



4. Between 1974 and 1996, I was an attorney (1974-79) and then Vice President and General Counsel (1979-1996) of the National Wildlife Federation. Along with several executives of other major nonprofit organizations, I was a co-founder of the Alliance of Nonprofit Mailers in 1980. I held several positions on the Board of Directors of the Alliance from 1980 to 1992, including a term as President from 1986 to 1988.

5. My education includes a B.A. in political science from Trinity College; an M.P.A. from the Maxwell School of Citizenship and Public Affairs, Syracuse University; and a J.D. (cum laude) from the Ohio State University College of Law.

#### **Interests of NAPM**

6. The National Association of Presort Mailers, an Ohio nonprofit corporation headquartered in Annapolis, Maryland, is a trade association of presort service bureaus and other businesses that presort mail on behalf of individual mailer customers and vendors to the industry.

7. The primary mail class handled by presort bureaus traditionally has been Presort First-Class Mail. In recent years, however, presort bureaus have handled increasing volumes of Standard Mail. Moreover, the largest customer of almost every presort bureau is a financial institution that uses Standard Mail. In addition, approximately half of our members own, are owned by, or share a common owner with letter shops that prepare Standard Mail for customers. For these reasons, the members of NAPM have a significant economic interest in rate levels for Standard Mail as well as First-Class Mail.

## **Relationship of NAPM With Dr. James A. Clifton**

8. Dr. James A. Clifton, a resident of Potomac, Maryland, is an economist who does business as a consultant and professional witness under the name of the Washington Economics Consulting Group, Inc. ("WECG"), a closely held corporation of which he is the president (and apparently the controlling shareholder).

9. Dr. Clifton was the main economic witness and consultant for NAPM from 1997 until approximately one month ago. In this capacity, Dr. Clifton prepared and presented rate case testimony; drafted discovery of economic witnesses for other parties; participated intimately in rate case strategy decisions, including the choice of costing and ratemaking issues to pursue in a given case, with the professional staff, legal counsel, and internal oversight committees of the NAPM; and served as its primary economic adviser on postal matters. Throughout his professional relationship with NAPM, Dr. Clifton was entrusted with, and given discretion to act upon, confidential information from NAPM, its counsel, and its professional staff.

10. In early 2006, Dr. Clifton, acting in his capacity as President of WECG, executed a contract with NAPM and the American Bankers Association for Dr. Clifton's services in the present postal rate case, Docket No. R2006-1. Dr. Clifton participated thereafter in numerous strategy decisions with NAPM and ABA counsel and staff concerning the rate case from March to early September 2006. He reviewed the direct testimony filed by the Postal Service in May 2006, participated in multiple strategy discussions with professional staff and outside counsel of ABA and NAPM, and counsel and consultants for allied parties; helped prepare discovery requests concerning the

Postal Service's direct testimony; and drafted direct testimony filed by ABA and NAPM on September 6, 2006.

### **Contractual Restrictions On Dr. Clifton's Representation Of Conflicting Interests**

11. Approximately six years ago, Dr. Clifton informed NAPM that he wished to serve as economic consultant for the Greeting Cards Association ("GCA"), a trade association of companies that publish greeting cards.

12. The interests of GCA are not fully consistent with those of NAPM. Although greeting cards are sent primarily by First-Class Mail, most of this volume is entered at the Single-Piece, not Presort, rates. In the present case, the greeting card industry is seeking to shift a significant portion of the burden of recovering the Postal Service's "institutional" costs (i.e., costs that are joint or common to multiple classes of mail) from Single-Piece First-Class Mail to Presort First-Class and Standard Mail.

