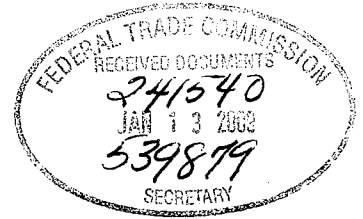


ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)
)
)
)
)
Polypore International, Inc.)
a corporation)
_____)

Docket No. 9327

PUBLIC DOCUMENT

**MEMORANDUM IN SUPPORT OF RESPONDENT’S MOTION TO COMPEL EXIDE
TECHNOLOGIES TO PRODUCE DOCUMENTS REQUESTED
BY SUBPOENA DUCES TECUM**

Respondent Polypore International, Inc. (“Polypore”) respectfully submits this memorandum in support of its Motion to Compel Exide Technologies (“Exide”) to Produce Documents Requested by Subpoena *Duces Tecum*, as amended by agreement between Polypore and Exide, in accordance with Commission Rule § 3.38(a)(2).

FACTUAL BACKGROUND

Respondent served a subpoena *duces tecum* on Exide on November 10, 2008 (hereinafter “the Subpoena”). (Tab A). The Subpoena originated in an adjudicatory proceeding currently pending before the Federal Trade Commission (“Commission” or “FTC”) in which Polypore is alleged to have violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 45, by its acquisition of Microporous Products L.P. (“Microporous”). The Subpoena was one of several subpoenas *duces tecum* issued by the Commission’s Administrative Law Judge, on behalf of Respondent, and directed to participants in the battery separator industry – including both manufacturers of batteries and separators. Materials responsive to the Subpoena were to be produced for inspection on November 25, 2008.

Counsel for Respondent and counsel for Exide were in communication about the Subpoena soon after its service. (See generally January 7, 2009 e-mail of Eric D. Welsh,

Esq.)(Tab B). Exide did not file any motions or objections with this Court in response to the Subpoena. Since the Subpoena was first served, however, counsel for Respondent attempted to negotiate in good faith with counsel for Exide in order to discuss and resolve any concerns Exide had concerning its compliance with the Subpoena. (See e-mail correspondence of November 20, 2008, November 26, 2008, December 4, 2008, December 22, 2008, and January 5, 2009)(Tab C). In fact, Counsel for Respondent and counsel for Exide have had numerous telephone conferences, including on November 18, 2008, November 25, 2008 and January 5, 2009, and have exchanged numerous e-mails in an attempt to move towards the production of the requested documents. *Id.* Moreover, Respondent agreed to several modifications of the Subpoena in order to allow Exide to begin the production of documents as soon as possible. *Id.* It was the belief of Respondent's counsel that Exide was to have produced all documents sought by the Subpoena no later than the week of January 5, 2009. See January 7, 2009 e-mail of Eric D. Welsh, Esq.)(Tab B). As of the date of this filing, however, Respondent has received only six pages of documents from Exide – which were produced on January 9, 2009. Thus, even though Exide reached an agreement with Respondent on December 4, 2008 which addressed and resolved all discovery issues and disputes raised in connection with the Subpoena, only six documents sought by Respondent's Subpoena – which are necessary for Respondent to adequately defend itself in this proceeding – have been produced. Additionally, while Exide's counsel has represented that Exide's documents have been gathered and are being reviewed by a vendor in California and by counsel in Pennsylvania for privilege, Exide's counsel has been unable to provide any commitment as to when Exide would complete its production of documents requested by the Subpoena. (See January 7, 2009 e-mail from Eric D. Welsh, Esq.)(Tab B).

Significantly, Respondent has served five subpoenas *ad testificandum* on the following individuals and entities: (a) Mr. Pradeep Menon (Exide's Vice President of Global

Procurement), (b) Mr. Douglas Gillespie (Exide's Vice President of Global Procurement), (c) Mr. Alberto Perez (Exide's Director of Commodities), (d) Mr. Gordon Ulsh (Exide's President and Chief Executive Officer), and (e) Exide Technologies (Tab D). The depositions were originally noticed for January 14-16, 2009. By agreement, Respondent and Exide have re-scheduled the depositions for January 21-23, 2009. Consequently, it is of paramount importance that the documents requested by Respondent's Subpoena be produced immediately in order to allow Respondent to properly review and analyze such documents in preparation for the noticed deposition examinations.

