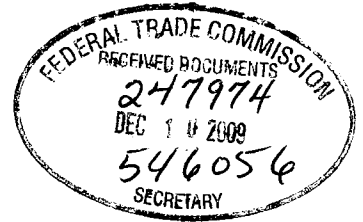


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL



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

PUBLIC

Docket No. 9327

COMPLAINT COUNSEL'S POST-TRIAL REPLY
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON THE REOPENED RECORD

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DECEMBER 10, 2009

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I. EXHIBIT AND WITNESS INDICES

II. PROCEDURAL BACKGROUND

1494. On June 22, 2009, after a five-week hearing in this proceeding, the record was closed.

Response to Finding No. 1494:

Complaint Counsel has no specific response.

1495. On September 25, 2009, Respondent, Polypore International, Inc. ("Polypore or Respondent") moved for a second time to re-open the record in this proceeding to permit the introduction of new and additional evidence (the "Second Motion to Re-open"). By its Second Motion to Re-open, Respondent sought leave to introduce new and additional evidence regarding (1) {

and (2) {
}, set forth in four proffers.

Response to Finding No. 1495:

Complaint Counsel has no specific response for Respondent's first sentence in this Finding of Fact. Complaint Counsel does not believe that Exide's conduct is an issue in this case, unlike the actual issues which are Respondent's merger to a monopoly in the Motive, UPS, and Deep-cycle markets, a decrease from three to two firms in the SLI market, Respondent's anticompetitive behavior, attempt to monopolize, and further monopoly power.

1496. After briefing, the Honorable D. Michael Chappell granted Respondent's Second Motion to Re-open.

Response to Finding No. 1496:

Complaint Counsel has no specific response.

1497. On November 12, 2009, in connection with the Second Motion to Re-open, a hearing was held before Administrative Law Judge Chappell. At the November 12 hearing, Respondent presented additional evidence to the Court through witnesses and exhibits regarding the four proffers. Respondent called two witnesses: Mr. Robert Toth ("Toth"), Chief Executive Officer of Respondent and Mr. Harry D. Seibert ("Seibert"), Vice President and Business Director for Respondent's Daramic subsidiary. Respondent also cross-examined Mr. Douglas Gillespie ("Gillespie"), Vice President of Global Procurement for Exide, who was called by Complaint Counsel as their witness. Respondent introduced 46 exhibits which were admitted into evidence, some over Complaint Counsel's objections. (Tr. 5632-5642, 5812, 5841; Pre. Tr. 10-11, 14-20). Complaint Counsel called only Gillespie in rebuttal. The record of the November 12, 2009 hearing was closed by Order dated November 23, 2009.

Response to Finding No. 1497:

Complaint Counsel has no specific response.

1498. Respondent incorporates herein the definitions set forth in its Proposed Findings of Fact and Conclusions of Law, submitted on July 10, 2009.

Response to Finding No. 1498:

Complaint Counsel incorporates its responses, if any, to Respondent's definitions set forth in its reply to Respondent's Proposed Findings of Fact and Conclusions of Law, submitted on July 10, 2009.

III. {

A. { }

1499. On May 28 and May 29, 2009, Gillespie testified in this proceeding. (JX-9).

Response to Finding No. 1499:

Complaint Counsel has no specific response.

1500. At the time of the hearing this past spring,

. (RX01720, *in camera*). {

. (Gillespie, Tr. 5807-08, *in camera*; see also RFOF 524, 530, 531).

Response to Finding No. 1500:

Exide currently pays { } for SLI separators in North America under the North America Supply Agreement. (Gillespie, Tr. 3018-3020, 3059, *in camera*; see also Gillespie, Tr. 5807-5808, *in camera* ({ })).

1501. {
}. (JX-9, *in camera*).

Response to Finding No. 1501:

Complaint Counsel has no specific response.

1502. {
}. (RX01119, *in camera*;
Hauswald, Tr. 1118; Gillespie, Tr. 3126, *in camera*; RX01120, *in camera*).

Response to Finding No. 1502:

With respect to this finding of fact, these citations do not support the assertions. The citations to the trial transcript do not remotely relate to {
}. The documents cited do not support Respondent's contentions. (RX01119, *in camera*; RX01120, *in camera*). Furthermore, Respondent's never stated nor does the citation demonstrate what year {
} (RX01119, *in camera*; Hauswald, Tr. 1118; Gillespie, Tr. 3126, *in camera*; RX01120, *in camera*). Certainly, Exide did not constitute {

} Exide's relative share of Respondent's business. (Seibert, Tr. 5673, *in camera*).

1503. {
}. (Gillespie, Tr. 5855-56, *in camera*).

Response to Finding No. 1503:

To the extent that Respondent is asserting that the industrial battery business is insignificant to Exide, they are incorrect. Exide's industrial battery manufacturing facilities accounted for more than 35% of Exide's net sales in its most recent quarter. (RX01726 at 006,

015; *see also* Gillespie, Tr. 5863, *in camera* ({
})).

