

BASS, BERRY & SIMS PLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

R. DALE GRIMES
TEL: (615) 742-6244
FAX: (615) 742-2744
dgrimes@bassberry.com

AMSOUTH CENTER
315 DEADERICK STREET, SUITE 2700
NASHVILLE, TN 37238-3001
(615) 742-6200

www.bassberry.com

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March 19, 2007

VIA HAND-DELIVERY

Chairman Sara Kyle
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: Petition Of Tennessee American Water Company To Change And Increase Certain Rates And Charges So As To Permit It To Earn A Fair And Adequate Rate Of Return On Its Property Used And Useful In Furnishing Water Service To Its Customers; Docket No. 06-00290

Dear Chairman Kyle:

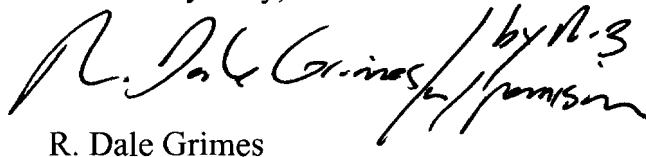
Enclosed please find an original and sixteen (16) copies of Tennessee American Water Company's Response to Motion for Sanctions.

Please return three copies of the Response, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

With kindest regards, I remain

Yours very truly,

by R.D.G.
R. Dale Grimes

RDG/ms
Enclosures

Chairman Sara Kyle

March 19, 2007

Page 2

cc: Hon. Pat Miller (*w/o enclosure*)
Hon. Ron Jones (*w/o enclosure*)
Hon. Eddie Roberson (*w/o enclosure*)
Ms. Darlene Standley, Chief of Utilities Division (*w/o enclosure*)
Richard Collier, Esq. (*w/o enclosure*)
Mr. Jerry Kettles, Chief of Economic Analysis & Policy Division (*w/o enclosure*)
Ms. Pat Murphy (*w/o enclosure*)
Michael A. McMahon, Esq. (*w/enclosure*)
Frederick L. Hitchcock, Esq. (*w/enclosure*)
Vance Broemel, Esq. (*w/enclosure*)
Henry Walker, Esq. (*w/enclosure*)
David Higney, Esq. (*w/enclosure*)
Mr. John Watson (*w/o enclosure*)
Mr. Michael A. Miller (*w/o enclosure*)

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

PETITION OF TENNESSEE AMERICAN)	
WATER COMPANY TO CHANGE AND)	
INCREASE CERTAIN RATES AND)	
CHARGES SO AS TO PERMIT IT TO)	Docket No. 06-00290
EARN A FAIR AND ADEQUATE RATE)	
OF RETURN ON ITS PROPERTY USED)	
AND USEFUL IN FURNISHING WATER)	
SERVICE TO ITS CUSTOMERS)	

**TENNESSEE AMERICAN WATER COMPANY’S RESPONSE TO
MOTION FOR SANCTIONS**

For its Response to the City of Chattanooga’s Motion for Sanctions (“Motion for Sanctions”), the Tennessee American Water Company (“TAWC”) respectfully submits that sanctions of any nature, particularly those requested by the City of Chattanooga (“City”) which appear to be designed primarily to forestall this rate case, are completely unwarranted because TAWC has reasonably complied in all material respects with each and every order issued by the Hearing Officer. Sanctions are particularly inappropriate under the circumstances surrounding the City’s Motion because TAWC was given no notice by counsel for the City of their intention to move for sanctions and, accordingly, had no opportunity to respond to their concerns prior to the filing of the Motion for Sanctions. TAWC further states as follows:

Material Compliance with the Terms of the Orders

TAWC has reasonably complied in every material respect with the terms of the Hearing Officer’s Orders. On March 1, 2007, after a protracted dispute concerning the confidentiality and relevance of certain proprietary and legally protected information requested by the intervenors in this matter, the Hearing Officer entered both an Order Granting Motions to