13. To protect NAPM and ABA against the risk that Dr. Clifton's engagement by GCA might create a conflict of interest with NAPM or ABA, our engagement contracts with Dr. Clifton's firm since 2001 have contained provisions barring him from taking positions adverse to NAPM and ABA. The conflict provisions of the 2006 contract with WECG, which covered his participation in the current rate case, state in relevant part as follows (emphasis added):

NAPM/ABA understand and accept that WECG is likely to contract with other intervenors in this case having similar, but not identical, interests in First Class Mail rates and that its contract with NAPM/ABA is entered into in the belief based upon current assessments that no conflict of interest with those other intervenors is likely. *WECG will make all reasonable and customary efforts to ensure that no business conflict or conflict of interest develops between its various clients.* Should such potential conflict

develop, *WECG shall notify NAPM/ABA and the other affected intervenors in writing as to the nature of the problem.* In the event that such conflict cannot be resolved without ending WECG's representation of one or another intervenor *WECG will represent NAPM/ABA* as provided under the terms and timetables of Section IV.

If the conflict is between NAPM and ABA, NAPM and ABA shall be responsible for deciding which Party shall retain the consulting and expert witness services of WECG. The Party retaining the services of WECG shall be solely liable for the remaining contract payments in Section IV.

14. Between March and September 2006, I had multiple discussions with Dr. Clifton about the appropriate scope of his testimony. During these discussions, I told him repeatedly that NAPM was opposed to any proposal to shift institutional costs from First-Class Mail to Standard Mail, or *vice versa*. I explained that, given the interests of their members in both classes of mail, an inter-class dispute of this kind would be contrary to the economic interests of NAPM members. I also stated that NAPM did not want to revive the costly inter-class litigation between First-Class and Standard (or Third-Class) mailers that had embroiled several previous omnibus rate cases.

15. During these discussions, and in contemporaneous e-mail communications, Dr. Clifton informed me that he believed the demand elasticity estimates developed by USPS witness Tolley and Thress were too unsound and unreliable to use in setting rates. At no time prior to September 6, 2006, however, did Dr. Clifton inform NAPM that he was contemplating sponsorship of testimony for GCA advocating a shift of institutional costs from First-Class Mail to Standard Mail, let alone a shift of the magnitude actually proposed by GCA.

16. If Dr. Clifton had informed me before September 6, 2006, that he intended to submit testimony for GCA advocating a shift of institutional costs from single-piece

First-Class Mail to Standard Mail, I would have directed him to refrain from doing so pursuant to the conflict provision of our engagement contract with his firm.

### **Dr. Clifton's September 2006 Testimony For GCA**

17. A few days after September 6, 2006, I learned that the centerpiece of Dr. Clifton's testimony for GCA (GCA-T-1) was a proposal to reduce the Postal Service's proposed rates for single-piece First-Class Mail by one cent per piece, with the resulting shortfall in revenue offset by higher rates on regular Standard Mail.

18. Whether the shortfall is covered by Standard Mail (as Dr. Clifton proposes) or by Presort First-Class Mail (the only other category of mail that can cover a significant share of USPS institutional costs), adoption of the GCA proposal would adverse to the economic interests of NAPM members. Single-piece First-Class Mail constitutes only a small share of the mail entered by the presort bureaus. Presort First-Class Mail and Standard Mail, by contrast, are their two largest categories of mail. Regardless of which mail category were required to offset the reduction in Single-Piece that GCA proposes, Dr. Clifton's proposal for GCA, if adopted in this rate case, would increase the overall postage expense of NAPM members and their customers.

19. On or about September 14, 2006, ABA counsel and I asked Dr. Clifton and GCA to withdraw his September 6 rate case testimony for GCA. They declined to do so.

## **Withdrawal of Dr. Clifton's Testimony For NAPM And ABA**

20. On September 25, 2006, NAPM and ABA filed a notice withdrawing Dr. Clifton's September 6 direct testimony for the two parties (ABA/NAPM-T-1). On September 29, 2006, NAPM and ABA filed a similar notice withdrawing Dr. Clifton's workpapers.

21. On several occasions since September 6, 2006, Dr. Clifton has communicated to me his belief that he and/or his consulting firm, WECG, are entitled to additional payment for his now-withdrawn testimony in this proceeding. Whether this claim will lead to litigation is unclear at this point.

