the deficiencies noted in our letter. The responses state that Complainants will further supplement their answers at an unspecified time following additional discovery. For the time being, we are willing to accept the supplemental responses, provided that Complainants agree to supplement these responses by a date certain. We are willing to work with you to determine what the "date certain" should be. Please advise me whether this is acceptable to you.

Our February 7 letter also requested a supplemental response to Interrogatory No. 4 regarding backup or emergency generation at an insureds premise on August 14, 2004, and Request for Production No. 4 regarding underwriting files for certain insureds. Complainants' supplemental responses do not provide the information requested. We have previously explained our theory of discoverability of this information. Inadequate service cases require the Commission to examine the "service" to the customer. A customer's facilities are relevant to the "service" received by the customer. Whether outage-related damages were caused by a customer's facilities or those of the utility is relevant to whether the utility provided adequate

Alyssa Endelman, Esq.
March 15, 2007
Page 4

service. The Attorney Examiner assigned to this case wrote on this issue in *Miami Wabash LLC v. Cincinnati Gas & Elec. Co.*, No. 02-2162-EL-CSS. The September 22, 2003 Order in that case discusses at great length the facilities of both the customer and the utility in determining whether the customer received adequate service. Consequently, we believe that the Attorney Examiner would grant a motion to compel discovery relating to customer-owned facilities if we were to file one. Supplemental responses to Interrogatory No. 4 and Request for Production No. 4 would avoid such a motion.

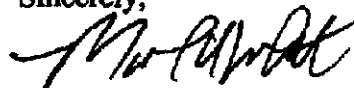
The underwriting files are also properly discoverable because they may shed light on whether the insureds were under a duty to pay any claim relating to an outage. We believe that proving payment and a duty to pay are part of your burden of proof to establish the insureds' standing under Ohio law.

Our February 7 letter also brought to your attention several insureds who appear not to be customers. Mr. Gallivan advised me that he would attempt to obtain documentation of customer status for the insureds listed in our letter. He stated that Complainants would likely dismiss the claims brought on behalf of any insured for whom Complainants cannot document customer status. Please update us on your progress in obtaining information concerning the customer status of the insureds referenced in the February 7 letter. Our review of the Nationwide files reveals that there are additional insureds who may not be customers. These insureds are: K&V Corp., Golberg Companies, Cliff Towers, Shore Appliance Co., Jeffrey Tuller, Robert Frantz, Richard Irwin, Gerald McClintic, Vince Beal, James Morelli, Troy Hanley, Darrell Reid, Jack Husch, Marlene Holbrook, David Heiman, Charles Udischas, Thomas Kuhlman and Theresa Felton. We would note that there is a certain amount of overlap between this list of potential non-customers and insureds with claims that do not appear to be outage related. To the extent that Complainants intend to pursue claims on behalf any of these insureds, please produce information to document their status as a customer of a Respondent.

As with the individuals who appear to have claims unrelated to the August 14, 2003 outages, if you are unwilling to dismiss those insureds who do not appear to be customers of any Respondent, please advise me when those individuals (those who do not appear to be a customer) are available for depositions.

Please call me if you have any questions about the issues addressed in this letter.

Sincerely,



Mark A. Whitt

cc: Daniel G. Galivan, Esq.
David A. Kutik, Esq.

EXHIBIT MAW-2

**GROTEFELD
& DENENBERG, LLC**

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Admitted
Lexington Corp.
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Admitted in IL

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April 6, 2007

Via Facsimile (614) 461-4198

Mark Whitt

Jones Day

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Columbus, OH 43215-5017

Re: Lexington Insurance Co., et al. v. The Cleveland Elec. Illum. Co., et al.
Case Nos. 05-1011-EL-CSS and 05-1012-EL-CSS
Our File No.: 65000.000000

Dear Mr. Whitt:

Please allow this to serve as follow up to our telephone conference of March 29, 2007, as well as our brief conversation of April 3, 2007, with respect to outstanding discovery issues in relation to the above-referenced matter. As our conversation dealt with issues outlined in your March 15, 2007 and March 26, 2007 letters respectively, I will address these issues with reference to those letters.

