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July 25, 2014

Attorney Examiner Mandy W. Chiles
Public Utilities Commission of Ohio
180 E. Broad SL, 11th Floor
Columbus, Ohio 43215-3793

RE: United Services Automobile Associaton v. NiSource Inc., *et al.*
PUCO Case No. 14-1176-GA-CSS

Dear Attorney Examiner Chiles:

On July 23, 2014, I filed on behalf of NiSource Inc. and Columbia Gas of Ohio, Inc. the *Motion to Dismiss of NiSource Inc. and Columbia Gas of Ohio, Inc.* I inadvertently forgot to attach Exhibit A to that motion. I am attaching Exhibit A to this letter and will serve Exhibit A to all parties of record. I apologize and regret any inconvenience caused by this inadvertent oversight.

Thank you for your cooperation in this matter.

Respectfully submitted

/s/ Christen M. Blend

Christen M. Blend

CMB
Enclosure

cc: Eric B. Gallon, Esq. (via e-mail)
Andrew P. Avellano (via U.S. mail)
Erick J. Kirker (via U.S. mail)

COLUMBUS/1730561v.1

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

UNITED SERVICES
AUTOMOBILE ASSOCIATION
as subrogee of Roger and Joy Ellen Wood
9800 Fredericksburg Road
San Antonio, Texas 78288

Plaintiff,

v.

NISOURCE, INC.
801 E. 86th Avenue
Merrillville, Indiana 46410

and

COLUMBIA GAS OF OHIO, INC.
t/a Columbia Gas Distribution Companies
200 Civic Center Drive
Columbus, Ohio 43215

and

ELSTER PERFECTION CORPORATION
436 N. Eagle Street
Geneva, Ohio 44041

and

NPL CONSTRUCTION CO. t/a National
Pipeline
2355 W. Utopia Road
Phoenix, Arizona 85027

and

ELSTER AMERICAN METER
COMPANY, LLC
2221 Industrial Road
Nebraska City, Nebraska 68410

Defendants.

CASE NO.: 14-CVC-07-0508

JUDGE EVERETT H. KRUEGER

COMPLAINT

(Jury Demand Endorsed Hereon)

COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
FILED
2014 JUL -7 PM 2:16
JAN ANTONOPLOS
CLERK



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COMPLAINT

NOW COMES Plaintiff, United Services Automobile Association as subrogee of Roger and Joy Ellen Wood, by and through its undersigned counsel, and for its Complaint against Defendants, NiSource, Inc., Columbia Gas of Ohio, Inc. t/a Columbia Gas Distribution Companies, Elster Perfection Corporation, NPL Construction Co. t/a National Pipeline, and Elster American Meter Company, LLC, avers as follows:

GENERAL ALLEGATIONS

1. Plaintiff, United Services Automobile Association (“USAA”) is a reciprocal inter-insurance exchange and is a citizen in each state that it has a member, including, but not limited to, Ohio. At all times relevant hereto USAA was duly authorized to issue policies of insurance in the State of Ohio with a sole principal place of business located at 9800 Fredericksburg Road, San Antonio, Texas 78288.

2. Defendant, NiSource, Inc. (“NiSource”) is a corporation duly organized and existing under the laws of the State of Delaware, with a principal place of business located at 801 E. 86th Avenue, Merriville, Indiana 46410.

3. Defendant Columbia Gas of Ohio, Inc. t/a Columbia Gas Distribution Companies (“Columbia Gas”) is a corporation duly organized and existing under the laws of the State of Ohio, with a principal place of business located at 200 Civic Center Drive, Columbus, Ohio 43215. NiSource is the corporate parent of Columbia Gas.

4. Defendant, Elster Perfection Corporation (“Elster Perfection”) is a corporation duly organized and existing under the laws of the State of Delaware, with a principal place of business located at 436 N. Eagle Street, Geneva, Ohio 44041.

5. Defendant, NPL Construction Co. t/a National Pipeline (“NPL”) is a corporation duly organized and existing under the laws of the State of Nevada, with a principal place of business located at 2355 W. Utopia Road, Phoenix, Arizona 85027.

6. Defendant, Elster American Meter Company, LLC (“Elster American Meter”) is a corporation duly organized and existing under the laws of the State of Delaware, with a principal place of business located at 2221 Industrial Road, Nebraska City, Nebraska 68410.

7. Plaintiff’s insureds, Roger and Joy Ellen Wood, (“Wood”) are adult individuals, that for all times relevant resided at 10374 Braemer Drive, Powell, Ohio 43065 (“the subject premises”).

8. At all times material hereto, Plaintiff USAA provided property insurance coverage to Wood for the subject premises, pursuant to policy number 358655.

9. At all relevant times, NiSource regularly and systematically conducted business in the State of Ohio, and in Delaware County, by supplying and distributing natural gas (the “gas”) to residential and commercial properties, including the subject premises.

10. At all relevant times, Columbia Gas regularly and systematically conducted business in the State of Ohio, and in Delaware County, by supplying and distributing natural gas to residential and commercial properties, including the subject premises.

