

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001**

Postal Rate and Fee Changes, 2006

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:
Docket No. R2006-1

**REQUEST FOR EXPEDITED RELIEF AND
MOTION OF THE GREETING CARD ASSOCIATION ON
BEHALF OF DR. JAMES CLIFTON FOR PROTECTIVE
ORDER CONCERNING GCA PRODUCTION IN
RESPONSE TO ANM/GCA-1**

(October 27, 2006)

The Greeting Card Association files this motion for expedited relief, and a protective order, on behalf of its witness Dr. James Clifton. On October 23, 2006, GCA filed its responses to the Association of Nonprofit Mailers' discovery request ANM/GCA-1. ANM sought documents constituting or reflecting communications between GCA witness Professor Kelejian and GCA witness Dr. Clifton. The next day, on October 24, 2006, ANM inspected, designated for copying and obtained certain of the responsive materials, including a March 2006 elasticity study. ANM is the only party that has inspected and obtained these materials.

As explained in his Declaration (Attachment A), Dr. Clifton has a financial dispute with his former client NAPM. According to Dr. Clifton, NAPM seeks material contained in the March study for which it owes Dr. Clifton, but has not yet paid him. In addition, Dr. Clifton believes the produced material is relevant, or otherwise potentially relevant to his collateral dispute with NAPM and ABA, and protections limiting the use of the produced material to this proceeding (R2006-1) are warranted.

Time is of the essence. Professor Kelejian is scheduled for cross-examination this coming Monday, October 30, 2006. ANM has indicated in its notice that it may well cross-examine Professor Kelejian concerning the produced documents. In any event, ANM now possesses the material at issue.¹

GCA is a stranger to this issue in that it does not seek or claim a basis for a protective order on its own behalf. Nevertheless, Dr. Clifton is himself entitled to protective relief under the plain language of Commission Rule 26(g) (emphasis added).

"The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a participant or person from undue annoyance, embarrassment, oppression, or expense."

Dr. Clifton's bases for the claimed protective relief are set out in his Declaration at Attachment A. The form of protective order that he seeks appears at Attachment B. While Dr. Clifton has his own independent counsel representing him in his dispute with ABA and NAPM, his counsel has not made an appearance in this proceeding. Given the exigent circumstances, and because time is of the essence, GCA files the instant motion on Dr. Clifton's behalf, and Dr. Clifton asks that the Commission grant the requested protective relief.

¹ ANM is represented by counsel who also represents NAPM in this proceeding.

Respectfully submitted,

/s/ James Horwood _____

James Horwood

Peter Hopkins

Spiegel & McDiarmid

1333 New Hampshire Ave. NW, 2nd Floor

Washington, D.C. 20036

Date: October 27 2006

ATTACHMENT A

statements concerning me and my company, Washington Economics Consulting Group, Inc. (“WECG”). See the attached Exhibit 1 for a response to those false statements.

5. I also currently serve as an expert for the Greeting Card Association (“GCA”) in the above-referenced rate case.

6. In response to certain discovery in R2006-1 served upon GCA by the Alliance of Non-Profit Mailers ANM) on October 4, 2006, GCA has produced on October 23, 2006, among other documents, a March 31, 2006, Elasticity Study that presents alternative elasticity estimates for FCLM than those made by the USPS .

7. The March 31, 2006 Elasticity Study contains similar, if not identical, arguments to those contained in my testimony for GCA, about which NAPM/ABA have made certain false assertions, and their use of that March 31, 2006 study in my current dispute with them could be harmful to me in that dispute. In addition, the March 31, 2006 Elasticity Study contains valuable analyses and estimates of cross elasticities for worksharing mail that did not appear in my testimony. A major member of NAPM has requested such analyses and estimates but has not offered to pay me, my firm, or GCA for such. See Exhibit 2. Neither NAPM, its major member, nor any other major mailer should have access to that information without prior compensation to GCA and/or WECG.

8. It is necessary for the Commission to enter a Protective Order so that NAPM/ABA cannot use the March 31, 2006 Elasticity Study in their dispute with me, and cannot benefit by free riding on valuable information on worksharing cross elasticities contained in that study.

9. It is necessary for the Commission to enter a Protective Order limiting the use of the Study to this rate proceeding, and requiring that all copies of the Study be returned or destroyed at the conclusion of this rate proceeding.

I solemnly declare and affirm under the penalties of perjury and upon personal knowledge that the contents of foregoing Declaration are true.