I. March 15, 2007 Correspondence

A. Missing Claim Files

The claim file with respect to Frankenmuth insured Aimee Kelly is being copied and forwarded to you by our Michigan office. It may have already reached you by the time of this correspondence. If not, please advise. The omission of the other two claim files referenced in your letter was apparently due to oversight by our clients and we are seeking to obtain and then produce these files as soon as possible. You and I have not agreed upon a date certain for the production of these two files although we will certainly produce them as soon as they are received. Upon your receipt and review of this correspondence we can provide you with the status of this production.

B. Non-Outage Related Claims

In response to your correspondence we have reviewed all of the claim files identified in your letter. We have determined that the following claims are related to the August 14, 2003 power outage: Nationwide's insureds Robert Frantz, Tabatha Stephens, Ted Marks, and Traveler's insured Freddy Robinson. It appears that none of the other

claims identified in your letter are in fact related to the August 14, 2003 outage. As agreed, we will voluntarily move to dismiss those claims. This will also confirm that the claim with respect to *Nationwide insured John Lewis* is not referenced in the Complaint, is not related to the subject power outage and is not being pursued.

C. Incomplete/ Illegible Documents

With respect to the photographs referenced in your first paragraph under this subheading, we are attempting to determine whether the photos are electronic and can, therefore, be produced on a disc. If they are not, we will arrange for laser reproduction of color photographs to be made and produced. As we have not agreed upon a date certain to complete this, we should discuss it further upon your receipt of this correspondence.

As to document AIGREP 01043, we have confirmed that the file contains no second page and therefore cannot produce it. We can confirm that the document at AIGREP 01081-82 is a complete copy as produced.

As of this writing, staff in our Michigan office is working to correct the deficiencies by arranging production of unredacted documents, amending the privilege log or a combination of both. We will provide you a status on this on April 9, 2007. Your letter indicates additional concerns to be addressed in a separate letter regarding the privilege log. As of our conversation, and as of this writing, I have not received additional correspondence regarding the privilege log.

With respect to unreadable documents, the documents have been produced in the condition in which we received them. In an effort to address your concerns regarding the Matson report exhibits, we have inquired whether those might exist in electronic format so we can re-produce them to you on a disc. We will endeavor to update you on this issue on April 9, 2007 as well.

Finally, we believe that the Lexington policy beginning at AIGREP 00435 is complete as produced. If we receive any information indicating otherwise, we will contact you immediately and produce any missing sections.

D. Republic Damages Information

As we discussed, you are seeking a breakdown of the amounts paid by the respective insurers on the Republic claim. That breakdown is as follows:

Allianz:	\$54,521,864.38
Royal:	\$27,370,388.45
Lexington:	\$5,000,000.00

E. Supplemental Discovery Responses

The first issue addressed in your letter concerns reaching agreement on a date certain for Complainants to supplement, if necessary, responses to Respondents' Interrogatories 7-12 regarding tariff, rules, statutes, PUCO orders and industry standard violations. As we discussed, we concur that a date certain should be agreed upon and that it should bear some relationship to, and be in advance of, the deadline for disclosure of expert opinions. As Complainants' motion to extend the scheduling order is now pending, we have agreed to defer this issue, and the setting of a date certain for supplementation, until the Attorney Examiner rules on that motion.

The next issue here concerns Respondents' requests that we supplement responses to Respondents' Interrogatory No. 4 and Production Request No. 4 regarding emergency backup or generation equipment and the underwriting files, respectively. We have discussed our respective position on this issue at length, we have reviewed the authority you have cited in support of Respondents' position and we appreciate your agreement to limit the requests to certain claims. However, we do not believe the cited authority supports Respondents' position and we continue to maintain that these issues are beyond the scope of the present proceedings. Accordingly, it would appear that we have exhausted all efforts at reaching a resolution of these issues without Examiner intervention. As we discussed, it may be appropriate to address these issues with the Examiner in connection with Complainants' motion to extend the discovery schedule. For that reason, and because it supports our request for the extension, we have referenced these issues in Complaints' motion.

