

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiffs, )  
)  
STATE OF NEW YORK, STATE OF NEW )  
JERSEY, STATE OF CONNECTICUT, )  
HOOSIER ENVIRONMENTAL COUNCIL, )  
and OHIO ENVIRONMENTAL COUNCIL, )  
) Civil Action No. 1:99-cv-1693-LJM-JMS  
Plaintiff-Intervenors, )  
)  
v. )  
)  
CINERGY CORP., PSI ENERGY, INC., and )  
THE CINCINNATI GAS & ELECTRIC )  
COMPANY, )  
)  
Defendants. )

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**DECLARATION OF SCOTT R. ALEXANDER**

Scott R. Alexander, being of legal age and pursuant to 28 U.S.C. § 1746, states that:

1. I am a partner in the Indianapolis, Indiana office of Taft Stettinius & Hollister LLP (“Taft”), previously known as Sommer Barnard PC. In the spring of 2004, Taft was hired to serve as local counsel in this litigation. I was primarily assigned the task of defending various Cinergy engineers and scientists during their depositions. I defended depositions related to certain projects conducted at the Gallagher and Gibson generating stations. I also defended a few depositions related to projects conducted at the Cayuga and Wabash River stations. All four of these generating stations are located in Indiana. All told, I defended approximately twenty depositions and assisted in several more.

2. Prior to the liability trial, I was not assigned any responsibility for responding to discovery requests or for document production, other than responding to the Plaintiffs' June 2005 Rule 30(b)(6) Notices of Depositions related to certain projects conducted at the Gallagher, Gibson, Cayuga, and Wabash River stations.

3. Robert Batdorf was designated to testify on behalf of Cinergy in response to the above referenced Rule 30(b)(6) deposition notices. I was assigned to assist with the preparation for and defense of Mr. Batdorf's various Rule 30(b)(6) depositions during June and the first few days of July 2005. Ms. Katie Thomson of Sidley & Austin, my partner John Papageorge and I all participated in Mr. Batdorf's deposition preparation. Ms. Thomson and I split responsibility for the actual defense of Mr. Batdorf's Rule 30(b)(6) depositions. My work on preparation for Mr. Batdorf's Rule 30(b)(6) depositions took place over a period of roughly four weeks. Most of this time was spent identifying documents or additional information that was responsive to Plaintiffs' Rule 30(b)(6) notices and working with Mr. Batdorf to prepare for those six depositions.

4. Mr. Batdorf retired in the middle of his six Rule 30(b)(6) depositions. The first three days of testimony occurred while Mr. Batdorf was employed by Cinergy, and the last three occurred within a couple of days after he had retired. I recall that Mr. Batdorf spent his last day as a Cinergy employee in a deposition as well as his first day of retirement.

5. Almost all of the Rule 30(b)(6) deposition preparation work took place while Mr. Batdorf was still a Cinergy employee. Although I knew at the time that Mr. Batdorf was retiring, I did not discuss with him and was not aware of any plans for post-retirement compensation, or any post-retirement consulting relationship or agreement. Likewise, I was involved with preparing and/or defending the depositions of at least two other retired Cinergy employees, and I

did not discuss post-retirement compensation or consulting relationships with either of these individuals during their deposition preparation.

6. I did not communicate with Mr. Batdorf between December 2005 and the closing arguments at the liability trial in May 2008. I did speak with him briefly after the closing arguments at the liability trial and again after the jury verdicts were read. During those conversations, we did not discuss any post-retirement consulting or compensation agreement he may have had with Cinergy/Duke.

7. During the weeks leading up to and during the liability trial, I did not attend or personally participate in trial witness preparation sessions for Mr. Batdorf or any other trial witness. I was not involved in developing trial strategy. At the request of lead trial counsel several weeks prior to trial, I did have a Taft courier deliver copies of Mr. Batdorf's Rule 30(b)(6) deposition preparation binders to the hotel where lead trial counsel were staying at the time. On two or three other occasions, I provided documents or other information (unrelated to Mr. Batdorf) requested by the trial team during the trial. I was not present during Mr. Batdorf's trial testimony and did not attempt to influence his testimony. I attended the closing arguments on my own time just to observe.

8. I did not know about Mr. Batdorf's 2008 Agreement until after the liability trial ended. Specifically, the first time I learned of Mr. Batdorf's consulting relationship under the 2008 Agreement was on September 10, 2008 when I was copied on an email from Ms. Thomson to Plaintiffs that was sent to all counsel of record. I learned of the existence of the 2008 Agreement shortly thereafter, and first saw that Agreement on October 2, 2008, again by virtue of being copied on an email to Plaintiffs from Ms. Thomson.

9. In preparing this Declaration, I discovered an August 19, 2005 email chain dealing with summary judgment matters that was directed to me and others, and which I forwarded to Taft's Robert Clark on the same date. The initial emails in that chain (which were not directed to me) were among Cinergy employees and Robert Batdorf, and Mr. Batdorf's email refers to a consulting service agreement. I have no recollection of those emails or that reference, and my best recollection is that I first became aware of the existence of, and first saw, the 2005 Agreement when that Agreement, and references to it, appeared in connection with the briefing on Plaintiffs' new trial motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 8, 2009.

  
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SCOTT R. ALEXANDER