

ATTACHMENT TO ALJ'S RULING OF 1/8/10

(motion granted for "lined-through" text)

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Complainants assert that the Company's compliance database shows 1,730 "valid" complaints. This is an absolute falsehood. Complainants base their assertion on ~~the number of times there was a number in the "validity" field in~~ the Agent Allegation Reports that the CCR group send to Regional Distributors. (CG Brief., p. 25). ~~In fact, Complainants know that the presence of a number in that field does not represent a determination that the complaint was valid.~~

The Agent Allegation Reports were produced on December 5, 2008 in the Company's responses to CUB data requests 2.53 and 6.32. Complainants clearly did not understand or deliberately disregarded the meaning of the contents of the Agent Allegation Reports ~~because on January 30, 2009, CUB served the following data request:~~

~~CUB 9.03 — Refer to the Company's DR Ex. 6.32: Please explain how the Company determines the number assigned to the "Validity" column in the "Agent Allegation Report" documents. Provide also all Documents relating to the Company's determination of or designation of the number in the "Validity" column in these documents.~~

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~~Shockingly, CUB made this a request two days after Ms. Alexander filed her surrebuttal testimony, in which she purports to have found information showing 1,730 instances of "valid" allegations. (Cf. CG Ex. 3.0, 24:484-25:498, fn. 17).~~

~~While Complainants' original mischaracterization in the surrebuttal testimony was due to their lack of knowledge, at that time, about the "validity" field, the continued attempt in their initial brief to portray the Agent Allegation Reports as showing "valid" allegations is blatantly disingenuous. As explained in the Company's response to CUB data request 9.03, the following information was provided:~~

~~**RESPONSE:** — The "validity" field on the Agent Allegation Reports has not been used since February 2007. The field continues to appear in the reports because the field has not been eliminated from the data system.~~

~~(Emphasis added).~~ The only ostensible purpose of continuing to characterize the Agent Allegation Reports as showing 1,730 "valid" allegations is for Complainants to deliberately mislead the ALJ and this Commission.

Complainants' blatant mischaracterization of the Agent Allegation Reports is even more appalling given that Complainants know that an Agent Allegation Report is not the type of document that the CCR group issues to indicate that a customer complaint may have merit. Ms. Findley explained that the CCR group issues a Penalty Letter whenever it determines a customer complaint may have merit. (Tr. at 339:13-16 (Findley)). Thus, in offering the Agent Allegation Reports as evidence of wrongdoing, Complainants are not only relying on information they know to be inaccurate, ~~but are also disregarding the information that they have had for a full year and that they know to be most probative of the CCR group's determinations.~~ Complainants' statement that the Company produced "thousands of penalty letters" in discovery is downright false. (See CG Brief, p. 25).

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~~Again, Complainants' reliance on the numbers in the "validity" column is misplaced, and is an outright misrepresentation of the evidence, because that field was no longer in use when this particular report was generated in March 2008, and therefore the numbers in that field are unreliable. The inaccuracy of the data in that field is consistent with Mr. Nicholson's surprise of having any allegations against him deemed "valid," because these allegations were never found to be true.~~

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~~Once again, the primary flaw is that Complainants base their argument on data from the "validity" field in the Agent Allegation Reports. As discussed above, Complainants' continued reliance on Ms. Alexander's summary of that data (CG Ex. 3.6) is specious at best or intentionally misleading and false at worst. The figures in Ms. Alexander's summary simply represent the number of allegations received, not any determination by the CCR group that a complaint is valid.~~