Finally, your letter identifies a list of additional insureds for whom Respondents have no record of providing service and for whom Complainants have yet to produce documents in support of a Respondent-customer relationship. As indicated in our conversation, we agree that we are obligated to produce the requested information and continue in our efforts to obtain it. You and I have agreed that a date certain should be agreed upon and that determination of that date will be temporarily deferred pending the ruling on Complainants' motion to extend the discovery schedule.

II. March 26, 2006 Correspondence

Based upon our review of Respondents' objection to Complainants' Deposition Notices, as a result of our March 29, 2007 conference and in an effort to reach agreement on the disputed matters, we have modified our position with respect to certain of your objections. Our current position regarding the disputed notices is outlined below, and identified according to the number of the original notices:

A. Complainants' Deposition Notices

Nos. 1 and 2: Based upon our discussion of the Respondents' objections, we have agreed to withdraw theses requests.

No. 3: You have indicated, both in your written objections and during our conference call of March 29th that all investigations by Respondents were done at the direction of and under the supervision of counsel. As I understand your position, production of witnesses requested by this Notice is protected by attorney-client and work product privileges. Having considered your opinion, I respectfully disagree. Nonetheless, we will issue a Supplemental Notice that is more narrow in scope and more specific. Hopefully, the Supplemental Notice will adequately address your objections.

No. 4: We accept your position that production of Respondents' experts addresses this request.

No. 5: We will issue Supplemental Notices separately identifying with greater particularity the subject matters of this request, which hopefully will address your objection as to specificity.

No. 6: We accept your position that production of a witness concerning tree trimming practices and policies in effect as of August 14, 2003 satisfied this request.

No. 10 and 11: You and I discussed your written offer to produce the communications transcripts in response to this Notice. In response, I advised that we anticipate that the transcripts will identify the personnel involved in the transcribed communications and that we reserve the right to depose those individuals. You have stated that you will provide your response to that proposal upon your review of the subject transcripts. As you did not have possession of them at the time of our conversation, we defer discussion of this issue and await your further reply.

No. 12: We have considered your objection and agree to withdraw this request.

No. 13: We are issuing a Supplemental Notice that hopefully addresses your objection as to lack of specificity.

No. 14: We are issuing a Supplemental Notice that hopefully addresses your objection as to lack of specificity.

No. 16: We have considered your objection and agree to withdraw this request.

No. 21: We are issuing a Supplemental Notice that hopefully addresses your objection as to lack of specificity.

No. 22: We accept your proposed resolution to produce a witness concerning training and certification programs of control room personnel.

No. 23: We are issuing a Supplemental Notice that hopefully addresses your objection as to ambiguity.

No. 24 and 25: We are issuing a Supplemental Notice that hopefully addresses your objection as to lack of specificity.

As discussed in our follow up conversation of April 3, 2007, we will issue the Supplemental Notices on April 9, 2007. Your written responses to the deposition notices indicated that you would be providing the identities of the witnesses and their available dates for deposition. During our conference call, you were still unable to provide that information. Upon your receipt of this correspondence, please provide that information or contact me to discuss a date certain on which the information will be produced.

III Respondents' Responses/Objections to Complainants' Interrogatories and Requests for Production.

Issues with respect to the Respondents' written discovery responses, and objections noted therein, were also discussed during the March 29, 2007 conference call. We have agreed that production of the documents identified therein will be served by Respondents during the week of April 9, 2007. As no privilege log was tendered with the written responses, we assume that will be provided contemporaneously with the document production.