10/26/06
Date

James A. Clifton
James A. Clifton

Exhibit 1

**SHULMAN
ROGERS
GANDAL
PORDY &
ECKER, P.A.**

Lawrence A. Shulman
Donald R. Rogers
David A. Pordy⁺
David D. Freishtat
Martin P. Schaffer
Christopher C. Roberts
Edward M. Hanson, Jr.
David M. Kochanski
Robert B. Canter
Daniel S. Krakower
Kevin P. Kennedy
Nancy P. Regelin
Samuel M. Spiritos⁺
Martin Levine
Worthington H. Talcott, Jr.⁺
Fred S. Sommer
Morton A. Faller
Alan S. Tilles
James M. Hoffman
Michael V. Nakamura

Jay M. Eisenberg⁺
Douglas K. Hirsch
Glenn C. Etelson
Karl J. Protol, Jr.⁺
Timothy Dugan⁺
Kim Viti Fiorentino
Sean P. Sherman⁺
Gregory D. Grant⁺
Jacob S. Frenkel^{*}
William C. Davis, III
Rebecca Oshoway
Alan B. Sternstein
Michael J. Frochlich
Sandy David Baron
Christine M. Sorge
Michael L. Kabik
Jeffrey W. Rubin
Simon M. Nadler
Scott D. Muscles
Karl W. Means

Michelle R. Curtis^{*}
Mimi L. Magyar
Glenn W.D. Golding⁺
Michael J. Lichtenstein
Bruce A. Henoch
Jeremy W. Schulman
William F. Askinazi
Matthew M. Moore⁺
Jeannie Eun Cho
Debra S. Friedman^{*}
Eric J. von Vorys
Heather L. Howard⁺
Stephen A. Metz
Hong Suk "Paul" Chung
Patrick J. Howley
Carmen J. Morgan^{*}
Kristin E. Draper^{*}
Heather L. Spurrier^{*}
Melissa G. Bernstein
Patricia Teck

Jacob A. Ginsberg
John D. Sadler
Marc E. Pasekoff
Erin J. Ashbarry
Alexis H. Peters^{*}
Mercedith S. Abrams
Kristen Munger^{*}
Leslie E. Gallagher^{*}
Michael T. Ebaugh
Anne Marie Vassallo^{*}
Matthew D. Alegi^{*}
Joann J. Wang^{•+}
Christopher W. Poverman
Chanoch D. Kanovsky
Thomas A. Gravely
Rebekah L. Bina[°]
William F. Gibson⁺
William B. Schroeder⁺
Mary Clare H. Kimber^{*}

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David E. Weisman
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Deborah L. Moran
Scott D. Field

Special Counsel
Philip R. Hochberg[°]

Retired
Karl L. Ecker

Maryland and D.C. except as noted:
⁺ Virginia also [°] D.C. only
[•] Maryland only

Writer's Direct Dial Number:

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October 4, 2006

VIA TELECOPIER AND FIRST-CLASS MAIL

The Honorable Steven Williams
Secretary
Postal Rate Commission
901 New York Avenue, N. W.
Washington, DC 20268-0001

Re: Dr. James A. Clifton and Washington Economics Consulting Group, Inc.
Our File No. 112-474-011

Dear Secretary Williams:

I understand that you receive public comments for inclusion in a "commenters file" associated with proceedings such as R2006-1 under Title 39 CFR §3001.20b. My clients are Dr. James A. Clifton and his company, Washington Economics Consulting Group, Inc. Dr. Clifton has practiced before this Commission as a consultant and expert since 1990.

On Monday of last week, September 25, 2006, the American Bankers Association ("ABA") and National Association of Presort Mailers ("NAPM") withdrew Dr. Clifton's testimony on behalf of ABA and NAPM. This was done without my client's consent, and the wording of the ABA's and NAPM's motion for withdrawal was not run by my client or me. The only "forcing event" for their withdrawal was the need to respond to four USPS interrogatories directed to Dr. Clifton's testimony by September 29th.

Nonetheless, ABA and NAPM withdrew the testimony on Monday, September 25th, but did not withdraw the workpapers associated with my client's testimony until Friday, September 29 -- thus making this a week-long event aired in the public evidentiary record of R2006-1. Now that ABA/NAPM have finally completed their withdrawal, on behalf of my client, I want to comment on their stated reasons for withdrawal of my client's testimony, as they are factually inaccurate.

