

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

| | | |
|---|---|------------------------|
| In the Matter of the Complaints of S.G. |) | |
| Foods, Inc., et al.; Miles Management Corp., |) | |
| et al.; Allianz US Global Risk Insurance |) | |
| Company, et al.; Lexington Insurance |) | |
| Company, et al.; BMW Pizza, Inc. and |) | |
| DPNY, Inc., et al.; Triple A Sport Wears, Inc.; |) | |
| and Dennis Kucinich; |) | |
| |) | |
| Complainants, |) | Case Nos. 04-28-EL-CSS |
| |) | 05-803-EL-CSS |
| v. |) | 05-1011-EL-CSS |
| |) | 05-1012-EL-CSS |
| The Cleveland Electric Illuminating |) | 05-1014-EL-CSS |
| Company, Ohio Edison Company, |) | 05-1020-EL-CSS |
| Toledo Edison Company, and |) | 03-1833-EL-CSS |
| American Transmission Systems, Inc. |) | |
| |) | |
| Respondents. |) | |

MOTION FOR AN EXTENSION OF THE PROCEDURAL SCHEDULE AND MOTION FOR A CONTINUANCE OF THE HEARING AND REQUEST FOR EXPEDITED RULING ON THE MOTION FOR AN EXTENSION OF THE PROCEDURAL SCHEDULE AND MOTION FOR A CONTINUANCE OF THE HEARING

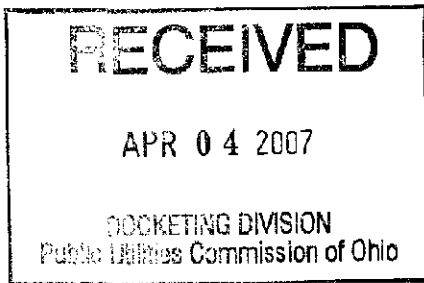
BY
ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, et al
and LEXINGTON INSURANCE COMPANY, et al

GROTEFELD & DENENBERG, L.L.C.

Daniel G. Galivan
Christina L. Weeks
Trial Attorneys

105 West Adams Street, Suite 2300
Chicago, IL 60603
(312) 551-0200; (312) 601-2402 (fax)

and
Leslie P. Wargo, Assistant Counsel
1800 Midland Building
101 Prospect Avenue West
Cleveland, Ohio 44115
(216) 696-1422



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FOR A CONTINUANCE OF THE HEARING AND REQUEST FOR EXPEDITED
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SCHEDULE AND MOTION FOR A CONTINUANCE OF THE HEARING**

BY

**ALLIANZ GLOBAL RISKS US INSURANCE COMPANY, et al
and LEXINGTON INSURANCE COMPANY, et al**

Pursuant to Ohio Adm. Code 4901-1-12 and 4901-1-13, Allianz Global Risks U.S. Insurance Company, Lexington Insurance Company and Royal Indemnity Company, as subrogees of Republic Engineered Products, Inc. and Lexington Insurance Company, Frankenmuth Mutual Insurance Company, Charter Oak Fire Insurance, The Automobile Insurance Company of Hartford, The Standard Fire Insurance Company, Travelers Indemnity Company of America, Travelers Indemnity Company of Connecticut, Travelers Indemnity Company, Travelers Property Casualty Company of America, Phoenix Insurance Company, St. Paul Mercury Insurance Company, St. Paul Surplus Lines Insurance Company, United States

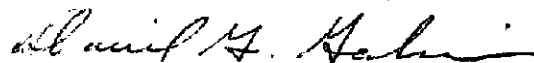
Fidelity & Guaranty, Allied Mutual Insurance Company and Nationwide Mutual Insurance, as subrogees of their insureds, ("Complainants") move the Public Utilities Commission of Ohio ("PUCO" or "Commission") pursuant to Ohio Adm. Code 4901-1-13(A) for an extension of time of the case schedule and Continuance of the Hearing one hundred twenty (120) days as follows:

- Deadline to complete fact discovery – from May 1, 2007 to **August 29, 2007**;
- Complainants to identify all experts and submit a document prepared by each such expert – from May 31, 2007 to **September 28, 2007**;
- Complainants to file testimony descriptions of experts to Commission – from June 7, 2007 to **October 5, 2007**;
- Respondents to identify all experts and file with the Commission a testimony description of experts – from June 29, 2007 to **October 26, 2007**;
- Responses to written discovery relating to experts and expert depositions to be completed – from August 31, 2007 to **December 28, 2007**;
- All parties to file with the Commission written testimony of all witnesses and a list of all anticipated witnesses whose testimony is not filed – from October 1, 2007 to **January 29, 2008**; and
- Continuance of Hearing – from October 16, 2007 at 10:00 a.m. to a date in February 2008 **set by PUCO**.

The reasons supporting these requests are set forth in the attached Memorandum in Support.

Respectfully submitted,

GROTEFELD & DENENBERG, L.L.C.



Daniel G. Galivan
Christina L. Weeks
Trial Attorneys

105 West Adams Street, Suite 2300
Chicago, IL 60603
(312) 551-0200; (312) 601-2402 (fax)

and
Leslie P. Wargo, Assistant Counsel
1800 Midland Building
101 Prospect Avenue West
Cleveland, Ohio 44115
(216) 696-1422

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to their various insureds for losses suffered as a result of the blackout. Upon making those payments, Complainants became subrogated to the rights of their insureds.

Following the investigation into the blackout, Complainants filed a Complaint with the PUCO against Respondents. Subsequent to a prehearing conference with counsel for the parties, the Examiner issued an Entry reflecting, *inter alia*, a May 1, 2007 deadline for the completion of fact discover, including responses to all written discovery *and* the taking of all depositions related to factual matters.

II. STATEMENT OF FACTS

On January 26, 2007, Complainants served Respondents with Interrogatories and Requests for Production of Documents. On March 27, 2007, Complainants received written answers to the Interrogatories and Requests for Production of Documents; no documents were produced therewith. Respondents have asserted objections to all but two of 28 Interrogatories and have further objected to all but two of 27 Requests for Production. Although Respondents have provided some responses subject to objection, extensive consultation between counsel for the parties has been, and continues to be, required to resolve the remaining issues. Counsel for Complainants and counsel for Respondents engaged in a lengthy conference call on March 29, 2007 in an effort to resolve as many disputes as possible and agree upon specific dates for completion of outstanding written discovery.

Complainants anticipate that some of the disputed matters surrounding Respondents' objections will be resolved through Complainants' issuing amended or supplemental requests and others will likely continue to be the subject of discovery disputes that may not be resolved through the efforts of counsel. With respect to the requests which can be clarified, additional

time is necessary to amend the requests and then await a response from the Respondents. The documents responsive to the Requests for Production have not yet been produced and are apparently being copied and bates-stamped. Respondents have been unable to provide a date certain for their production, although it is currently agreed that Respondents will produce these documents during the week of April 9, 2007. Complainants expect the document production to be voluminous and the time necessary to review these documents prior to taking depositions will be extensive.

Further, on March 26, 2007, Complainants received Respondents' Response to Complainants' Notice of Taking Deposition of Respondents' Corporate Representatives which was served on February 20, 2007. The response objects to thirteen (13) of the twenty-five (25) subject matters contained within the deposition notice. For the remaining twelve (12) subject matters, Respondents advised in a written response on March 26, 2007, that "[w]e will be in contact with you shortly to advise you of the identity and available dates of the witness or witnesses." At the March 29, 2007 telephone conference between counsel, Respondents were unable to provide a date certain for producing the identity and availability of these witnesses.