11. At all relevant times, Elster Perfection designed, manufactured, installed, serviced, repaired and/or supplied gas pipeline systems, *inter alia*, including the pipeline connecting the gas main to the meter (the “pipeline”), at the subject premises.

12. At all relevant times, NPL provided, *inter alia*, gas distribution infrastructure services in the State of Ohio, and in Delaware County, including the pipeline construction and installation for the distribution of gas to the subject premises.

13. At all relevant times, Elster American Meter supplied and distributed gas meters for the regulation, measurement and control of gas for residential and commercial properties in the State of Ohio, and in Delaware County, including the subject premises.

14. On July 17, 2012, a fire (the "Fire") occurred at the subject premises.

15. The Fire was caused by a leakage of gas supplied and distributed by NiSource and Columbia Gas from their defective pipeline, meter and applicable equipment that was constructed, installed, repaired, serviced and regulated by Nisource, Columbia Gas, Elster Perfection, NPL and Elster American Meter.

16. As a result of the fire, Wood suffered significant damages to its real and personal property as well as loss of use expenses, which were in excess of \$386,140.00.

17. Pursuant to its contractual obligations, Plaintiff USAA has made payments to Wood, in an amount in excess of \$386,140.00.

18. By virtue of those payments, USAA is legally, equitably and contractually subrogated to any right of recovery possessed by its assured to the extent of payments made by USAA.

19. Pursuant to the principles of legal and equitable subrogation, as well as the terms and conditions of the aforementioned policy of insurance, USAA is subrogated to the rights of its insured to the extent of its payments.

20. At all times relevant hereto, Defendants acted by and through their respective employees, agents, servants and workmen, each of whom was acting in the course of his or her employment and within the scope of his or her authority, subject to the control and direction and for the benefit of their respective employers.

COUNT I

PLAINTIFF v. DEFENDANTS NISOURCE AND COLUMBIA GAS
NEGLIGENCE

21. Plaintiff incorporates by reference each and every allegation set forth above and below as though the same were fully set forth herein at length.

22. NiSource and Columbia Gas owed duties of care to Plaintiff's insured, and NiSource and Columbia Gas breached those duties resulting in damages sustained by Wood that were caused by the negligent and careless acts and omissions of the Defendants NiSource and Columbia Gas as follows:

- a. failing to properly and safely monitor the supply and distribution of natural gas to the subject premises;
- b. failing to properly and safely maintain and control the supply and distribution of natural gas to the subject premises;
- c. failing to properly and safely inspect, control, maintain, and repair the pipeline, meter and applicable equipment used to supply, distribute, convey, transport, deliver, regulate, measure and control the natural gas going to the subject premises;
- d. failing to properly train, instruct and monitor its agents, workmen and employees;
- e. failing to properly train, instruct and monitor its subcontractors, agents, workmen and employees;

f. continuing to provide gas to the subject premises when it knew or should have known of dangerous conditions within the supply and distribution system that provided gas to the subject premises;

g. violating applicable codes, standards, practices and regulations regarding the supply and distribution of natural gas and applicable equipment; and

h. supplying, conveying, selling, distributing, and/or delivering and/or transporting gas in an unsafe manner that presented an unreasonable risk of harm; and

i. otherwise failing to use due care under the circumstances.

23. As a direct and proximate result of the aforesaid gross negligence, negligence, carelessness and negligent acts and omissions of NiSource and Columbia Gas, the aforementioned fire occurred causing substantial damage and destruction to Wood's property.

WHEREFORE, Plaintiff demands judgment against NiSource and Columbia Gas in excess of \$25,000.00 together with interest and the cost of this action, and such other relief as the Court deems just and proper.

COUNT II

PLAINTIFF v. DEFENDANTS NISOURCE AND COLUMBIA GAS STRICT LIABILITY FOR ULTRA-HAZARDOUS ACTIVITIES

24. Plaintiff incorporates by reference each and every allegation set forth above and below as though the same were fully set forth herein at length.

25. At all times relevant hereto, defendants NiSource and Columbia Gas, by and through their agents, servants and/or employees, were engaged in the aforementioned ultra-hazardous activity of supply and distribution of natural gas, for which activity and resulting harm thereof defendants are strictly liable.

26. The occurrence referred to above and the consequent damage to Wood's property was caused by the actions and omissions of the defendants, for which they are strictly liable, for creating an unreasonable risk of harm to Wood by performing an ultra-hazardous activity.

27. As a result of the defendants' conduct, for which they are strictly liable, the occurrence referred to above took place and resulted in damage to Wood's property.

28. As a direct and proximate result of the aforesaid acts and omissions of NiSource and Columbia Gas, the aforementioned Fire occurred causing substantial damage and destruction to Wood's property.

WHEREFORE, Plaintiff demands judgment against NiSource and Columbia Gas in excess of \$25,000.00 together with interest and the cost of this action, and such other relief as the Court deems just and proper.