Further, you have agreed to supplement the Answer to Interrogatory No. 6 in order to identify the specific Respondent-employer of each identified witness. With respect to Interrogatory No. 16 regarding voltage criteria, you have agreed to provide Respondents' FERC Forms 715, subject to an agreed upon protective order. We acknowledge receipt of the proposed order earlier today and will provide our position on this on April 9, 2007.

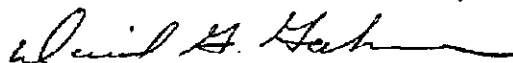
Having discussed Respondents' other objections, we have agreed that Complainants will serve a Second Set of Interrogatories and a Second Set of Requests for Production in order to address some of the issues raised by the objections. Those discovery requests will be accompanied by cover letter identifying each Interrogatory or Request for Production which we believe Respondents are obligated to answer in its original form.

Mark Whitt
April 6, 2007
Page 6

Thank you for your attention to this matter and for your continued efforts in coordinating discovery and resolution of potential disputes. If you believe that any aspect of this correspondence does not accurately reflect our agreements or other discussions, please let us know immediately.

Very truly yours,

GROTEFELD & DENENBERG, LLC

A handwritten signature in cursive script, appearing to read "Daniel G. Galivan".

Daniel G. Galivan

DGG/cp

EXHIBIT MAW-3

All Activity Logs

Claim Key: 92 34 HP 143138 08152003 01

Policyholder: Marks, Ted, Joan & Karen

Claimant: N/A

Requester: SUBRO1

Print Date: February 13, 2007

Print Time: 4:11 PM

NATIONCLAIM 01134

Cov:
Claimant:

LDI changed from to \$11 by Michael Demitrieff on check side 1.

Date: 2003-08-28 Time: 12:03:58
Creator: OOR
Assignee: OOR
Cov: HOPRIM
Claimant:

Check for \$1000.00 payable to Ted Marks 2419 Bromley Rd University Hts OH 44118 - 92-562330 - Manual

Date: 2003-08-28 Time: 12:01:15
Creator: OOR
Assignee: OOR
Cov: HOPRIM
Claimant: Tedjoan & Karen Marks

RESERVE opened for HOPRIM on Tedjoan & Karen Marks for \$1400.00 assigned to DEMITRM

Date: 2003-08-28 Time: 12:00:50
Creator: OOR
Assignee: OOR
Cov:
Claimant:

0104 BLDG/CONT/ALE EVALUATION:... My Means estimate was \$100 higher than p.h.'s contractor's estimate; using contractor's estimate of \$1,634.00 as basis for settlement...
.... Agreed to settle on ACV basis until the repairs are done... Sent p.h. a check for \$1,000.00 payable to him; will issue holdback amount of \$384.00 when repairs are done..... \$250 deductible has been applied.....

Date: 2003-08-28 Time: 11:58:34
Creator: OOR
Assignee: OOR
Cov:
Claimant:

0102 INVESTIGATION/C&O:... Reviewed damage with p.h... She said that after the power outage; when power came back on; toilet overflowed; they have water damage to basement paneling and ceiling.... After speaking to Mr. Marks; it sounds that the issue was the water going off... They apparently drained the tank and when it refilled; the float got stuck They did not replace any plumbing, the toilet is working fine now....

Set appt with p.h. from my car to inspect on 8/25/03; the day he paged me....

My inspection showed the plaster ceiling in rec room basement is damaged (13' x 8' section).... There is tongue and groove paneling on bottom 4 feet of wall; plywood 1/4" paneling on the upper 3 feet; one wall of the upper section is water damaged; this goes around the entire perimeter of the room.... Could not complete on site estimate as I did not have Means machine with me when the p.h. paged me....

Completed Means estimate for \$1,764.42 (no o/p) ; p.h. showed me an estimate he obtained from a local contractor = \$1,634.00..... As p.h.'s estimate is less; I will use it as basis for settlement.....