Despite the efforts of Respondent's counsel, Exide has continued to delay and stall in its production efforts. Respondent cannot afford any further delay from Exide, as important deadlines are approaching, including a discovery cut-off of February 13, 2009, and therefore Respondent is left with no option but to file this motion.

ARGUMENT

Respondent seeks the immediate production of documents and electronic data responsive to its Subpoena. Respondent's Subpoena is tailored to seek documents pertinent to the issues raised by the FTC in the Complaint and to Polypore's defense. Under the FTC's Rules, Respondent has the right to "obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations in the complaint, to the proposed relief, or to the defenses of [the] respondent." *16 C.F.R. § 3.31(c)(1)*. Moreover, "public interest requires that once a complaint issues . . . Commission counsel (and respondent's counsel when they put on their defense) be given the opportunity to develop those facts which are essential" to support or undermine the allegations in the pleadings. *In re Gen. Foods.*, No. 9085 C, 1978 FTC LEXIS 412 at *6 (April 18, 1978). The applicant for a subpoena need only show that the materials sought are generally or reasonably relevant. *In re Kaiser Aluminum & Chem. Corp.*, 1976 FTC

LEXIS 68 at *4 (Nov. 12, 1976). In contrast, the subpoenaed party bears “[t]he burden of showing that the request[s] are unreasonable.” *In re Rambus, Inc.*, No. 9302, 2002 FTC LEXIS 90, at *9 (Nov. 18, 2002). Such a showing is a heavy burden, even when the subpoena is directed at a non-party. *In re Flowers Indus., Inc.*, No. 9148, 1982 FTC LEXIS 96 at * 15 (Mar. 19, 1982).

The factual allegations of the Commission’s Complaint and the Respondent’s defenses to the allegations contained therein make it clear that the information sought by Respondent’s Subpoena is relevant. Exide does not challenge the relevance of the discovery. Indeed, Exide has agreed to produce documents and provide the requested information to Polypore.

The discovery sought by the Subpoena is necessary and relevant. By way of example, Polypore needs information about Exide’s purchasing and pricing data and the end-products for which Exide purchases battery separators (Subpoena Request Nos. 1-2, 4-6, 16, 18, 31-32) to rebut the FTC’s allegation that Polypore has monopolized any alleged battery separator market and/or the FTC’s allegation that Polypore’s acquisition of Microporous led to higher prices. Polypore needs information about Exide’s qualification and testing of products from Respondent’s competitors (Subpoena Request Nos. 3-4, 23-25, 33-34) to rebut the FTC’s allegation that testing and capital requirements prevent entry into any relevant market. Polypore needs information about Exide qualification and testing of products from Microporous (Subpoena Request Nos. 4, 12, 23-25) to rebut the FTC’s allegation that Microporous was preparing to actively compete in the SLI and UPS battery separator markets, and was testing its products with customers. Polypore needs information about Exide’s use of all types battery separator products – including products that are or may be competitive with lead acid battery separators (Subpoena Request Nos. 14-16, 19, 27-29) to rebut the FTC’s allegation that battery separators manufactured for a particular application cannot be effectively used for other

applications. And finally, Polypore needs information about Exide's dealings with other battery separator manufacturers (Subpoena Request Nos. 3-4, 6, 11-16, 21-22, 26-30) to rebut the FTC's allegation that the acquisition of Microporous removes the only alternative sources of separator supply in several alleged battery separator markets.

Clearly, the documents sought by Respondent are highly relevant to the issues raised in the pleadings and should be immediately produced. *See In re Kaiser Aluminum & Chem. Corp.*, 1976 FTC LEXIS 68, at *4 ("The practice of the Commission has been to uphold subpoenas *duces tecum* upon a showing . . . that the requested information is generally relevant to the issues raised by the pleadings."). Moreover, Exide has already reached an agreement resolving all discovery disputes related to the Subpoena. Polypore's receipt and review of Exide's materials is necessary for its defense and any further delay or limitation on this review will tilt the playing field heavily in favor of the FTC.