Compel Discovery Relating to Initial Public Offering Information and Materials (“IPO Order”) and a companion Supplemental Protective Order (“SPO”). The IPO Order narrowed the scope of the requested information and compelled its production within seven calendar days, but only in accordance with the terms of the SPO. (IPO Order, 11.) (“The Production of confidential information will be in accordance with . . . the Supplemental Protective Order to be issued contemporaneously with this Order.”). Among the protections included in the SPO is the requirement that all persons except TRA Directors and Staff must execute and provide to TAWC a Nondisclosure Statement (“NDS”). The IPO Order and the SPO can only be read together, providing a framework for the production of Highly Confidential Information under the umbrella of the SPO’s protections.

1. The Timing of TAWC’s Production of Highly Confidential Information to the City Complies with the Orders

A. TAWC’s Efforts to Comply with the Orders

Pursuant to both the IPO Order and the SPO, on March 8, 2007 TAWC produced substantially¹ all responsive information, the majority of which was designated as Highly Confidential Information. This Highly Confidential Information was produced to the TRA under seal, as required by the IPO Order and the SPO. On March 8, 2007, at the time its discovery response was filed with the TRA, TAWC had not received the executed NDS from any individual.

Late on the afternoon of Friday, March 9, 2007, TAWC received the NDS executed by Henry Walker, counsel for the Chattanooga Manufacturers’ Association (“CMA”). Also late on that day, before TAWC could prepare and transmit the Highly Confidential Information to Mr.

¹ On March 9, 2007, TAWC produced certain additional documents which it was unable to obtain in time to include in the March 8, 2007 production.

Walker, TAWC received the Consumer Advocate's ("CAPD") Motion to Reconsider Supplemental Protective Order ("Motion to Reconsider") seeking to modify or overturn the SPO. On Monday, March 12, 2007, TAWC's counsel of record, Mr. Grimes, was out of the office as his daughter was undergoing surgery. All parties and the Hearing Officer received notice of Mr. Grimes' unavailability. *See* E-mail from Mr. Grimes to all parties dated March 12, 2007, attached hereto as Exhibit A. The following day, one of the City's lawyers filed notice that the City was joining in the CAPD's Motion to Reconsider, in spite of the fact that on Monday the City's other lawyer faxed a signed NDS to TAWC counsel. The next day, the City filed the present Motion for Sanctions. Unsure of the effect of the Motion to Reconsider on the protections afforded by the SPO, or the meaning of the City's conflicting actions, TAWC entered into good faith discussions with Mr. Walker to facilitate the service of Highly Confidential Information to him. Mr. Walker, acknowledging TAWC's concerns about the uncertainties and confusion as to the status of the SPO, agreed to return all Highly Confidential Information to TAWC if the protections of the SPO are disturbed. As a result of these discussions, TAWC served copies of all Highly Confidential Information to Mr. Walker. A letter memorializing this agreement is attached hereto as Exhibit B.

B. The City of Chattanooga's Misinterpretation of the Material Terms of the SPO

Throughout the past week, the City has sent mixed signals, at best, about how it interpreted the SPO and whether it would obey the clear text of the SPO. On Monday, March 12, 2007, City of Chattanooga attorney Michael McMahan sent an executed NDS to Mr. Grimes, who was out of the office. Before TAWC could enter into discussions with Mr. McMahan about the production of the Highly Confidential Information, as with Mr. Walker, Mr. Hitchcock filed Notice that the City was challenging the validity of the SPO by joining the CAPD's Motion to

to Reconsider. Then Mr. Hitchcock, without any prior notice, filed the Motion for Sanctions on behalf of the City. More strongly than the Motion to Reconsider, the Motion for Sanctions called into question the City's understanding of – or willingness to abide by – the express terms of the SPO. In the Motion for Sanctions, Mr. Hitchcock claims in the name of the City that "TAWC's counsel has wrongly asserted that the Supplemental Protective Order requires counsel of record to personally execute the affidavit attached to the Supplemental Protective Order." (Mot. for Sanctions, 2.) The SPO, however, plainly provides,

only those identified herein who require access to such Highly Confidential Information for this proceeding and have fully executed a copy of the Nondisclosure Statement for Highly Confidential Information ("Nondisclosure Statement"), attached hereto, may receive access to Highly Confidential Information Notwithstanding the foregoing, TRA directors, the Hearing Officer, and members of the staff of the TRA shall not be required to execute the Nondisclosure Statement.