Further, Respondents have identified twenty-three (23) individuals interviewed in relation to, and with knowledge regarding, the Task Force findings. As a result of the March 29, 2007 discovery conference between counsel, Respondents have agreed to supplement this response by identifying the Respondent-employee of each witness, so that Complainants can make informed decisions with respect to which of the witnesses it needs to depose. Complainants will be noticing these individuals' depositions upon receipt of the supplemental response agreed to by Respondents. A substantial amount of time will be required to coordinate these depositions.

Further, Complainants expect that additional persons will be identified in discovery responses once the discovery disputes are settled.

It should be further noted that a discovery dispute with respect to Complainants' responses to Respondents' written discovery requests exists as well. This dispute surrounds Respondents' requests for information and/or documentation regarding backup or emergency generation equipment own or operated by Complainants' insureds as well as Respondents' requests for production of underwriting files with respect to certain claims. Counsel for the parties have engaged in multiple telephone conferences and exchanges of correspondence in an effort by both sides to resolve this dispute in good-faith and without the necessity of Examiner intervention. However, at this juncture, it appears most likely that resolution of these issues will in fact require intervention by the Commission. The manner in which this dispute is ultimately resolved could occasion further and substantial delay, for example if Complainants are ordered to produce the requested materials and information.

Due to the delay in providing discovery responses, the existence of discovery disputes, the volume of documents yet to be exchanged, and the volume of depositions yet to be taken, Complainants are requesting a one hundred twenty (120) day extension of the Procedural Schedule.

III. STANDARD OF REVIEW

Ohio Admin. Code 4901-13 permits parties to move for extensions of time to file pleadings and continuances of hearings. In addition, that rule provides for the granting of such motions for good cause shown.

Ohio Admin. Code 4901-1-12(C) allows parties to request an expedited ruling on their motions. Complainants maintain that an expedited ruling is appropriate in that the deadline for

completion of fact discovery, which Complainants seek to extend, is currently set for May 1, 2007.

IV. ARGUMENT

Pursuant to Ohio Admin. Code 4901-13, Complainants have filed a motion for an extension of time one hundred twenty (120) days as follows:

- Completion of fact discovery – from May 1, 2007 to **August 29, 2007**;
- Complainants to identify all experts and submit a document prepared by each such expert – from May 31, 2007 to **September 28, 2007**;
- Complainants to file testimony descriptions of experts to Commission – from June 7, 2007 to **October 5, 2007**;
- Respondents to identify all experts and file with the Commission a testimony description of experts – from June 29, 2007 to **October 26, 2007**;
- Responses to written discovery relating to experts and expert depositions to be completed – from August 31, 2007 to **December 28, 2007**;
- All parties to file with the Commission written testimony of all witnesses and a list of all anticipated witnesses whose testimony is not filed – from October 1, 2007 to **January 29, 2008**; and
- Continuance of Hearing – from October 16, 2007 at 10:00 a.m. to a date in February 2008 **set by PUCO**.

As stated, counsel for Complainants and counsel for Respondents engaged in a lengthy conference call on March 29, 2007 in an effort to resolve as many disputes as possible and agree upon specific dates for completion of outstanding discovery. While the parties continue to work together in good faith to resolve disputes and coordinate discovery, there remain a number of issues that are likely to require Examiner intervention. In short, there remains a substantial amount of fact discovery to be conducted, and the current deadline simply does not allow for completion such that a fair, complete and just adjudication of this litigation can be accomplished.

Complainants are in receipt of Respondents' written answers to the Interrogatories and Requests for Production of Documents. Documents responsive to the Requests were not were produced therewith. Respondents' counsel has agreed to produce those documents during the week of April 9, 2007. As noted above, Respondents' written responses assert objections to all

but two of the 28 Interrogatories and to all but two of 27 Requests for Production. In response to Respondents' objections, agreement has been reached by counsel that Complainants will issue amended or supplemental Interrogatories and Request for Production on or before April 9, 2007. Complainants will then have to await a response from the Respondents. Additionally, the Respondents' ultimate document production will no doubt be voluminous; the time necessary to review these documents prior to taking depositions will be extensive.