Although Exide has resolved all discovery issues related to the production of documents pursuant to the Respondent's Subpoena, it has delayed its production, producing belatedly documents that were readily accessible, which had been previously provided to the FTC last July. Indeed, many of the documents sought by the Subpoena were no doubt previously provided to the FTC as part of the thousands of document submitted by Exide in response to the FTC's subpoena during the investigation stage of the proceeding. Polypore needs Exide's production so that it can move forward efficiently with depositions of Exide's witnesses. Otherwise, Polypore will be forced to proceed with the depositions without the benefit of Exide's documents and will then need to leave the depositions open, to be resumed after the production is complete. Given the current discovery schedule, such an outcome would be necessary, but ultimately not economical to Polypore due to the costs associated with traveling from North Carolina to Pennsylvania twice for these depositions.

CONCLUSION

For the foregoing reasons, Respondent Polypore respectfully moves this Court to enter an order compelling Exide to immediately comply with Respondent's subpoena *duces tecum*, as amended by agreement between Polypore and Exide.

Dated: January 12, 2009

Respectfully Submitted,



William L. Rikard, Jr.

Eric D. Welsh

PARKER POE ADAMS & BERNSTEIN, LLP

Three Wachovia Center

401 South Tryon Street, Suite 3000

Charlotte, NC 28202

Telephone: (704) 372-9000

Facsimile: (704) 335-9689

williamrikard@parkerpoe.com

ericwelsh@parkerpoe.com

John F. Graybeal

PARKER POE ADAMS & BERNSTEIN, LLP

150 Fayetteville Street

Raleigh, NC 27602

Telephone: (919) 835-4599

Facsimile: (919) 828-0564

johngraybeal@parkerpoe.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing *Memorandum in Support of Respondent's Motion to Compel Exide Technologies to Produce Documents Requested by Subpoena Duces Tecum*, and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580
secretary@ftc.gov

I hereby certify that on January 12, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing *Memorandum in Support of Respondent's Motion to Compel Exide Technologies to Produce Documents Requested by Subpoena Duces Tecum* upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oalj@ftc.gov

I hereby certify that on January 12, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing *Memorandum in Support of Respondent's Motion to Compel Exide Technologies to Produce Documents Requested by Subpoena Duces Tecum* upon:

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
rrobertson@ftc.gov

Steven Dahm, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
sdahm@ftc.gov

Donald J. Russell, Esq.
Robbins, Russell, Englert, Orseck,
Untereiner & Sauber LLP
1801 K Street, N.W., Suite 411
Washington, D.C. 20006
drussell@robbinsrussell.com



Adam C. Shearer
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 335-9050
Facsimile: (704) 334-4706

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)

Docket No. 9327

)
)
)
)
Polypore International, Inc.)
a corporation)

PUBLIC DOCUMENT

TAB A



SUBPOENA DUCES TECUM
 Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO Exide Technologies 13000 Deerfield Parkway, Building 200 Alpharetta, Georgia 30004	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION Parker Poe Adams & Bernstein, LLP Three Wachovia Center 401 S. Tryon Street, Suite 3000 Charlotte, NC 28202	4. MATERIAL WILL BE PRODUCED TO Polypore International, Inc. 5. DATE AND TIME OF PRODUCTION OR INSPECTION November 25, 2008 9:30 a.m.
--	--

6. SUBJECT OF PROCEEDING

In the Matter of Polypore International, Inc., Docket No. 9327

7. MATERIAL TO BE PRODUCED

See Attached Requests, Instructions and Definitions.