(Supplemental Protective Order, ¶ 8(b) (emphasis added).)

The execution of an NDS as a precondition for receipt of Highly Confidential Information is plainly required for everyone other than TRA personnel.

On the afternoon of March 15, 2007, TAWC received a message in response to a prior voicemail from TAWC counsel to Mr. McMahan, in which Mr. McMahan indicated that he would be unavailable for several days and that Mr. Hitchcock would be handling this case for the City while Mr. McMahan was unavailable. Having been placed on notice of the City's apparent unwillingness to recognize the requirements of the SPO by the arguments presented in the Motion for Sanctions, TAWC sought clarification from Mr. McMahan of his understanding of the requirements of the SPO before transmitting the Highly Confidential Information to him. On the afternoon of March 15, TAWC received unequivocal assurances from Mr. McMahan that he understood the requirements of the SPO and would not disclose Highly Confidential Information

to Mr. Hitchcock unless and until Mr. Hitchcock executes the NDS. Mr. McMahan also acknowledged TAWC's concerns regarding the status of the SPO in light of the Motion for Reconsideration of the SPO and agreed that the City would immediately return all Highly Confidential Information to TAWC if any of the protections of the SPO are disturbed. Having received such assurances from Mr. McMahan, TAWC served Mr. McMahan with copies of the Highly Confidential Information. A letter memorializing this agreement is attached hereto as Exhibit C.

In light of the extremely sensitive nature of the Highly Confidential Information and the uncertainty regarding whether the City recognized or would abide by the express terms of the SPO, TAWC's service of Highly Confidential Information was consistent with the requirements of the IPO Order and the SPO. It is unreasonable to read the IPO Order and the SPO to require a producing party to deliver Highly Confidential Information into the hands of a party that has given indications that it will not recognize the protections that it is required to provide such information under the SPO.² Given the circumstances indicating the City's misapprehension of the terms of the SPO, TAWC should not be subject to sanctions of any kind based upon the timing of TAWC's production of Highly Confidential Information to the City.³

² In fact, the SPO provides that a producing party may seek emergency injunctive relief if Highly Confidential Information is at risk of unauthorized disclosure. (*See* SPO, ¶ 9.) In this instance, it was not necessary for TAWC to seek emergency injunctive relief against the City because TAWC received notice of the risk of violation of the SPO by the City before TAWC transmitted the Highly Confidential Information. TAWC, as discussed in the text above, was able to resolve this issue with the City without having to seek emergency injunctive relief.

³ The ultimate sanction of dismissal of TAWC's rate case is completely unwarranted. *See Shahrddar v. Global Housing, Inc.*, 983 S.W.2d 230, 236 (Tenn. Ct. App. 1998) (default judgment as a sanction for failure to comply with a discovery order is appropriate only where "there has been a clear record of delay or contumacious conduct."); *cf. Henry v. Goins*, 104 S.W.3d 475, 481 (Tenn. 2003) (in reviewing dismissal for failure to prosecute, stating "[b]oth dismissals and default judgments are drastic sanctions. Neither dismissals nor default judgments are favored by the courts.") (citations omitted).

2. The Scope of TAWC's Production Complies with the IPO Order

The Motion for Sanctions also contends that TAWC has “refused to provide responses compelled by the Hearing Officer’s Order except for information that has been produced in other cases before other state regulatory authorities.” (Mot. for Sanctions, 2-3.) This statement is factually incorrect. TAWC has provided all of the documents it was required to produce under the language of the IPO Order, including numerous documents that have not been produced in any other state proceeding.