1504. At the time of the hearing this past summer, {

Tr. 5646-48, *in camera*; RX01721, *in camera*).

. (Seibert,

Response to Finding No. 1504:

{

}. In

2007, Exide issued a Request for Proposal (“RFP”) to battery separator manufacturers around the world. (Gillespie Tr. 2962). {

}. (PX0922 (Roe, IH at 228, *in camera*)). {

}. (PX1028 at

058-060, *in camera*; Roe, Tr. 1785-1786, *in camera*; *see also* Gillespie, Tr. 2966). Furthermore,

{

}. (RX01666, *in camera*; RX01667, *in camera*; RX01668, *in camera*; RX01669, *in camera*; RX01683, *in camera*; RX01687, *in camera*; RX01713, *in camera*; RX01714, *in camera*; RX01721, *in camera*).

a. { }

1505. {

002, *in camera*; Seibert, Tr. 5648, *in camera*).

. (RX01721 at

Response to Finding No. 1505:

Complaint Counsel has no specific response.

1506. {

. (Seibert, Tr. 5648-49, 5662-63, *in camera*).

. (Seibert, Tr. 5682, *in camera*). Even this year,

. (Seibert, Tr. 5681-83, *in camera*; RX01724, *in camera*).

. (Seibert, Tr. 5682-83, *in camera*; RX01724, *in camera*).

{

Response to Finding No. 1506:

This is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

Although Respondent claims that {

} (PX5076 (Seibert, Dep. Tr. 26, *in camera*)). In

fact, the record indicates that a large portion of all battery separator purchases are completed without a contractual relationship between the buyer and the seller, and that firms can maintain their production lines. Most Microporous customers did not have actual supply contracts with Microporous. (Trevathan, Tr. 3773; Gilchrist, Tr. 614). {

} . (RX00116 at 004, *in camera*). {

} square meters of separators from Entek on an annual basis without a contract. (Hall, Tr. 2686-2687, 2690).

To the extent that Respondent is asserting that the {

} . In fact, when Respondent's counsel

questioned Mr. Gillespie on this subject he stated the

} (Gillespie, Tr. 5849-5850, *in camera*). Moreover, Exide's

{

} . (Gillespie, Tr. 5792, 5860, *in camera*). {

} . (Gillespie, Tr. 5844-5845, 5860, *in camera*;

RX01724-001, *in camera*).

1507. {

. (Toth, Tr. 5648-49, *in camera*). {

} . (Toth, Tr. 5749-50, *in camera*).

Response to Finding No. 1507:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5748-5750, *in camera*).

To the extent that Respondent is asserting that {

} . (PX5076 (Seibert, Dep. Tr. 26, *in camera*)). In fact, the record indicates that a large portion of all battery separator purchases are completed without a contractual relationship between the buyer and the seller and that firms can maintain their production lines. Most

Microporous customers did not have actual supply contracts with Microporous. (Trevathan, Tr. 3773; Gilchrist, Tr. 614). {

} (RX00116 at

004, *in camera*). From 2004-2007, JCI purchased over 100 million square meters of separators from Entek on an annual basis without a contract. (Hall, Tr. 2686-2687, 2690).

1508. {

. (Seibert, Tr. 5649, 5658, *in camera*; RX01667 at 002, *in camera*; RX01668 at 002, *in camera*; RX01669 at 002, *in camera*; RX01713, *in camera*; RX01718, *in camera*; RX01714 at 001 (“

}).”) *in camera*).

Response to Finding No. 1508:

This is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent’s one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent’s negotiation and litigation posture in its unresolved dispute with Exide.

The allegation about the { } is outside the scope of the proffered facts, because it is not evidence that supports any of the four proffers.

{

}. (See e.g., RX01713-003, *in camera* {(

}; see also RX01666 at 002, *in camera*; RX01667 at 002, *in camera*; RX01668 at 002, *in camera*; RX01669 at 002, *in camera*; RX01683 at 001, *in camera*; RX01718 at 002, *in*

camera; RX01714 at 002, *in camera*). Mr. Seibert testified that all of the {
}. (PX5076 (Seibert, Dep. at 33-34), *in camera*).¹
{
} (PX5076 (Seibert, Dep. at 30-31), *in camera*). As
recently as Daramic's October 2, 2009 {

}. (RX01714 at 001-003, *in camera*). Moreover, Mr. Seibert testified at trial that
Daramic has not { }.
(Seibert, Tr. 5725, *in camera*).

1509. { }.
(Seibert, Tr. 5651, *in camera*).
. (Seibert, Tr. 5668, *in camera*).