8. ADMINISTRATIVE LAW JUDGE The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580	9. COUNSEL REQUESTING SUBPOENA Eric D. Welsh (704) 335-9052
--	---

DATE ISSUED October 24, 2008	SECRETARY'S SIGNATURE 
-------------------------------------	--

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**SUBPOENA DUCES TECUM ISSUED TO EXIDE TECHNOLOGIES
ON BEHALF OF POLYPORE INTERNATIONAL, INC.
FTC DOCKET NO. 9327**

EXHIBIT A

I. REQUESTS

1. All documents (including without limitation internal email or other written communication at Exide) relating to any communication between Exide and Polypore regarding (a) any actual or potential contract for lead acid battery separators, (b) any actual or proposed change in Polypore prices and/or (c) any actual or potential increase or decrease in the volume of lead acid battery separators purchased from Polypore.

2. All documents (including without limitation internal email or other written communication at Exide) relating to any communication between Exide and Microporous regarding (a) any actual or potential contract for lead acid battery separators, (b) actual or proposed pricing of lead acid battery separators by Microporous, (c) actual or proposed development and/or testing of lead acid battery separators or (d) Polypore.

3. All documents (including without limitation internal email or other written communication at Exide) relating to any communication between Exide and ENTEK regarding (a) any actual or potential contract for lead acid battery separators, (b) actual or proposed prices for lead acid battery separators by ENTEK, (c) actual or proposed development and/or testing of lead acid battery separators or (d) Polypore.

4. All documents (including without limitation internal email or other written communication at Exide) relating to any communication between Exide and any Third Party other than Polypore, Microporous or ENTEK regarding (a) any actual or potential contract for lead acid battery separators, (b) actual or potential prices for lead acid battery separators, (c) actual or proposed development and/or testing of lead acid battery separators or (d) Polypore.

5. All documents constituting or reflecting any actual or potential contract or agreement between Exide and Polypore for the manufacture and sale by Polypore to Exide of lead acid battery separators.

6. All documents reflecting any discussion or consideration internally at Exide about Exide producing or manufacturing lead acid battery separators whether in response to Polypore's actual or potential acquisition of Microporous, any actual or potential change in price of lead acid battery separators or otherwise.

7. All documents relating to the contract entered into between Exide and Polypore for the purchase and sale of the Exide plant located in Corydon, Indiana (the "Corydon plant"), including without limitation, documents concerning the terms of payment under that contract.

8. All documents relating to the negotiation of the contract entered into between Exide and Polypore for the purchase and sale of the Corydon plant, including without limitation,

documents concerning the options discussed between Polypore and Exide for the terms of payment under that contract.

9. All documents relating to any communication between Exide and Polypore concerning (a) the contract between Polypore and Exide for the purchase and sale of the Corydon plant, (b) the financial condition and prospective business of the Corydon plant at the time of sale, and/or (c) the negotiation of the contract entered into between Exide and Polypore for the purchase and sale of the Corydon plant, including without limitation, documents concerning the options for the terms of payment under that contract.

10. All documents relating to any expression of interest of or submission of any bid by any person other than Polypore in the purchase of the Corydon plant.

11. All documents constituting or reflecting any actual or potential contract or agreement between Exide and ENTEK for the manufacture and sale by ENTEK to Exide of lead acid battery separators.

12. All documents constituting or reflecting any actual or potential contract or agreement between Exide and Microporous for the manufacture and sale by Microporous to Exide of lead acid battery separators.

13. All documents relating to any memorandum of understanding between Exide and Microporous, including without limitation, documents concerning any expiration, extension or amendment to such memorandum of understanding.

14. All documents relating to any consideration by Exide or any Third Party to sponsor, finance or support entry or expansion of a battery separator business in (a) North America or (b) the world.

15. All documents constituting or reflecting any actual or potential contract or agreement between Exide and any Third Party other than ENTEK, Polypore or Microporous for the manufacture and sale by any such Third Party to Exide of lead acid battery separators.

16. All documents or any database reflecting all lead acid battery separators purchased by Exide from any supplier, including but not limited to the specific product(s) purchased, the amount or volume of each such product(s) purchased, the price(s) of the product(s) purchased, the date(s) of purchase, the end use(s) or application(s) of the product purchased and the Exide plant to which such product was shipped.

17. All documents discussing, describing or reflecting any actual or potential ownership interest of Exide in any joint venture or other entity that manufactures led acid battery separators.