Date: 2003-08-28 Time: 11:48:47
Creator: OOR
Assignee: OOR

NATIONCLAIM 01137

Financial Inquiry

Claim: LAG4739
 Selection Criteria

Selected Grouping by: Pay Type

Date Range: 08/22/2003 To 08/27/2003

Financial Summary

Sel	PayType	Incurred	Payments	Credits	Net Total Paid	O/S Reserves
X	Claim	2,233.00	2,232.50	0.00	2,232.50	0.50
	Expenses	0.00	0.00	0.00	0.00	0.00
	TOTAL	2,233.00	2,232.50	0.00	2,232.50	0.50

Payment Detail

Rows 1 thru 1 of 1

Sel	PayType	Cor	Kind	Cmtl	Amount	Check #	Payee	Date	Status	From	To	C/D
	Claim	08		001	2,232.50	8838-0036063667	FREDIE ROBINSON	08/22/2003	ISSUED			
	TOTAL				2,232.50							

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TRVCLM00419

NOTICE TAKER: GLM - GEORGE MINOR
TELEPHONE : (866) 430-3472

08/15/2003 11:31:51	CHARISSA SOJA - 279	Assignment	REASSIGNMENT		001 INS - FREDDIE ROBINSON
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OFFICE: 279 Re-assigned by: CS -CHARISSA SOJA Transferred from: JES -JEF
FREY STEWART to AP - ANTHONY PAZELT

08/16/2003 11:31:51	CHARISSA SOJA - 279	Assignment	REASSIGNMENT		000 FILE LEVEL
---------------------	---------------------	------------	--------------	--	----------------

OFFICE: 279 Re-assigned by: CS -CHARISSA SOJA Transferred from: JES -JEF
FREY STEWART to AP - ANTHONY PAZELT

08/15/2003 13:24:32	AP - 279	Investigation		CONTACTED INSURED	001 INS - FREDDIE ROBINSON
---------------------	----------	---------------	--	-------------------	----------------------------

Called the insured. Power was out due to the balckout. When the power was turned back on, an electrical surge caused the neighbors garage to burn and as a result of that burning the insured garage was burned. damage sounds slight. Will visit on 8/18/2003.

08/16/2003 05:30:30	SYST - 295	Subrogation	SUBRO REFERRAL		001 INS - FREDDIE ROBINSON
---------------------	------------	-------------	----------------	--	----------------------------

redacted

08/18/2003 13:41:10	CAP - 295	Subrogation		subro review	000 FILE LEVEL
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redacted

08/18/2003 13:41:54	CAP - 295	Assignment	REASSIGNMENT		001 INS - FREDDIE ROBINSON
---------------------	-----------	------------	--------------	--	----------------------------

OFFICE: 295 Re-assigned by: CAP -CAROL A PILLION Transferred from: - to J
MH - JACQUELINE HEIN

08/18/2003 16:22:02	AP - 279	Investigation		FILE MANAGEMENT	001 INS - FREDDIE ROBINSON
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Visited the loss location. The side of the neighbors home is heavily burned and the garage adjacent to the insured garage is a total. The insured garage suffered burns to the side of the garage and the roof. However the garage was a total loss prior to the fire. There are large holes in the roof where the sheathing has rotted through and the roof is being held up by supports. The garage is 17 x 19 The back of the garage has rotted away as well. The City of Cleveland will not allow this garage to be rebuilt but it will have to be torn down, a new pad 20 x 20 will have to be pored with curbs. Will discuss the adjustment with Supv Lucia.

TRVCLM00421

08/20/2003 08:38:18	AP - 279	Loss Adjustment		FILE ASSIGNMENT	001 INS - FREDDIE ROBINSON
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Discussed the adjustment with Supv Lucia who said to write the estimate as direct damage to the fire damaged portion of the garage.