Response to Finding No. 1509:

Any proposed { } is simply a reflection of the fact that Exide currently
pays { } for SLI separators in North America. (Gillespie, Tr.
3018-3020, 3059, *in camera*). {

}. (Hauswald, Tr. 763 ({
}); Bregman, Tr. 2901, *in camera*; Gillespie, Tr. 3018-
3020, *in camera*; see also PX1026, *in camera*). {

¹ Mr. Seibert evaded this question at trial and had to be impeached with his deposition testimony. (Seibert, Tr. 5703-5706, *in camera*).

} (Gillespie, Tr. 5807-5808, *in camera*).

Moreover, {

} (RX01714 at 001-003, *in camera*;

Gillespie, Tr. 5814, *in camera*; see also CCFOF 1316-1320).

Respondent's allegations that its {

} (CCFOF 1321; Seibert, Tr. 5668, *in camera*).

1510. {

5668, *in camera*).

. (Seibert, Tr.

.” (Seibert, Tr. 5668, *in camera*).

Response to Finding No. 1510:

This is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

{

} The fact that parties

are in negotiations and thus far have been unable to reach an agreement does not provide any evidence that Exide wields power in its negotiations with Daramic. In fact, the evidence establishes that the failure of Exide and Daramic to reach a supply agreement is because Daramic wields power over Exide. (*See* CCRF 1512).

Moreover, {

}. (See CCRF 1509).

Based on Mr. Seibert's testimony it is clear that Daramic does not have to {

}. (CCFOF 1321; Seibert, Tr. 5668-5669, *in camera*); (RX01669 at 002, *in camera*

(Exide proposed {

}); Gillespie, Tr.

5808-5810, *in camera*; see also CCFOF 1321).

To the extent that Respondent alleges that any { offered by Daramic to Exide is an indication that the SLI market is currently acting in a competitive fashion, such allegations are contradicted by facts which show that the SLI market was much more competitive with three competitors than it currently is with only two competitors.

All three potential SLI suppliers in North America (Daramic, Entek and Microporous) were actively competing for {

}. (Gilchrist, Tr. 423, 466-467, *in camera*).

During this same time period, {

}. (Roe, Tr.

1685-1686, *in camera*; Hall, Tr. 2884, *in camera*). {

}. (RX00072, *in camera*).

{

}. (RX00072 at 54-61, *in camera*). {

} (RX00072 at 56, *in camera*). In comparison, the best { }
offered to Exide by Daramic for {

} (RX01668 at 002, *in camera*; Seibert, Tr.
5656, *in camera*). {

} (RX00072 at 56, *in camera*;
RX01668 at 002; Seibert, Tr. 5656, *in camera*).

1511. This Court finds Seibert to be a credible witness. Seibert's testimony is consistent with Respondent's exhibits. This Court credits Seibert's testimony in this matter. In contrast, for the reasons stated herein and previously, this Court does not find Gillespie to be a credible witness. The evidence adduced during the hearing on November 12 and May 28 and 29, 2009 demonstrates that Exide has attempted to manipulate this proceeding by intentionally refraining from certain relevant conduct until after the hearing record had been closed. Gillespie's testimony on May 28 and 29, 2009 was rehearsed with Complaint Counsel, including Exide's "recommendation" of relief. (RFOF 602). Accordingly, this Court does not credit Gillespie's testimony.

Response to Finding No. 1511:

Respondent's ludicrous statements are outside of the scope and are only dealing with alleged facts that arose in the first hearing in this matter. This is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

{

} The fact that parties
are in negotiations and thus far have been unable to reach an agreement does not provide any
evidence that Exide wields power in its negotiations with Daramic. In fact, the evidence

establishes that the failure of Exide and Daramic to reach a supply agreement is because Daramic wields power over Exide. (See CCRF 1512).

Respondent's allegation that Exide has attempted to manipulate this proceeding is inaccurate. At no time did Exide intentionally refrain from certain relevant conduct until after the hearing record closed. (See CCRF 1543).

The determination of the credibility of Mr. Seibert and Mr. Gillespie is a legal conclusion, not a factual assertion. However, Mr. Seibert is not a credible witness and has been caught by Complaint Counsel on several occasions changing his story. (See CCFOF 1345-1347). One example of Mr. Seibert's lack of credibility relates to {

}. (PX5076 (Seibert, Dep. at 27), *in camera*). At the end of the deposition, after a lengthy break and under redirect, Mr. Seibert testified that {

}. (PX5076 (Seibert, Dep. at 102), *in camera*).

In his deposition testimony, Mr. Seibert made no mention of {

}. Yet, at trial, Mr. Seibert testified that {

} (Seibert, Tr. 5703, *in camera*). Mr.

Seibert's testimony at trial, that he had communicated at his deposition that Daramic had

{ }. (Seibert, Tr. 5703, *in camera*; PX5076 (Seibert, Dep. at 102), *in camera*).