18. All documents discussing, describing or reflecting, by dollar amount, units, price, square meters and product type or brand, all battery separators purchased by Exide from any source from January 1, 2000 to the present.

19. For all product responsive to Request No. 18, all documents reflecting the actual or anticipated end use or application of the product purchased by Exide and the destination of the shipment of such product.

20. All documents discussing, describing or reflecting any internal discussions, communications or consideration given by Exide to purchasing or acquiring a supplier of lead acid battery separators; entering into a joint venture or similar relationship for the supply of lead acid battery separators, or building a plant to manufacture lead acid battery separators for use by Exide.

21. All documents discussing, describing or reflecting any actual or potential entrant in the manufacturing of lead acid battery separators.

22. All documents relating to any company or entity that entered or was viewed as a potential entrant into the production and sale of lead acid battery separators.

23. All documents relating to any actual or potential barrier to entry for suppliers or manufacturers of lead acid battery separators, including without limitation, costs of entry or achieving minimum viable scale, in (a) North America and (b) the world.

24. All documents relating to any testing or qualification by Exide of lead acid battery separators manufactured by Polypore or Microporous.

25. All documents relating to any testing or qualification by Exide of lead acid battery separators produced by any entity other than Polypore or Microporous.

26. All documents (including email or memorandum internal to Exide) reflecting or discussing any manufacturer of lead acid battery separators or market conditions including capacity for lead acid battery separators.

27. All documents describing, discussing or reflecting by brand name or manufacturer the products comprising lead acid battery separators including those products used for the following end uses: golf car or cart; floor scrubber or sweeper; automotive; motorcycle; truck; train; fork lift; pallet truck; submarine; uninterrupted power supply for hospitals, telephone companies and other uses; motive; industrial; marine; stationary; and/or nuclear power plant.

28. All documents discussing or referring to any type of battery separator, including AGM separators, other than those used in flooded lead acid batteries.

29. All documents describing, discussing or reflecting products that are or might be competitive with lead acid battery separators including those products used for the following end uses: golf car or cart; floor scrubber or sweeper; automotive; motorcycle; truck; train; fork lift; pallet truck; submarine; uninterrupted power supply for hospitals, telephone companies and other uses; motive; industrial; marine; stationary; and/or nuclear power plant.

30. Documents discussing or describing any technology used in the manufacture of battery separators for lead acid batteries.

31. All documents discussing or mentioning the actual or potential acquisition of Microporous by Polypore.

32. All documents discussing, mentioning or describing any effect, actual, potential or perceived, on Exide's business of an acquisition of Microporous by Polypore, and all documents relating to any plan or course of action considered or adopted by Exide to address such effect or otherwise respond to such acquisition.

33. All documents reflecting any product or technology that is a substitute for lead acid battery separators manufactured by Polypore or Microporous, including but not limited to, any substitute product or technology considered by Exide as an alternate technology for lead acid battery separators manufactured by Polypore or Microporous.

34. All documents referring to or discussing other sources of lead acid battery separators that Exide could or might be able to use to replace Polypore as a source of supply.

35. All documents referring to or discussing Polypore's past, present or future competitive position in the lead acid battery separator business.

36. All documents, including affidavits and statements, which Exide provided to the FTC relating in any way to Polypore.

37. A copy of any transcript of any testimony, deposition or investigational hearing conducted in the Polypore Matter.

38. All documents evidencing, relating or referring to communications between the FTC and Exide relating in any way to Polypore or Microporous.

39. All documents relating to any actual or perceived advantage to Exide of the location of its lead acid battery supplier.