As in its previous motion to compel, the City has not specified in the Motion for Sanctions any particular documents that it believes have not been produced. Moreover, the City filed the Motion for Sanctions without even knowing whether the documents produced comprised a reasonable and sufficient response to the Order and the requests as defined therein.

The City’s request for sanctions on this basis, therefore, should be denied.

3. TAWC's Assertions of Privilege Comply with the IPO Order

TAWC has also complied with the requirement set forth in the IPO Order that attorney-client and work product objections be asserted with specificity. The supplemental responses identified in the City’s Motion for Sanctions describe the nature and subject matter of the withheld documents or redacted portions of documents in full compliance with both the IPO Order and the Tennessee Rules of Civil Procedure. *See* Tenn. R. Civ. P. 26.02(5) (claims of privilege should be made “expressly and shall describe the nature of the documents . . . not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege protection.”). The documents for which TAWC asserts the attorney-client or work product privilege are particularly identified and sufficiently described to allow the City to assess the applicability of the claimed

privilege. The City fails to identify what information about the privileged documents it believes to be lacking in the supplemental responses, instead relying on the vague, pro forma claim that TAWC's assertions of privilege are "generalized." Because TAWC's assertions of privilege comply with the IPO Order and because the City has failed to explain the basis for its objection, the assessment of sanctions or the granting of any other relief to the City is not warranted.

Rather than explaining the basis for its objection, the City points to the fact that some of the documents withheld are documents prepared by non-attorneys, including the Treasurer and Comptroller of the Company. (Mot. for Sanctions, 3.) That TAWC has withheld certain documents prepared by TAWC in anticipation of litigation is fully consistent with Tennessee law governing the work product privilege, and it is unclear why the City believes the withholding of such documents is sanctionable or even objectionable. Tennessee Rule of Civil Procedure 26.01(3) describes the documents subject to work product protection as ones "prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent)." Tenn. R. Civ. P. 26.01(3) (emphasis added). The text of Rule 26.01(3) makes clear that the work product privilege is not limited to documents prepared by attorneys and includes documents prepared by the party claiming the privilege. The text of TAWC's Fifth Supplemental Response to the City's Request No. 3, the response specifically mentioned in the Motion for Sanctions, makes it clear that the withheld documents were prepared by or for TAWC in anticipation of rate case litigation.

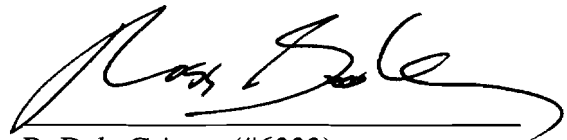
Because TAWC has complied with the IPO Order with regard to assertions of privilege and because the City has failed to present anything but a vague, conclusory objection to the

sufficiency of TAWC's supplemental responses, the City's requested relief, designed to delay the completion of this case on the merits, should be denied.

Conclusion

It is unreasonable to request sanctions against TAWC in the circumstances at issue. As it has throughout this rate case, TAWC has reasonably complied in good faith with all orders of the Hearing Officer. Accordingly, the City's Motion for Sanctions should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Dale Grimes', written over a horizontal line.

R. Dale Grimes (#6223)
J. Davidson French (#15442)
Ross I. Booher (#019304)
BASS, BERRY & SIMS PLC
315 Deaderick Street, Suite 2700
Nashville, TN 37238-3001
(615) 742-6200

*Counsel for Petitioner
Tennessee American Water Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via the method(s) indicated, on this the 19th day of March, 2007, upon the following:

<input type="checkbox"/> Hand	Michael A. McMahan
<input type="checkbox"/> Mail	Special Counsel
<input type="checkbox"/> Facsimile	City of Chattanooga (Hamilton County)
<input checked="" type="checkbox"/> Overnight	Office of the City Attorney
<input checked="" type="checkbox"/> Email	Suite 400
	801 Broad Street
	Chattanooga, TN 37402
<input checked="" type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input type="checkbox"/> Mail	Vance L. Broemel, Esq.
<input type="checkbox"/> Facsimile	Office of the Attorney General
<input type="checkbox"/> Overnight	Consumer Advocate and Protection Division
<input checked="" type="checkbox"/> Email	P.O. Box 20207
	Nashville, TN 37202
<input checked="" type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input type="checkbox"/> Facsimile	Suite 700
<input type="checkbox"/> Overnight	1600 Division Street
<input checked="" type="checkbox"/> Email	P.O. Box 340025
	Nashville, TN 37203
<input type="checkbox"/> Hand	David C. Higney, Esq.
<input type="checkbox"/> Mail	Grant, Konvalinka & Harrison, P.C.
<input type="checkbox"/> Facsimile	633 Chestnut Street, 9 th Floor
<input checked="" type="checkbox"/> Overnight	Chattanooga, TN 37450
<input checked="" type="checkbox"/> Email	
<input type="checkbox"/> Hand	Frederick L. Hitchcock, Esq.
<input type="checkbox"/> Mail	Chambliss, Bahner & Stophel, P.C.
<input type="checkbox"/> Facsimile	1000 Tallan Building
<input checked="" type="checkbox"/> Overnight	Two Union Square
<input checked="" type="checkbox"/> Email	Chattanooga, TN 37402

A handwritten signature in black ink, appearing to read "Ross", is written over a horizontal line.

Sullivan, Monique

From: Grimes, Dale
Sent: Monday, March 12, 2007 12:59 AM
To: Vance L. Broemel, Esq. (vance.broemel@state.tn.us); Ryan L. McGehee (RYAN.MCGEHEE@STATE.TN.US); Walker, Henry (hwalker@boultcummings.com); David C. Higney (dhigney@gkhpc.com); McMahan, Michael A. (mcmahan@mail.chattanooga.gov); Frederick L. Hitchcock Esq. (rhitchcock@cbslawfirm.com); richard.collier@state.tn.us; 'shalina.chatterjee@state.tn.us'
Cc: French, Davidson; Booher, Ross; Sinback, Matthew; Futrell, Adam B; Bible, Sue; Sullivan, Monique
Subject: Tennessee American Water Company Rate Case, Docket No. 06-00290 -- Monday, March 12, 2007

The Tennessee American Water rate case is not on the agenda for the Directors' Conference for Monday, March 12, 2007 for any reason. Nonetheless, due to the fast pace of the schedule and developments in the case, I wanted to let you know that I will be out of the office and not generally available on Monday due to the fact that my daughter is having surgery and I will be attending to that.

Thank you for your consideration.

Dale

R. Dale Grimes
Bass, Berry & Sims PLC
AmSouth Center, Suite 2700
315 Deaderick Street
Nashville, Tennessee 37238
(615) 742-6244
(615) 742-2744 (Fax)
dgrimes@bassberry.com

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TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE MUST INFORM YOU THAT, UNLESS SPECIFICALLY INDICATED OTHERWISE, THIS MESSAGE (INCLUDING ANY ATTACHMENTS) WAS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY THE ADDRESSEE OR ANY OTHER PERSON FOR THE PURPOSE OF (A) AVOIDING U.S. TAX-RELATED PENALTIES OR (B) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED MATTER ADDRESSED HEREIN.