Respondent's bare assertions regarding Mr. Gillespie's credibility are not only unsupported by citations to the voluminous record, but merely speculation and conjecture regarding Exide's intentions. Mr. Gillespie has given three depositions and several days of testimony at trial, yet Respondent can not cite to any lies that would directly affect his

credibility. Instead, Respondent had made an unfounded assertion about a neutral third party's credibility.

b. { }

1512. After Gillespie testified in this hearing on May 28 and 29, 2009,

{ (Seibert, Tr. 5650, *in camera*; RX01665, *in camera*). {

.” (RX01665 at 001, *in camera*).

Response to Finding No. 1512:

Respondent's assertion regarding {

} Proof that Exide was not able to dictate its alleged demands to Daramic can be found in the fact that during the course of negotiations, Exide {

}.

(RX01665 at 002, *in camera*; RX1250 at 001, *in camera*; RX01668 at 002, *in camera*). Daramic

refused to provide Exide with {

} (RX01668 at 002, *in camera*; RX01687, *in camera*). Second, Exide sought to have {

} (RX01665 at 002). Daramic refused to agree to this {

} (RX01668 at 002, *in camera*).

Third, Exide sought a {

}. (RX01668 at 002, *in camera*).

Moreover, contrary to Respondent's contention that Exide was able to dictate terms to Daramic, Daramic {

}. (RX01714 at 003, *in camera*;

RX01720 at 039, *in camera*). Similarly, Daramic never agreed to Exide's request for

{

}. (RX1714,

in camera). In fact, contrary to Mr. Toth's testimony that Daramic offered Exide {

}. (RX1714, *in camera*). {

}. (RX01665 at 002-003, *in*

camera). {

}. (RX01687, *in camera*).

1513. {

. (Seibert, Tr. 5650-51, 5697, 5669-70, *in camera*; RX01665 at 002-003, *in camera*).

Response to Finding No. 1513:

Respondent's use of {

} is a gross overstatement of what occurred. In fact,

{

}. (See CCRF 1512; *see, e.g.*,

RX01687 at 003, *in camera* ({

});

RX01714 at 003, *in camera* ({

}).

To the extent that Respondent alleges that Daramic conceded to Exide's alleged "demand[s]" with regards to { } for a new contract, such allegations are not true. First, Exide's {

}. (RX01665 at 004, *in camera*). But within one month's time, Exide indicated that it would be willing to {

}. (RX01669 at 002, *in camera*). Second,

Daramic was never willing to {

}. (See CCFOF 1321). Third, Daramic's proposed {

}. (Gillespie, Tr.

5807-5808, *in camera*; *see also* CCFOF 1326-1327). Fourth, all of Daramic's proposed {

}. (CCFOF 1316-1322).

1514. In addition, {

}. (RX01665 at 003, *in camera*).
Tr. 2934, *in camera*), and is further evidence that {
, (Gillespie,
} and therefore, contrary to Complaint Counsel's assertions, there are no
significant barriers to entry for battery separators due to testing, whether for automotive,
motive or some other application or use.

Response to Finding No. 1514:

Respondent's assertion that Mr. Gillespie's {

}. (Gillespie, Tr. 2934, *in camera*). {

}. (RX01665 at 003, *in camera*).

In fact, contrary to Mr. Toth's testimony that Daramic offered Exide {

}. (RX1714, *in camera*).

The assertions made by Respondent's about the time it takes to test different separator end-uses in the third sentence of this finding is outside of the scope of the four proffers of the second hearing; thus, is improperly included in these findings of fact.

1515. {
}. (Seibert, Tr. 5670, *in camera*; RX01697,
in camera).

Response to Finding No. 1515:

{

}. (*See*

CCRF 1509). Moreover, Daramic has not {

}. (See CCRF 1509).

1516. At the hearing,

” (Gillespie, Tr. 5852, *in camera*). {

. (RX01665 at 001, *in camera*).

. This Court finds Gillespie’s testimony not to be credible and further finds that Exide has attempted to manipulate this proceeding to its benefit.

Response to Finding No. 1516:

This is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent’s one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent’s negotiation and litigation posture in its unresolved dispute with Exide. Moreover, this finding calls for a legal conclusion, which is improper.

Respondent’s assertion Exide’s {

} (RX01665 at 001, *in camera*). {

}. (RX01665, *in camera*).

Moreover, Respondent’s allege that Mr. Gillespie’s testimony is in some way inconsistent with the { }; therefore, his testimony should be discounted.

However, Mr. Gillespie’s testimony is entirely consistent with the actions Exide took. At trial

Mr. Gillespie stated that {

} . (Gillespie, Tr. 5852, *in camera*). None of Mr. Gillespie's testimony that Respondent cited discusses why {
}. Respondent is simply ignoring the record evidence and developing its own story from wild speculation and conjecture as to the true reason for the {
}.

Respondent's last sentence is a legal conclusion and not a factual conclusion. Moreover, the assertion made in Respondent's last sentence is unsupported by any evidence.

B. {
1517. {
}. (RX01713, *in camera*; RX01667, *in camera*; Seibert, Tr. 5665, *in camera*). {
(RX01713 at 002, *in camera*). }.