II. INSTRUCTIONS AND DEFINITIONS

1. "Document" means the complete original or a true, correct and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored or reproduced, including, but not limited to, any writing, letter, e-mail, envelope, telegram, meeting minute, memorandum, statement, affidavit, declaration, book, record, survey, map, study, handwritten note, working paper, chart, index tabulation, graph, tape, data sheet, data processing card, printout, microfilm, index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, desk pad, telephone message slip, note of interview or communication or any other data compilation in your possession, custody or control, including all drafts or all such documents. "Document" also includes every writing, drawing, graph, chart, photograph, phono record, tape and other data compilations from which information can be obtained, translated, if necessary, by Exide Technologies, Inc. through detection devices into reasonably usable form, and includes all drafts and all copies of every such writing or record that contain any commentary, notes, or marking whatsoever not appearing on the original.
2. "You" "your" and "Exide" for purposes of this request, means Exide Technologies or any of its parents, divisions, subdivisions, subsidiaries, affiliates, officers, directors or managing agents, attorneys, employees, consultants and agents, as well as any predecessors in interest, and all other persons acting or purporting to act on its behalf.
3. "Polypore" for the purposes of this request, means the Polypore International, Inc. and any subsidiary or division thereof, including without limitation, Daramic, LLC, and their respective employees.

4. "Microporous" for the purposes of this request, means the Microporous Products, L.P., and any affiliate, subsidiary or division thereof, and their respective employees, officers, directors, partners, attorneys and agents.
5. "ENTEK" for the purposes of this request, means the ENTEK International LLC, and any affiliate, subsidiary or division thereof, and their respective employees, officers, directors, partners, attorneys and agents.
6. "FTC" means the Federal Trade Commission, and any of its directors, commissioners, employees, consultants and agents.
7. "Polypore matter" means the investigation conducted by the FTC under Rule No. 081-0131 and this Administrative Proceeding, Docket No. 9327.
8. "Investigation" means any FTC investigation, whether formal or informal, public or non-public.
9. "Third Party" means any person; corporate entity; partnership; association; joint venture; state, federal or local governmental agency, authority or official; research or trade association; or any other entity other than Exide or any of its subsidiaries.
10. "Complaint" means the Complaint issued by the Federal Trade Commission to Polypore International, Inc. in Docket No. 9327.
11. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying or stating.
12. Unless otherwise stated, the relevant time period for these requests is January 1, 2003 to the present.
13. The use of the singular shall be deemed to include the plural and vice versa.
14. The terms "and" and "or" shall be interpreted liberally as conjunctive, disjunctive, or both, depending on the context, so as to have their broadest meaning.

15. Whenever necessary to bring within the scope of a request all documents that might otherwise be construed to be outside its scope, the use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. The term "all" includes any and vice versa.

17. If you object to any part of a document request under the FTC Rules of Practice §3.37(b), set forth the basis for your objection and respond to all parts of the document request to which you do not object. No part of a document request shall be left unanswered merely because an objection is interposed to another part of a document request.

18. If a document database is provided, provide an explanation of the definitions used and the fields existing in such database.

19. All documents that respond, in whole or in part, to any portion of any document request shall be produced in their entirety, including all attachments, enclosures, cover memoranda and post-it notes.

20. If any privilege is claimed as a ground for not producing any document, provide for each such document withheld on the basis of privilege all information required by FTC Rules of Practice §3.38A.

21. In the event that any responsive document was, but is no longer in your possession, state what disposition was made of it, when, and the reason for such disposition. In the event that a responsive document has been destroyed or returned to a Third Party, state (i) the reason for such document's destruction or return, the date on which the document was destroyed or returned, and the Third Party to whom the document was returned or on whose behalf the document was destroyed; (ii) the name, title, and location thereof within Exide Technologies of the individual in whose possession, custody or control the document was when it was destroyed or returned; and

(iii) the name, title, and location thereof within Exide Technologies of the individual who destroyed or returned the document.

22. These document requests are continuing in nature, up to and during the course of the adjudicative hearing. All documents sought by these requests that you obtain or locate after you serve your responses must be immediately produced to counsel for Polypore by supplementary response.