22. At the request of Dr. Clifton, the current engagement contract between his consulting firm and NAPM/ABA contains a provision entitling any party to obtain arbitration of any dispute arising from or relating to the contract:

Any controversy, dispute, or claim of whatever nature arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including any claim based on contract, tort, or statute, shall be resolved at the request of any party to this Agreement, by final and binding arbitration, administered by and in accordance with the then existing Rules of Practice and Procedure of Judicial Arbitration & Medication Services, Inc. (JAMS), or its successor entity, and judgment upon any award rendered by the arbitrator may be entered by any State or Federal Court having jurisdiction thereof. The prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in appealing or enforcing any judgment entered by the arbitrator in any court having jurisdiction.

## **Dr. Clifton's Motion For A Protective Order**

23. On October 25, 2006, outside counsel for NAPM sent to my office in Annapolis, Maryland, a package of material obtained from GCA in response to ANM

discovery request ANM/GCA-1. I was out of town at the time, and did not open the package until my return on October 27, 2006.

24. I have not discussed the contents of the package with any person other than David M. Levy, NAPM's counsel in Docket No. R2006-1.

25. I have not made copies of any document in the package for any person, or otherwise disclosed the contents of the documents to any other person.

26. No person, including any member of NAPM, any bank, or any customer of a presort bureau, has asked me for copies of, or information about, any of the documents produced by GCA in response to ANM/GCA-1.

27. No person has asked me for the "analyses and estimates of cross elasticities for worksharing mail" set forth in the March 31, 2006 GCA report entitled *The Elasticity of First Class Mail in the Presence of Competing Substitutes*.

28. No member of NAPM, major or otherwise, has indicated to me that Dr. Clifton's analyses and estimates of the cross-elasticities of demand for worksharing mail would have any commercial value for that member. This is unsurprising. Businesses like presort bureaus are interested in knowing what this year's and next year's volume of business will be, not the amount of business last year or in previous years. The best way to answer this forward-looking question is usually to ask one's customers. Aggregate demand and elasticity studies based on national data have much less value to the business manager.

29. I have had numerous discussions and written communications since May 2006 with representatives of the Alliance of Nonprofit Mailers, American Bankers Association, Bank of America, Major Mailers Association, National Postal Policy Council, Pitney Bowes, Inc., the United States Postal Service, and other participants concerning this rate case. In none of these communications has any person proposed to exploit the Commission's discovery processes to obtain Dr. Clifton's analyses or estimates of cross elasticities for worksharing mail for the commercial benefit of any presort bureau, bank or other individual mailer.

30. Neither Dr. Clifton, nor any other representative of GCA, ever approached me before September 27, 2006, about the possibility of selling the "analyses and estimates of cross elasticities for worksharing mail" set forth in the March 31, 2006 GCA report to NAPM or any of its members.

31. I have read the Declaration of Dr. Clifton attached to his October 27 motion for a protective order, including his allegation that the March 2006 study by Dr. Clifton's firm for GCA "could be harmful to" him in his dispute with NAPM and ABA. Clifton Decl. ¶ 7. Dr. Clifton's apprehensions about the report are well-founded. The timing of the report, which Dr. Clifton concedes was essentially an earlier version of his September 2006 testimony for GCA,<sup>1</sup> raises serious questions about the good faith of his dealings with NAPM after March 2006.

---

<sup>1</sup> See Clifton Decl. ¶ 7 (the "March 31, 2006 Elasticity study contains similar, if not identical, arguments to those contained in my testimony for GCA").

32. **[BEGIN PROTECTED MATERIAL]**

**[END PROTECTED MATERIAL]**

33. It is difficult to imagine, however, how a protective order would protect Dr. Clifton from the implications of his having written the March 2006 study report. The facts of the report are what they are. Dr. Clifton concedes that the study “is relevant, or otherwise potentially relevant to his collateral dispute with NAPM and ABA.” Clifton Motion at 1. If so—and I certainly agree that the study is likely to be relevant—NAPM and ABA would be entitled to discover the March 2006 report anew in such litigation, regardless of whether the Commission enters a protective order here.

34. Further Declarant sayeth not.

## VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 1, 2006.

*/s/*

---

Joel T. Thomas