. (RX01713 at 003; Seibert, Tr. 5657, *in camera*).

Response to Finding No. 1517:

This is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide. Moreover, this finding calls for a legal conclusion, which is improper.

{
}. (See CCRF 1509). Moreover, Daramic has not {

}. (See CCRF 1509).

Importantly, Daramic continued to {

}. (See generally, CCFOF 1069-1078). {

}. (RX01714 at 001-003,

in camera). {

}. (Gillespie, Tr. 5814-5815, 5865-5866, *in*

camera).

a. { }

1518. {

. (Seibert, Tr. 5651-53, 5655, *in camera*;

RX01617, *in camera*).

Response to Finding No. 1518:

Complaint Counsel has no specific response.

1519. {

. (Seibert, Tr. 5651-52, 5670, *in camera*). {

5652, *in camera*). {
Tr. 5652, *in camera*).

. (Seibert, Tr.
}. (Seibert,

. (Seibert, Tr. 5658, *in camera*).

Response to Finding No. 1519:

The citation in the third sentence does not reference Mr. Gillespie agreeing with Daramic's rationale. (Seibert, Tr. 5652, *in camera*).

Mr. Seibert's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Seibert, Tr. 5651-5652, 5658, 5670 *in camera*). The statements attributed to Mr. Gillespie are being offered for the truth of the matter asserted, not for the state of mind of the one testifying to the statement, and thus, are

inadmissible hearsay and should be stricken. (Order on Post Trial Briefs, dated June 16, 2009). Complaint Counsel and Respondent agreed that any testimony provided by Mr. Seibert or Mr. Toth regarding statements made by Exide officials would be admitted solely for the state of mind of Mr. Seibert or Mr. Toth, and not for the truth of the matter asserted. (Seibert, Tr. 5660-5661, *in camera*; Toth, Tr. 5740, *in camera*).

Per the Court's June 16, 2009 Order on Post Trial Briefs, the parties shall

“not cite to testimony for the truth of the matter asserted if the testimony was admitted over objection for a purpose other than for the truth of the matter asserted. If such testimony is cited, the party must indicate in its brief or proposed findings that the testimony was elicited for a purpose other than for the truth of the matter asserted.”

(Order on Post Trial Briefs, dated June 16, 2009). Respondent's proposed finding violates this provision of the Court's order in two ways. First, it cites to Mr. Seibert's testimony for the truth of statements made by Mr. Gillespie. Second, it fails to indicate that the statement of Mr. Gillespie was elicited solely for the state of mind of Mr. Seibert. In addition in a separate provision, the Court's order states that the parties shall “not cite to evidence that was admitted for a limited purpose for any purpose other than the theory for which it was admitted. (Order on Post Trial Briefs, dated June 16, 2009). Respondent's proposed finding violates this provision of the Court's order by citing Mr. Seibert's testimony for a purpose other than his state of mind, the theory for which it was admitted.

Although Respondent claims that {

} (PX5076 (Seibert, Dep. Tr. 26, *in camera*)). In

fact, the record indicates that a large portion of all battery separator purchases are completed without a contractual relationship between the buyer and the seller and firms can maintain their production lines. (*See* CCRF 1506).

negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

To the extent that Respondent alleges that Daramic conceded to Exide's alleged { } for a new contract, such allegations are not true. First, Exide's { }.

(RX01665 at 004, *in camera*). But within one month's time, Exide indicated that it would be willing to {

} (RX01669 at 002, *in camera*). Second, Daramic's proposed {

}.

(Gillespie, Tr. 5807-5808, *in camera*; see also CCFOF 1326-1327). Third, all of Daramic's proposed {

} (CCFOF 1316-1322). Fourth,

Respondent's allegations that its {

} (See CCRF 1509).

To the extent that Respondent alleges that any { } offered by Daramic to Exide is an indication that the SLI market is currently acting in a competitive fashion, such allegations are contradicted by facts showing the SLI market was much more competitive with three competitors than it currently is with only two competitors.

{

} (RX00072 at 054-061, *in camera*). {

} (RX00072 at 056, *in camera*). In comparison, the {
} offered to Exide by Daramic for {

} (RX01668 at 002, *in camera*; Seibert, Tr.
5656, *in camera*). {

} (RX00072 at 56, *in camera*;
RX01668 at 002; Seibert, Tr. 5656, *in camera*).

b. {

1522. {

. (RX01668, *in camera*; RX01669, *in camera*; Seibert, Tr. 5658-59, 5662, *in camera*). {

. (RX01668 at 002, *in camera*; Seibert, Tr. 5659-60, *in camera*;
Gillespie, Tr. 5839, *in camera*).

Response to Finding No. 1522:

Respondent's assertion that there had been { } is self-serving
testimonial evidence regarding contentious negotiations between Daramic and Exide. The
validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations
should be given little or no weight. The statements are solely intended to further Respondent's
negotiation and litigation posture in its unresolved dispute with Exide.