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2008, I caused a copy of a *Subpoena Duces Tecum* directed to *Exide Technologies* to be served upon the following persons, at the addresses and through the means noted below:


Via Certified Mail:

Exide Technologies
1300 Deerfield Parkway, Building 200
Alpharetta, Georgia 30004

Via Electronic Mail:

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
rrobertson@ftc.gov

Steven Dahm, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
sdahm@ftc.gov


Eric D. Welsh
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 335-9052
Facsimile: (704) 334-4706

COPY

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)

Polypore International, Inc.)
a corporation.)
)

Docket No. 9327

PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL

For the purpose of protecting the interests of the Parties and Third Parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this Matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

DEFINITIONS

For purposes of this Protective Order, the following definitions apply:

1. "Confidential Material" shall mean all Discovery Material that is confidential or proprietary information produced in discovery. Such material is referred to in, and protected by, section 6(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f); section 21 of the Federal Trade Commission Act, 15 U.S.C. § 57b-2, the FTC Rules of Practice, Sections 4.9, 4.10, 16 C.F.R. §§ 4.9, 4.10; and precedents thereunder. Confidential Material shall include non-public trade secret or other research, development, commercial or financial information, the disclosure of which would likely cause commercial harm to the Producing Party or to Respondent. The

following is a non-exhaustive list of examples of information that likely will qualify for treatment as Confidential Material: strategic plans (involving pricing, marketing, research and development, product road maps, corporate alliances, or mergers and acquisitions) that have not been fully implemented or revealed to the public; trade secrets; customer-specific evaluations or data (e.g., prices, volumes, or revenues); sales contracts; system maps; personnel files and evaluations; information subject to confidentiality or non-disclosure agreements; proprietary technical or engineering information; proprietary financial data or projections; and proprietary consumer, customer, or market research or analyses applicable to current or future market conditions, the disclosure of which could reveal Confidential Material. Discovery Material will not be considered confidential if it is in the public domain.

2. "Document" means the complete original or a true, correct, and complete copy and any non-identical copies of any written or graphic matter, no matter how produced, recorded, stored, or reproduced. "Document" includes, but is not limited to, any writing, letter, envelope, telegraph, e-mail, meeting minute, memorandum, statement, affidavit, declaration, transcript of oral testimony, book, record, survey, map, study, handwritten note, working paper, chart, index, tabulation, graph, drawing, chart, printout, microfilm index, computer readable media or other electronically stored data, appointment book, diary, diary entry, calendar, organizer, desk pad, telephone message slip, note of interview or communication, and any other data compilation from which information can be obtained, and includes all drafts and all copies of such Documents and every writing or record that contains any commentary, notes, or marking whatsoever not appearing on the original.

3. "Discovery Material" includes without limitation deposition testimony, exhibits, interrogatory responses, admissions, affidavits, declarations, Documents, tangible thing or

answers to questions produced pursuant to compulsory process or voluntarily in lieu thereof, and any other Documents or information produced or given to one Party by another Party or by a Third Party in connection with discovery in this Matter. Information taken from Discovery Material that reveals its substance shall also be considered Discovery Material.

4. "Commission" shall refer to the Federal Trade Commission, or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

5. "Polypore" means Polypore International, Inc., and its predecessors, divisions, and subsidiaries, and all persons acting or purporting to act on its behalf.

6. "Respondent" means Polypore.

7. "Party" means the Commission or Polypore.

8. "Third Party" means any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Matter and its employees, directors, officers, attorneys and agents.

9. "Producing Party" means a Party or Third Party that produced or intends to produce Confidential Material to any of the Parties. With respect to Confidential Material of a Third Party that is in the possession, custody or control of the FTC, or has been produced by the FTC in this matter, the Producing Party shall mean the Third Party that originally provided such material to the FTC. The Producing Party shall mean the FTC for purposes of any Document or Discovery Material prepared by, or on behalf of, the FTC.

10. "Matter" means the above captioned matter pending before the Federal Trade Commission, and all subsequent administrative, appellate or other review proceedings related thereto.

TERMS AND CONDITIONS OF PROTECTIVE ORDER

1. Any Document or portion thereof submitted by Respondent or a Third Party during the Federal Trade Commission ("FTC") investigation preceding this Matter or during the course of proceedings in this Matter that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as Confidential Material for purposes of this Protective Order. For purposes of this Protective Order, the identity of a Third Party submitting such Confidential Material shall also be treated as Confidential Material where the submitter has requested in writing such confidential treatment.