Moreover, Respondents' Response to Complainants' Notice of Taking Deposition of Respondents' Corporate Representatives objects to thirteen (13) of the twenty-five (25) subject matters contained within the deposition notices. For the remaining twelve (12) subject matters, Respondents have yet to provide the identity or available dates of the witnesses. Once again, coordination and scheduling of the depositions is going to take substantial time and cannot reasonably be accomplished under the current schedule. Likewise with respect to the twenty-three (23) individuals identified by Respondents as having been interviewed in relation to, and with knowledge regarding, the Task Force findings. As stated, Respondents have agreed to supplement this response. A substantial amount of time will be required to coordinate these depositions. Complainants anticipate that additional persons may be identified in discovery responses once the discovery disputes are resolved.

As further noted, a discovery dispute exists with respect to Respondents' requests for information and/or documentation regarding backup or emergency generation equipment own or operated by Complainants' insureds as well as Respondents' requests for production of underwriting files with respect to certain claims. It appears most likely that resolution of these issues will in fact require intervention by the Attorney Examiner. The manner in which this

dispute is ultimately resolved could occasion even further delay, if Complainants are ordered to produce the requested underwriting files.

As a result of delays in providing discovery responses, the existence of discovery disputes, the volume of documents yet to be exchanged, and the volume of depositions yet to be taken, Complainants are requesting a one hundred twenty (120) day extension of the Procedural Schedule.

V. CONCLUSION

Pursuant to Ohio Admin. Code 4901-1-13 and the reasons stated above, the Attorney Examiner should grant Complainants' Motion for Extension of the Procedural Schedule and Continuance of the Hearing. Also, pursuant to Ohio Admin. Code 4901-1-12(C) and the reasons stated, above the Attorney Examiner should issue an expedited ruling on the Motions for Extension of the Procedural Schedule and Continuance of Hearing.

Respectfully submitted,

GROTEFELD & DENENBERG, L.L.C.



Daniel G. Galivan
Christina L. Weeks
Trial Attorneys

105 West Adams Street, Suite 2300
Chicago, IL 60603
(312) 551-0200; (312) 601-2402 (fax)

and
Leslie P. Wargo, Assistant Counsel
1800 Midland Building
101 Prospect Avenue West
Cleveland, Ohio 44115
(216) 696-1422

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for an Extension of the Procedural Schedule was mailed by ordinary U.S. mail to the following persons this 3rd day of April, 2007.

David A. Kutik
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114

Mark A Whitt
JONES DAY
325 John H. McConnell Blvd., Suite 600
Columbus, OH 43215-5017

Edward Siegel
Attorney at Law
5910 Landerbrook Drive, #200
Cleveland, OH 44124

Craig Bashein
BASHEIN & BASHEIN CO. L.P.A.
50 Public Sq # 3500
Cleveland, OH 44113

Francis Sweeney, Jr.
Attorney at Law
323 Lakeside Avenue, Suite 450
Cleveland, OH 44113

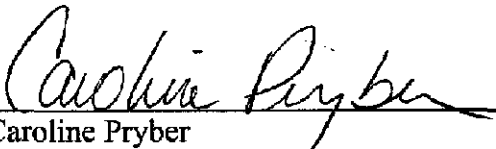
Joel Levin
LEVIN & ASSOCIATES, CO., L.P.A.
The Tower at Erieview, Suite 1100
1301 East Ninth Street
Cleveland, OH 44114

Paul Flowers
PAUL W. FLOWERS CO., L.P.A.
50 Public Square
#3500
Cleveland, OH 44113

Patrick O'Malley
Keis & George LLP
55 Public Square, Suite 800
Cleveland, OH 44113-2001

Henry Eckhart
Attorney at Law
50 West Broad Street, Suite 2117
Columbus, OH 43215-3301

Gary D. Benz
First Energy Corp.
76 S. Main Street
Akron, OH 44308


Caroline Pryber