3/19/2007



BASS, BERRY & SIMS PLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

R. DALE GRIMES
TEL: (615) 742-6244
FAX: (615) 742-2744
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315 DEADERICK STREET, SUITE 2700
NASHVILLE, TN 37238-3001
(615) 742-6200

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KNOXVILLE
MEMPHIS

March 15, 2007

VIA HAND-DELIVERY

Henry M. Walker, Esq.
Boult, Cummings, Connors & Berry, PLC
Roundabout Plaza, Suite 700
1600 Division Street
Nashville, TN 37203-2771

Re: Petition Of Tennessee American Water Company To Change And Increase Certain Rates And Charges So As To Permit It To Earn A Fair And Adequate Rate Of Return On Its Property Used And Useful In Furnishing Water Service To Its Customers; Docket No. 06-00290

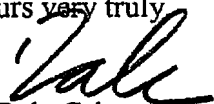
Dear Henry:

Pursuant to the Hearing Officer's Order Granting Motions to Compel Discovery Relating to Initial Public Offering (IPO) Information and Materials and specifically pursuant to the Supplemental Protective Order, both entered March 11, 2007, and your execution of the required Nondisclosure Statement, as well as our conversation on March 14, 2007, please find enclosed "Highly Confidential" documents filed with Tennessee American Water Company's Second Supplemental Response to Consumer Advocate and Protection Division's First Discovery Requests dated January 22, 2007. This supplement included responses to Questions 5, 6, 7, and 8. Also enclosed are "Highly Confidential" documents filed with Tennessee American Water Company's Fifth Supplemental Response to City of Chattanooga's First Discovery Requests dated January 22, 2007. This supplement includes responses to Questions 3, 5, 7, 8, 9, 26, 27, 28 and 34.

As we discussed yesterday, you have agreed that you are receiving the Highly Confidential documents only pursuant to the supplemental protective order entered March 1, and if the supplemental protective order is overturned or, for any reason, rendered ineffective, you will return those documents to me pending further orders of the Hearing Officer and/or the TRA.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

Yours very truly


R. Dale Grimes

RDG/ms/jb
Enclosures



BASS, BERRY & SIMS PLC
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

R. DALE GRIMES
TEL. (615) 742-6244
FAX: (615) 742-2744
dgrimes@bassberry.com

AMSOUTH CENTER
315 DEADERICK STREET, SUITE 2700
NASHVILLE, TN 37238-3001
(615) 742-6200

www.bassberry.com

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KNOXVILLE
MEMPHIS

March 15, 2007

VIA FEDERAL EXPRESS

Michael A. McMahan, Esq.
Special Counsel, City of Chattanooga
Office of the City Attorney
801 Broad Street, Suite 400
Chattanooga, TN 37402

Re: Petition Of Tennessee American Water Company To Change And Increase Certain Rates And Charges So As To Permit It To Earn A Fair And Adequate Rate Of Return On Its Property Used And Useful In Furnishing Water Service To Its Customers; Docket No. 06-00290

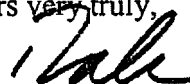
Dear Mike:

Pursuant to the Hearing Officer's Order Granting Motions to Compel Discovery Relating to Initial Public Offering (IPO) Information and Materials and specifically pursuant to the Supplemental Protective Order, both entered March 11, 2007, and your execution of the required Nondisclosure Statement, as well as our conversation on March 15, 2007, please find enclosed "Highly Confidential" documents filed with Tennessee American Water Company's Second Supplemental Response to Consumer Advocate and Protection Division's First Discovery Requests dated January 22, 2007. This supplement included responses to Questions 5, 6, 7, and 8. Also enclosed are "Highly Confidential" documents filed with Tennessee American Water Company's Fifth Supplemental Response to City of Chattanooga's First Discovery Requests dated January 22, 2007. This supplement includes responses to Questions 3, 5, 7, 8, 9, 26, 27, 28 and 34.

As we discussed today, you have agreed that you are receiving the Highly Confidential documents only pursuant to the Supplemental Protective Order entered March 1, and if the Supplemental Protective Order is overturned or, for any reason, rendered ineffective, you will return those documents to me pending further orders of the Hearing Officer and/or the TRA. In addition, you have confirmed your understanding that you may not afford access to these documents to your co-counsel, Rick Hitchcock because he has not signed the nondisclosure statement.

Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

Yours very truly,



R. Dale Grimes

RDG/ms
Enclosures