2. The Parties and any Third Parties, in complying with informal discovery requests, disclosure requirements, discovery demands or formal process in this Matter may designate any responsive document or portion thereof Confidential Material, including documents obtained by them from Third Parties pursuant to discovery or as otherwise obtained.

3. The Parties, in conducting discovery from Third Parties, shall provide to each Third Party a copy of this Protective Order so as to inform each such Third Party of his, her or its rights herein.

4. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes Confidential Material as defined in Paragraph 1 of the Definitions of this Protective Order. All deposition transcripts

shall be treated as Confidential Material.

5. If any Party seeks to challenge the Producing Party's designation of material as Confidential Material, the challenging Party shall notify the Producing Party and all other Parties of the challenge. Such notice shall identify with specificity (*i.e.*, by document control numbers, deposition transcript page and line reference, or other means sufficient to locate easily such materials) the designation being challenged. The Producing Party may preserve its designation by providing the challenging Party and all other Parties a written statement of the reasons for the designation within five (5) business days of receiving notice of the confidentiality challenge. If the Producing Party timely preserves its rights, the Parties shall continue to treat the challenged material as Confidential Materials, absent a written agreement with the Producing Party or order of the Commission providing otherwise.

6. If any conflict regarding a confidentiality designation arises and the Parties and Producing Party involved have failed to resolve the conflict via good-faith negotiations, a Party seeking to disclose Confidential Material or challenging a confidentiality designation may make written application to the hearing officer for relief. The application shall be served on the Producing Party and the other Parties to this Matter, and shall be accompanied by a certification that good-faith negotiations have failed to resolve the outstanding issues. The Producing Party and any other Party shall have five (5) business days after receiving a copy of the motion to respond to the application. While an application is pending, the Parties shall maintain the pre-application status of the Confidential Material. Nothing in this Protective Order shall create a presumption or alter the burden of persuading the hearing officer of the propriety of a requested disclosure or change in designation.

7. The Parties shall not be obligated to challenge the propriety of any designation or treatment of information as Confidential Material and the failure to do so promptly shall not preclude any subsequent objection to such designation or treatment, or any motion seeking permission to disclose such material to Persons not otherwise entitled to access under the terms of this Protective Order. If Confidential Material is produced without the designation attached, the material shall be treated as Confidential from the time the Producing Party advises Complaint Counsel and Respondent's Counsel in writing that such material should be so designated and provides all the Parties with an appropriately labeled replacement. The Parties shall return promptly or destroy the unmarked materials.

8. Material produced in this Matter may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL-FTC Docket No. 9327" or any other appropriate notice that considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL-FTC Docket No. 9327" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. The foregoing designation of "CONFIDENTIAL-FTC Docket No. 9327" shall not be required for confidentiality to apply to documents and information previously produced voluntarily or pursuant to a Civil Investigative Demand or subpoena during the investigational phase preceding this Matter for which confidential treatment was requested. Masked or otherwise redacted copies of documents may be produced where the portions deleted

contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

9. Confidential Material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the commission as experts or consultants for this proceeding, (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter, (c) court reporters in this matter, (d) outside counsel of record for Respondent, its associated attorneys and other employees of its law firm(s), provided they are not employees of Respondent, (e) Michael Shor, Polypore Special Counsel, (f) anyone retained to assist outside counsel in the preparation of hearing of this proceeding including consultants, provided they are not affiliated in any way with Respondent and have signed Exhibit A hereto; (g) any witness or deponent who may have authored or received the information in question; (h) any individual who was in the direct chain of supervision of the author at the time the Discovery Material was created or received, except that this provision does not permit disclosure of Industrial Growth partner or Warburg Pincus International documents to Polypore or former Microporous personnel who would not otherwise have had access to the Discovery Material; (i) any employee or agent of the entity that created or received the Discovery Material; (j) anyone representing the author or recipient of the Discovery Material in this Matter; and (k) any other Person(s) authorized in writing by the Producing Party.

10. Disclosure of confidential material to any person described in Paragraph 9 of this Protective Order shall be only for the purposes of the preparation and hearing of this Matter, or any appeal therefrom, and for no other purpose whatsoever; provided, however, that the