The Honorable Steven Williams

October 4, 2006

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ABA and NAPM claim in their notice of withdrawal of Dr. Clifton's testimony to have not been aware of the nature and scope of his direct testimony for the Greeting Card Association ("GCA") until it was submitted on September 6, 2006. In fact, I have several e-mails and other evidence in my possession that make it clear that the nature and scope of Dr. Clifton's representation of, and contemplated testimony for, GCA were known to ABA and NAPM at least as far back as May of this year. Yet, ABA and NAPM did not ask my client to withdraw from his representation of GCA -- not in May, June, July, or August. There was no mention whatsoever of any "divergence" of interests and/or no assertion of a conflict in any way. Nor did ABA and/or NAPM ask my client to amend his contract with GCA in any manner.

ABA and NAPM also claim in their notice of withdrawal that a "divergence" of interests became apparent after they read my client's responses to five interrogatories posed by the Direct Marketing Association ("DMA") to Dr. Clifton's GCA testimony. The basis for the statistical answers Dr. Clifton rendered in response to those interrogatories was the ABA's own postal survey from 2000, which ABA had provided to my client as part of his research for ABA, and which is available to the public on the ABA website.

Without going into great detail, Dr. Clifton's proposal in the GCA testimony irrefutably helps the banking industry. Because a one cent cut in the First Class single piece letter rate that constitutes 66% of the mail volume sent by banks in the ABA postal survey is spread over a larger volume of Standard A Regular letter mail (51 billion pieces versus 39 billion pieces in 2005), the impact is to raise the price of the latter by less than one cent. Under a key principal from welfare economics, those banks benefiting from a one cent cut in the single piece rate can compensate those banks whose postage rates for marketing letters go up by less than one cent. All banks are therefore left as well off -- or better off -- than before the GCA proposal. This follows because the ABA postal survey given to my client also indicates that the volume of single piece mail sent by the banking industry greatly exceeds the volume of Standard A Regular marketing mail sent by the banking industry.

The normal practice in postal rate proceedings is that parties having common interests openly and publicly submit joint pleadings including interrogatories, joint testimony and joint legal briefs. On information and belief, at least one consultant and expert for DMA in the R2006-1 rate case is also a consultant and expert for Pitney Bowes, which is also a significant member of NAPM. On further information and belief, that same consultant and expert has also done consulting work for Bank of America in this rate case in association with outside counsel for Bank of America, whose other clients in this case include NAPM and a large association representing Standard A Regular mail interests. Bank of America is also a significant member of ABA.

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Whereas, Dr. Clifton certainly does not contest the ABA's and NAPM's right to withdraw his testimony, he does contest that they have any right in the evidentiary record to use language justifying that withdrawal that is demonstrably inaccurate, and that damages his reputation and that of his company, whether intentionally or not.

Best regards.

Very truly yours,


William C. Davis, III

WCD/mls

Exhibit 2

From: michael.lintell@pb.com
Sent: Wednesday, October 11, 2006 4:45 PM
To: Clifton@wecg.com
Subject: price elasticity study

Dr Clifton,
You recently presented the cross-price elasticity study to the PRC for R2006-1.

Do you have a presentation format that you can share?

Also,
Have you looked at elasticity of substitution for 1st class mail with electronic alternatives?

Michael Lintell
Director, Future of Mailstream
Pitney Bowes - Corporate Strategy Group
Phone: 203-351-7630

ATTACHMENT B

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001**

Postal Rate and Fee Changes, 2006)	Docket No. R2006-1
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PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order filed by the Greeting Card Association (“GCA”) and the responses, if any, thereto, it is this _____ day of _____, 2006 by the Postal Rate Commission;

ORDERED, that the Motion for Protective Order filed by the Greeting Card Association be, and is hereby, granted; and it is further

ORDERED, that

1. Only a person who is a participant in Postal Rate Commission Docket No. R2006-1, or a person employed by such participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. R2006-1 shall be granted access to the materials produced by GCA on October 23, 2006 in response to the Alliance of Non-Profit Mailers discovery request dated October 4, 2006.
2. The use of the materials shall be strictly limited to litigation of R2006-1, and not used for any other purpose during or after the concluding date of that litigation, as defined below in item 4.
3. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
4. The final date of any participant’s access, defined as the concluding date, shall be January 7, 2007, the scheduled date for reply briefs in R2006-1.

5. A participant shall return all protected materials to Peter Hopkins, Esq. at Spiegel and McDiarmid no later than 5 business days after January 7, 2007, and certify to Peter Hopkins, Esq. by Certified First Class Mail that the protected material has been returned, or destroyed, and attest in writing with signature that all the protective conditions above have been met in full.

Entered

Commissioner, Postal Rate Commission