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July 31, 2007

Via U.S. Mail

Public Utilities Commission of Ohio  
Docketing Division  
180 East Broad Street  
Columbus, OH 43215-3793

**Re: S.G. Foods, Inc., et al. vs Cleveland Electric Illuminating, et al.**  
**PUCO Case Nos: 04-28-EL-CSS, etc. (Consolidated)**  
**Our File No: 65000.0**

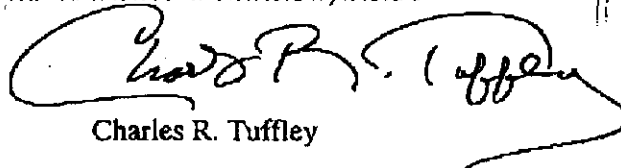
Dear Docketing Division:

Enclosed please find an original and ten (10) copies of Insurance Company Complainants' Response to Respondents' Fifth Motion to Compel Discovery and a Certificate of Service regarding same. Please file with the Commission relative to the above matter.

Thank you for your anticipated cooperation in this regard. If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

DENENBERG TUFFLEY, PLLC



Charles R. Tuffley

CRT/vmk  
Enclosures

cc: Mark A. Whitt  
David A. Kutik/Meggan Rawlin  
Joel Levin  
Paul W. Flowers  
Edward F. Siegel

W. Craig Bashein  
Francis E. Sweeney  
Gary D. Benz

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**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 Global Risks U.S. Insurance Company, et al.; Lexington Insurance Company, et al.; and BMW Pizza, Inc. and DPNY, Inc., et al., )

Complainants, )

v. )

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

Respondents. )

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

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**INSURANCE COMPANY COMPLAINANTS' RESPONSE TO RESPONDENTS' FIFTH MOTION TO COMPEL DISCOVERY**

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NOW COME Complainants Lexington Insurance Company, Frankennouth Mutual Insurance Company, Charter Oak Fire Insurance Company, 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 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 in Case Number 05-1012, by and through their attorneys, Denenberg Tuffley, PLLC, and in response to the Respondents' Fifth Motion to Compel Discovery say as follows:

The Respondents filed a Notice of Deposition for 16 representatives of the claimant insurers. As discussed below, each of the proposed areas of discovery have either been heretofore provided or are outside the discoverable parameters previously outlined by the Commission.

This is the third occasion that a dispute regarding the scope of discovery relating to the Complainants' claim has arisen. In Respondents' Second Motion to Compel Discovery of the Lexington Complainants, Respondents moved to compel information regarding backup systems to the Respondents' electrical systems and the underwriting file for each insured. The underwriting files were allegedly required to determine whether the Complainants paid the claims voluntarily or paid the claims pursuant to a contractual duty.

The Attorney Examiner in denying Respondents' Second Motion to Compel stated in part:

The Examiner agrees with the Respondents insofar as they maintain that, for the insurance companies to be appropriate subrogees and represent the insureds in these matters, they must have paid an insurance claim resulting from the alleged inadequate service in these proceedings to the insured.

If the Respondents are trying to discern whether the Complainant insurance companies are appropriate subrogees, they should review the claim files to determine if the Complainant insurance companies did in fact pay a claim to the insureds for the time period in question. Information beyond this inquiry relating to information such as backup power pertains to damages and damages are not at issue in these cases before the Commission.

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(See Opinion and Order dated May 24, 2007, page 6).

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It appears that the Respondents are seeking information from the underwriting files that will negate the insureds' claims to the insurance complainants. Again, these cases are not about damages and the Commission will not be addressing the issue of whether the insureds' claims were or were not appropriately paid. Rather, the Commission will be considering the allegations made by the insurance complainants on

behalf of the insureds to which claims were paid that the Respondents provided inadequate service. With that scope in mind, the underwriting files are not relevant to these proceedings. For purposes of these proceedings, the Respondents should look to the policies which the insurance complainants state they have provided or will be providing for the information relevant to these cases.

(See Opinion and Order dated May 24, 2007, pages 7-8).

A brief review of each of the five areas of deposition topics proposed by the Respondents will demonstrate that the Respondents' Motion should be denied.

First area:

1. The identity of each insured to whom the Complainant paid a claim for losses allegedly arising from the August 14, 2003 outage.

Response:

The identity of each insured to whom the Complainants paid claims has been provided in the claim files.