Respondent fails to acknowledge that Exide's {

} (RX01668 at 002, *in camera*).

Additionally, on the same {

}.
}

(RX01668 at 002, *in camera*). Moreover, {

} (RX01704 at 001, *in*

camera). Furthermore, {

}. (RX01687 at 002, *in camera*).

However, none of Exide's scenarios mattered because all of Daramic's proposed {

}. (CCFOF 1316-1322; *see e.g.*, RX01713-003, *in*

camera {

}; Toth, Tr. 5750-5751, *in*

camera; Seibert, Tr. 5663-5664 ({

}; *see also*

RX01666 at 002, *in camera*; RX01667 at 002, *in camera*; RX1668 at 002, *in camera*; RX01683
at 001, *in camera*; RX01718 at 002, *in camera*; RX01714 at 002, *in camera*).

1523. At the same time

. (RX01668 at 002
{
}), *in camera*;

{
Seibert, Tr. 5734, *in camera*).

Response to Finding No. 1523:

Respondent fails to acknowledge that Exide's {

}. (*See* CCRF 1522).

To the extent that Respondent alleges that Daramic conceded to Exide's alleged { } for a new contract, such allegations are not true. (See CCRF 1521).
{ } (See

CCRF 1509). Respondent's allegations that {

} (See CCFOF 1321).

To the extent that Respondent alleges that any { } offered by Daramic to Exide is an indication that the SLI market is currently acting in a competitive fashion, such allegations are contradicted by facts which show that the SLI market was much more competitive with three competitors than it currently is with only two competitors. (See also CCRF 1521). {

} (Gillespie, Tr. 5814-5815, 5865-5866, *in camera*). Mr. Seibert confirmed at trial that {

} (Seibert, Tr. 5726, *in camera*²; see also CCRF 1527).

1524. Upon learning that {

. (Seibert, Tr. 5660, *in camera*).

. (RX01720 at 035, *in camera*; Seibert, Tr. 5660, *in camera*). {

. (Seibert, Tr. 5660, *in camera*).

Response to Finding No. 1524:

Respondent's assertion that { } is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide.

² Mr. Seibert evaded this question at trial and had to be impeached with his deposition testimony, which he finally adopted. (Seibert, Tr. 5725-5726, *in camera*).

The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

Respondent fails to acknowledge that Exide's {

}. (RX01668 at 002, *in camera*).

Additionally, on the same {

}.

(RX01668 at 002, *in camera*). Moreover, Mr. Ulsh in a letter to Mr. Toth, {

} (RX01704 at 001, *in*

camera). Furthermore, {

}. (RX01687 at 002, *in camera*).

Moreover, Polypore's own document anticipated a {

}. (RX01692 at 002, *in camera*).

Daramic expects to {

}. (CCFOF 1253 – 1255, 1305 - 1306). However, Daramic has never {

}. (CCFOF 1312 - 1315). Because Daramic is {

}. (CCFOF 1321). Finally, Daramic has

repeatedly refused to offer to supply Exide with {

}. (CCFOF 1317).

1525. {

. (Seibert, Tr. 5660-61, *in camera*).

{
 . (Seibert, Tr. 5661, *in camera*).

Response to Finding No. 1525:

Mr. Seibert's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Seibert, Tr. 5660-5661 *in camera*). The statements attributed to Mr. Gillespie are being offered for the truth of the matter asserted, not for the state of mind of the one testifying to the statement, and thus, are inadmissible hearsay and should be stricken. (Order on Post Trial Briefs, dated June 16, 2009; *see also* CCRF 1519).

Respondent fails to acknowledge that Exide's {
 } . (See CCRF 1524).

Polypore's own document anticipated a {
 } . (See CCRF 1524).

At trial Mr. Seibert was asked if Exide had ever informed him that it intended to {

} . (PX5076 (Seibert, Dep. at 48-49), *in camera*). Mr. Seibert admitted that {

} PX5076 (Seibert, Dep. at 49), *in camera*). What Mr. Seibert
does know is that {

} . (PX5076 (Seibert, Dep. at 74), *in camera*). Mr. Gillespie testified that {

} . (Gillespie, Tr. 5826, 5838, *in camera*). Moreover, Exide has {

} . (Gillespie, Tr. 5868, *in camera*).

1526. In subsequent discussions, {

. (Seibert, Tr. 5662-63, 5666, *in camera*; Toth, Tr. 5749-50, *in camera*; RX01714 at 002, *in camera*; RX01718 at 002, *in camera*). In addition,

. (Seibert, Tr. 5663-65, *in camera*; Toth, Tr. 5750-51, 5760-61, *in camera*; RX01718 at 002, *in camera*; RX01683, *in camera*; RX01714 at 002, *in camera*). {
}

Response to Finding No. 1526:

Respondent's assertion that it {

} is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

{

} The fact that parties are in negotiations and thus far have been unable to reach an agreement does not provide any evidence that Exide wields power in its negotiations with Daramic. In fact, the evidence establishes that the failure of Exide and Daramic to reach a supply agreement is because Daramic wields power over Exide. (*See* CCRF 1512).