COUNT III

PLAINTIFF V DEFENDANT NPL
NEGLIGENCE

29. Defendant NPL owed duties of care to Plaintiff's insured, and NPL breached those duties resulting in damages sustained by Wood that were caused by the negligent and careless acts and omissions of the Defendant as follows:

- a. failing to ensure the purchase, sale and installation of a defect free pipeline, meter and applicable equipment at the subject premises;
- b. failing to ensure proper and sufficient materials were used in the construction, service, repair and installation process;
- c. causing or allowing defective pipeline, meter and applicable equipment to be constructed and installed;

- d. failing to properly and adequately design, construct, install, perform, manage, supervise or inspect its work at the premises;
- e. failing to hire proper and adequate employees, agents and/or contractors;
- f. failing to perform its work at the premises in conformity with good practice, industry standards and due care;
- g. failing to properly warn and/or notify plaintiff's insured of any and all dangers and/or hazards associated with the pipeline, meter and its applicable equipment;
- h. improperly installing, servicing, repairing, and/or replacing the pipeline, meter and applicable equipment at the subject premises; and
- i. otherwise failing to exercise reasonable care under the circumstances.

30. As a direct and proximate result of the aforesaid gross negligence, negligence, carelessness and negligent acts and omissions of NPL, the aforementioned fire occurred causing substantial damage and destruction to Wood's property.

WHEREFORE, Plaintiff demands judgment against NPL in excess of \$25,000.00 together with interest and the cost of this action, and such other relief as the Court deems just and proper.

COUNT IV

PLAINTIFF V DEFENDANT ELSTER PERFECTION
NEGLIGENCE

31. Defendant Elster Perfection owed duties of care to Plaintiff's insured, and Elster Perfection breached those duties resulting in damages sustained by Wood that were caused by the negligent and careless acts and omissions of the Defendant as follows:

- a. failing to ensure the purchase, sale and installation of a defect free pipeline, meter and applicable equipment at the subject premises;

- b. failing to ensure proper and sufficient materials were used in the construction, repair, service and installation process;
- c. causing or allowing defective pipeline, meter and applicable equipment to be constructed and installed;
- d. failing to properly and adequately design, construct, install, perform, manage, supervise or inspect its work at the premises;
- e. failing to hire proper and adequate employees, agents and/or contractors;
- f. failing to perform its work at the premises in conformity with good practice, industry standards and due care;
- g. failing to properly warn and/or notify plaintiff's insured of any and all dangers and/or hazards associated with the pipeline, meter and its applicable equipment;
- h. improperly installing, servicing, repairing, and/or replacing the pipeline, meter and applicable equipment at the subject premises; and
- i. otherwise failing to exercise reasonable care under the circumstances.

32. As a direct and proximate result of the aforesaid gross negligence, negligence, carelessness and negligent acts and omissions of Elster Perfection, the aforementioned fire occurred causing substantial damage and destruction to Wood's property.

WHEREFORE, Plaintiff demands judgment against Elster Perfection in excess of \$25,000.00 together with interest and the cost of this action, and such other relief as the Court deems just and proper.

COUNT V

**PLAINTIFF V DEFENDANT ELSTER AMERICAN METER
NEGLIGENCE**

33. Defendant Elster American Meter owed duties of care to Plaintiff's insured, and Elster American Meter breached those duties resulting in damages sustained by Wood that were caused by the negligent and careless acts and omissions of the Defendant as follows:

- a. failing to ensure the purchase, sale, repair and installation of a defect free pipeline, meter and applicable equipment at the subject premises;
- b. failing to ensure proper and sufficient materials were used in the construction and installation process;
- c. causing or allowing defective pipeline, meter and applicable equipment to be constructed and installed;
- d. failing to properly and adequately design, construct, install, perform, manage, supervise or inspect its work at the premises;
- e. failing to hire proper and adequate employees, agents and/or contractors;
- f. failing to perform its work at the premises in conformity with good practice, industry standards and due care;
- g. failing to properly warn and/or notify plaintiff's insured of any and all dangers and/or hazards associated with the pipeline, meter and its applicable equipment;
- h. improperly installing, servicing, repairing, and/or replacing the pipeline, meter and applicable equipment at the subject premises; and
- i. otherwise failing to exercise reasonable care under the circumstances.

34. As a direct and proximate result of the aforesaid gross negligence, negligence, carelessness and negligent acts and omissions of Elster American Meter, the aforementioned fire occurred causing substantial damage and destruction to Wood's property.

WHEREFORE, Plaintiff demands judgment against Elster American Meter in excess of \$25,000.00 together with interest and the cost of this action, and such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of the within matter.

Respectfully submitted,

BY:



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in

Case No(s). 14-1176-GA-CSS

Summary: Exhibit "A" to Motion to Dismiss of NiSource Inc. and Columbia Gas of Ohio, Inc. (filed July 23, 2014) electronically filed by Ms. Christen M. Blend on behalf of NiSource Inc. and Columbia Gas of Ohio, Inc.