08/20/2003 14:17:51	AP - 279	Investigation		FILE MANAGEMENT	001 INS - FREDDIE ROBINSON
---------------------	----------	---------------	--	-----------------	----------------------------

Picked up fire report. Cause of loss listed as electric short

All Activity Logs

Claim Key: 92 34 HP 337941 08142003 01

Policyholder: Vecchio, Tabitha M

Claimant: N/A

Requester: SUBRO1

Print Date: February 13, 2007

Print Time: 11:49 AM

NATIONCLAIM 00803

All Activity Logs

Claim Key: 92 34 HP 337941 08142003 01
Policyholder: Vecchio, Tabitha M
Claimant: N/A

Requester: SUBRO1
Print Date: February 13, 2007
Print Time: 11:49 AM

Date: 2005-10-15 **Time:** 07:01:29
Creator:
Assignee: OOR
Cov:
Claimant:

Claim moved to Tape

WBJ20 0

Date: 2005-09-19 **Time:** 20:45:01
Creator:
Assignee: OOR
Cov: HOPRIM
Claimant: Tabitha M<Stephens

LOSS Block transferred for HOPRIM on Tabitha M<Stephens from OHCLM986

Date: 2005-09-19 **Time:** 20:45:01
Creator:
Assignee: OOR
Cov: HOPRIM
Claimant: Tabitha M<Stephens

LOSS Block transferred for HOPRIM on Tabitha M<Stephens to JOHNSOD1

Date: 2003-09-02 **Time:** 16:18:17
Creator: OOR
Assignee: OOR
Cov:
Claimant:

0118 -LEVEL 1 PROPERTY RESOLUTION...CR has issued RC payments on file. CR will close at this time.

Date: 2003-09-02 **Time:** 16:17:54
Creator: OOR
Assignee: OOR
Cov:
Claimant:

0104 LEVEL 1 PROPERTY-BLD/CON/ALE EVALUATION...***MAIL***CR rec'd via fax from PH repair bill for A/C unit. Cost to replace is \$1458.00. Inspect cost is \$108.00. Damage is electrical nature per review of est.

Date: 2003-09-02 **Time:** 16:16:17
Creator: OOR
Assignee: OOR
Cov: HOPRIM
Claimant: Tabitha M Stephens

EXHIBIT MAW-4

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of S.G.)
Foods, Inc.; Miles Management Corp., et al.;)
Allianz US Global Risk Insurance Company,)
et al.; and Lexington Insurance Company, et)
al.,)

Complainants,)

Case Nos. 04-28-EL-CSS
05-803-EL-CSS
05-1011-EL-CSS
05-1012-EL-CSS

v.)

The Cleveland Electric Illuminating)
Company, Ohio Edison Company,)
Toledo Edison Company, and)
American Transmission Systems, Inc.,)

Respondents.)

NOTICE OF DEPOSITION *DUCES TECUM*

PLEASE TAKE NOTICE that pursuant to Rule 4901-1-21 of the Ohio Administrative Code, Respondents will take depositions of the following individuals:

- Robert Frantz
- Ted Marks
- Freddy Robinson
- Tabitha Stephens (aka Tabitha Vecchio)

The depositions will be taken by a person authorized to administer oaths in the place where the depositions are taken. The depositions will commence during the week of May 7, 2007 at a time and place to be agreed upon by counsel, or such other date as the parties may agree, and will continue from day to day thereafter until completed. The individuals listed above

shall produce, at the time of their deposition, all documents pertaining to any alleged loss of electric service on August 14, 2003, and any alleged damages arising therefrom.

April 19, 2007

Respectfully submitted,



David A. Kutik (Trial Counsel)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
Telephone: 216-586-3939
Facsimile: 216-579-0212
E-mail: dakutik@jonesday.com

Mark A. Whitt
JONES DAY
Mailing Address:
P.O. Box 165017
Columbus, Ohio 43216-5017
Street Address:
325 John H. McConnell Blvd., Suite 600
Columbus, Ohio 43215-2673
Telephone: 614-469-3939
Facsimile: 614-461-4198
E-mail: mawhitt@jonesday.com

Attorneys for Respondents

JONES DAY BOOK

EXHIBIT MAW-5



Mark A. Whitt/JonesDay
Extension 6-3880
(614-281-3880)

05/22/2007 03:15 PM

To dgg@gd-llc.com

Subject Lexington et al v. CEI et al.