} (CCFOF 1317, 1322; *see generally*, CCFOF 1069-1078). {

} (*See* CCRF 1509).

1527. {

. (Seibert, Tr. 5732-34, *in camera*).

Response to Finding No. 1527:

Respondent's assertion that {

} is self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

{

} The fact that parties are in negotiations and thus far have been unable to reach an agreement does not provide any evidence that Exide wields power in its negotiations with Daramic. In fact, the evidence establishes that the failure of Exide and Daramic to reach a supply agreement is because Daramic wields power over Exide. (*See CCRF 1512*).

Mr. Seibert testified that all of the {

}. (PX5076 (Seibert, Dep. at 33-34), *in camera*).³ {

} (PX5076 (Seibert, Dep. at 30-31), *in camera*). As recently as Daramic's October 2, 2009 {

}: (RX01714 at

³ Mr. Seibert evaded this question at trial and had to be impeached with his deposition testimony. (Seibert, Tr. 5703-5706, *in camera*).

001-003, *in camera*). Mr. Seibert testified at trial that Daramic has not {

}. (Seibert, Tr. 5725, *in camera*).

{

}. (See

CCRF 1509). Furthermore, Respondent's allegations that {

}. (See CCRF 1524;

CCFOF 1321).

To the extent that Respondent alleges that any { offered by Daramic to Exide is an indication that the SLI market is currently acting in a competitive fashion, such allegations are contradicted by facts which show that the SLI market was much more competitive with three competitors than it currently is with only two competitors. (*See also* CCRF 1521).

Lastly, Daramic has never {

}. (CCFOF 1312 - 1315). {

(CCFOF 1312 - 1315). {

}. (Seibert, Tr. 5722, *in camera*). Mr. Seibert

could not testify as to {

} (PX5076 (Seibert, Dep. at 101), *in camera*). Mr. Seibert confirmed at trial that {

}. (Seibert, Tr. 5726, *in camera*).⁴ Mr. Seibert was unable to even {

}. (Seibert, Tr. 5725,

⁴ Mr. Seibert evaded this question at trial and had to be impeached with his deposition testimony, which he finally adopted. (Seibert, Tr. 5725-5726, *in camera*).

in camera). Mr. Seibert could not testify about {
} (Seibert, Tr. 5725, *in camera*).

Moreover, Mr. Seibert testified that {
}

(PX5076 (Seibert, Dep. at 101), *in camera*). Mr. Gillespie testified that {

} (Gillespie, Tr. 5814-5815, *in camera*).

1528. {

. (Seibert, Tr. 5645, *in camera*; Gillespie, Tr. 5851, *in camera*; RX01665, *in camera*;
RX01669 at 002, *in camera*; RX01687, *in camera*).

Response to Finding No. 1528:

The fact that the parties are in negotiations and thus far have been unable to reach an
agreement does not provide any evidence that Exide yields power in negotiations with Daramic.

{ } In October 2009, after

Daramic {

} (Gillespie, Tr. 5815, *in*

camera). According to Mr. Gillespie, Daramic's immediate response was that it {

} (Gillespie,

Tr. 5865-5866, *in camera*).

C. { }

1529. After the record was closed on June 22, 2009, {

(RX01676, *in camera*; Seibert, Tr. 5674, *in camera*; Gillespie, Tr. 5845, *in camera*).

(Seibert, Tr. 5673-74, 5676-77, *in camera*; Gillespie, Tr. 5845-46, *in camera*; RX01676, *in camera*). {

. (RX01676, *in camera*; JX-9, *in camera*; Gillespie, Tr. 5839, 5843, *in camera*). Specifically, {

}(RX01676, *in camera*).

Response to Finding No. 1529:

The contention that Exide's { } began "after the record was closed" is wrong. Exide first { } prior to the close of the record. (RX01676 at 001, *in camera*). Furthermore, Exide had previously informed Daramic of its intention to {

}. (CCFOF 1261-1262, 1267-1268). {

}. (CCFOF 1262, 1265-1266). Additionally, on June 2, 2009 Mr. Seibert

acknowledged that Daramic had received { } (CCFOF 1264; PX5076 (Seibert, Dep. at 10-11, *in camera*).

Moreover, to the extent that Respondent alleges that Exide will in fact have { }, such allegation is contradicted by the facts in the record. In fact, Daramic {

} (Gillespie, Tr. 5860, *in camera*; CCFOF 1283-1288). {

} (Gillespie, Tr. 5799, *in camera*).

Furthermore, Respondent's allegations that Exide {

} (CCFOF 1267-1268). Mr. Gillespie testified that {

} (Gillespie, Tr. 5818, 5823, 5829, *in camera*).