Second area:

2. The terms of the insurance policy alleged to provide coverage for the loss allegedly sustained by each such insured.

Response:

The policies have already been provided. This area appears to be another attempt to conduct discovery on the issue of whether the insureds' claims were voluntarily paid. That issue has already been resolved by the Commission's holding that such discovery is outside the parameters of this proceeding.

Third area:

3. The facts underlying the claim made by each insured including without limitation any investigation of any claim by each Complainant.

**Response:**

The claims files do not contain information pertinent to this matter i.e., the cause of the outage. As the Commission stated in its Order of May 24, 2007 on pages 5 – 6:

The Respondents argue in terms of causation of damage. However, it is actually causation of the outage that is relevant.

No Complainant investigated the cause of the blackout in connection with the adjustment of any of the insurance claims in question, so no testimony could possibly come out at any of these depositions that would provide evidence relevant to these limited proceedings.

Fourth area:

4. The contents of each claim file for each insured for each Complainant.

**Response:**

The contents of the claims files have already been produced.

Fifth area:

5. The facts underlying each Complainant's claim that each of its insureds was a customer of Respondents as of August 14, 2003.

**Response:**

In the Respondents' Third and Fourth Motions to Compel Discovery, they moved to compel discovery regarding customer status and whether certain claims were connected to the blackout. In response to the Third and Fourth Motions to Compel Discovery, the Plaintiffs voluntarily dismissed 50 claims and the Respondents withdrew their Third and Fourth Motions to Compel Discovery. Therefore, the Respondents have identified those claims where customer status was an issue and unless the Complainants had contrary evidence, the claims were dismissed. Therefore, the issue of customer status has been resolved and additional discovery regarding the issue as suggested by the Notice of Deposition is not required.

Complainants have produced all of their claim files. These files identify each insured, they confirm that the claim in question was made arising out of the blackout, and they indicate the amount paid on the claim. In short, the claim files provide the information which the Attorney Examiner previously indicated needed to be provided to Respondents. Since the claim files essentially "speak for themselves," if the depositions in question were to take place **absolutely no additional information** (relevant to these limited proceedings) could or would be disclosed.

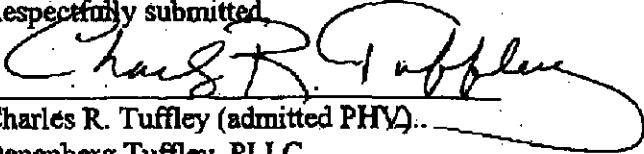
Indeed, the issues raised in Respondents' Motion all come down to one simple thing – authentication of evidence. If, in the interests of keeping the hearing to become as streamlined as possible, Respondents were to stipulate to the obvious authenticity (and admissibility) of the various claim files, there would be no need for any representatives of Respondents to provide the "pro forma" testimony required to admit these files into evidence. Unfortunately, Respondents have thus far shown no willingness to cooperate in this regard. Rather they have continually attempted to expand the scope and complexity of these proceedings to embrace issues such as insurance coverage and damages. Accordingly, Complainants realize they will be required to produce representatives at the hearing who will do nothing more than provide the limited foundational testimony necessary for the admission of the claim files into evidence. While such testimony will be required for the hearing, absolutely no purpose will be served by requiring this testimony to first come out during a deposition.

Therefore, the Respondents' Motion should be denied for the reasons that:

1. The issue of customer status has been resolved.
2. The areas of inquiry set out by the Respondents in their Notice of Depositions are outside the scope of discovery in this proceeding.

3. The information relevant to this proceeding has been provided by way of the claim files and no additional discovery is required.
4. Depositions as proposed by the Respondents would be redundant and the expense and inconvenience clearly outweighs the minimal likelihood, if any, of obtaining additional facts relevant to this proceeding.

Respectfully submitted,

  
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Attorneys for The Insurance Company Complainants  
(Case Nos. 05-1011 and 05-1012)

Dated: July 31, 2007

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Insurance Company Complainants' Response to Respondents' Fifth Motion to Compel Discovery was mailed by ordinary U.S. mail to the following persons this 31<sup>st</sup> day of July, 2007 and to Jones Day by facsimile and U.S. Mail:

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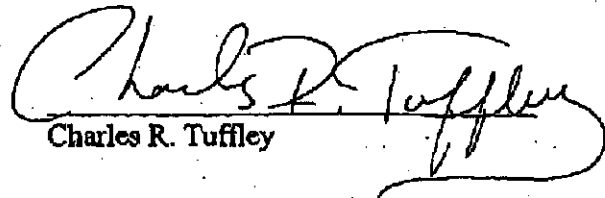
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