Dan -

I sent you an email on 5/10 asking for information about customer status for various insureds by 5/18. I haven't heard from you. We will be filing a motion to compel on this issue if I don't hear from you in the immediate future; i.e., in the next day or two.

Respondents also have outstanding deposition notices for 4 insureds (Franz, Marks, Robinson and Stephens). We need availability dates for these individuals. If complainants' position is that these individuals (or any other insureds we wish to depose) require subpoenas, let us know so that we can issue the subpoenas.

Mark A. Whitt
Jones Day
mawhitt@jonesday.com
(614) 281-3880 (Columbus)
(312) 269-4348 (Chicago)

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EXHIBIT MAW-6



"Daniel G. Galivan"
<dgg@GD-LLC.COM>

05/25/2007 03:45 PM

To "Mark A. Whittr" <mawhitt@JonesDay.com>

cc

Subject RE: Lexington et al v. CEI et al.

Mark,

I did not have an opportunity to call you Wednesday in Columbus. If you haven't filed the motion to compel yet on the customer issue, perhaps we can reach an agreement that will avoid unnecessary motion practice. In short, as I've said all along, we'll dismiss any claims for non-customers. I realize I haven't committed to a date certain for providing some proof of a customer Responsibility relationship as to the specified insured's, but would suggest something near the end of June, since the schedule calls for completion of discovery by July 13th. (I might even end up with more time if you file a motion).

As for producing insureds, it would help to know why you want to depose them in order for us to assist in securing their appearances without subpoenas. I'm amenable to discussing this when we both have an opportunity.

Finally, I note that the PUCO has denied your motion to reconsider the schedule modification so if you need to discuss a joint motion to move the hearing, I will be glad to do so. And looks like we'll have to reach our own agreement on the protective order as that joint motion was denied.

Call me when you can.

Dan

Daniel G. Galivan
Grotefeld & Denenberg, LLC
105 West Adams Street
Suite 2300
Chicago, IL 60603

EXHIBIT MAW-7



Mark A. Whitt/JonesDay
Extension 6-3880
(614-281-3880)
07/02/2007 04:55 PM

To "Alyssa J. Endelman" <aje@GD-LLC.COM>
cc
bcc
Subject Re: Blackout Litigation--Heinen's

Thanks.

I had also asked you about the four insureds that were noticed separately - Ted Marks, Freddy Robinson, Tabitha Stevens and Robert Frantz. Given that Frantz is being dismissed because he isn't a customer, we do not need his deposition. We still need dates for the other three. Please advise ASAP so that we don't have to file a motion.

Mark A. Whitt
Jones Day
mawhitt@jonesday.com
(614) 281-3880 (Columbus)
(312) 269-4348 (Chicago)
"Alyssa J. Endelman" <aje@GD-LLC.COM>



"Alyssa J. Endelman"
<aje@GD-LLC.COM>
07/02/2007 03:54 PM

To "Mark A. Whitt" <mawhitt@JonesDay.com>
cc
Subject Blackout Litigation--Heinen's

The Heinen's you referenced in your motion to compel was serviced by Cleveland Illuminating. The correct address is 20601 Aurora, not 20604 Aurora in Warrensville Heights. Heinen's paid \$44,993.30 to Cleveland Illuminating for their August 2003 utility bill via check number 2895090. If you need an affidavit reflecting this information, please advise.

Alyssa J. Endelman, Esq.
DENENBERG TUFFLEY, PLLC
21 East Long Lake Road, Ste. 200
Bloomfield Hills, MI 48304
Tel: (248) 549-3900
Fax: (248) 593-5808

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