{

} (CCFOF 1276).

1530. {

. (RX01667 at 001, *in camera*; RX01670 at 001, *in camera*; RX01671 at 001, *in camera*; Seibert, Tr. 5675-76, *in camera*; Gillespie, Tr. 5844, *in camera*).

Response to Finding No. 1530:

The contention that Daramic was not aware of the {

}. During the first half of 2009, Exide informed Daramic of its intention to {

}.

(CCFOF 1261-1262, 1267-1268). Daramic knew precisely {

}. (RX01720 at 019, *in camera*). Moreover, on June 2,

2009 Mr. Seibert acknowledged that Daramic had received {

}. (CCFOF 1264; PX5076 (Seibert, Dep. at 10-11, *in camera*).

1531. {

. (Seibert, Tr. 5673-74, 5679, *in camera*). {

. (Gillespie, Tr. 5842-43, *in camera*).

. (Gillespie, Tr. 5843, *in camera*; Toth, Tr. 5752-53, *in camera*; RX01686, *in camera*).

Response to Finding No. 1531:

To the extent that Respondent alleges that Exide will in fact have {

}, such allegation is contradicted by the facts in the record. In fact,

Daramic {

}. (Gillespie, Tr. 5860, *in camera*; CCFOF 1283-1288). {

}. (Gillespie, Tr. 5799, *in camera*).

To the extent that Respondent contends that Exide does not {

} (Gillespie, Tr. 5859, *in camera*).

Furthermore, Respondent's allegations that Exide {

}. (CCFOF

1267-1268). Mr. Gillespie testified that {

}. (Gillespie, Tr. 5818, 5823, 5829, *in camera*).

Moreover, the statements attributed to Mr. Ulsh are being offered for the truth of the matter asserted, not for the state of mind of the one testifying to the statement, and thus, are inadmissible hearsay and should be stricken. (Order on Post Trial Briefs, dated June 16, 2009; *see also* CCRF 1519).

1532. Based on past practice,

. (Seibert, Tr. 5671, *in camera*; JX-9, *in camera*). In contrast, {

. (RX01676, *in camera*; JX-9, *in camera*; Seibert, Tr. 5673-74, *in camera*; Gillespie, Tr. 5839, *in camera*).

Response to Finding No. 1532:

{

}. (Gillespie, Tr. 5806, 5833, *in camera*).

To the extent that Respondent alleges that Exide will in fact have {
}, such allegation is contradicted by the facts in the
record. Daramic {

}. (Gillespie, Tr. 5860, *in camera*; CCFOF 1283-1288). {

}. (Gillespie, Tr. 5799, *in camera*).

Respondent's allegations that Exide {

}. (CCFOF

1267-1268). Mr. Gillespie testified that {

}. (Gillespie, Tr. 5818, 5823, 5829, *in camera*).

1533. {

camera). {

. (Seibert, Tr. 5671, *in*

camera; RX01723, *in camera*).

. (Seibert, Tr. 5672, *in*

5673, *in camera*; RX01708 (

. (Seibert, Tr.

), *in camera*.)

Response to Finding No. 1533:

{

} . (Seibert, Tr. 5672, *in camera*). {

}

(CCFOF 1260). {

} . (CCFOF 1276).

1534. {

camera). {

. (Seibert, Tr. 5678-79, 5709-10, *in*

in camera; Seibert, Tr. 5672, *in camera*).

. (RX01698,

. (RX01699, *in camera*; Seibert, Tr. 5672-73, *in camera*).

Response to Finding No. 1534:

To the extent that Respondent alleges that Exide will in fact have {

}, such allegation is contradicted by the facts in the

record. Daramic {

} . (Gillespie, Tr. 5860, *in camera*; CCFOF 1283-1288). {

}

(CCFOF 1288).

{

} . (CCFOF 1276).

1535. {

, (Seibert, Tr. 5674, *in*

camera), { } (Seibert,
Tr. 5683, *in camera*). {
}. (Seibert, Tr. 5682-83, *in camera*; RX01724, *in camera*). {
. (RX01723, *in camera*; Gillespie, Tr. 5837, *in camera*).

Response to Finding No. 1535:

To the extent that Respondent alleges that Exide will in fact have {
}, such allegation is contradicted by the facts in the record. In fact,
Daramic {
}. (Gillespie, Tr. 5860, *in camera*; CCFOF 1283-1288).

To the extent that Respondent alleges that it was unaware of the {
}. During the first half of
2009, Exide had informed Daramic of its intention to {
}. (CCFOF 1261-1262, 1267-1268).

Daramic knew precisely {
}.
(RX01720 at 019, *in camera*). Moreover, on June 2, 2009 Mr. Seibert acknowledged that
Daramic had received { } (CCFOF 1264; PX5076
(Seibert, Dep. at 10-11, *in camera*).

{
}. (CCFOF 1271). Despite this,
Daramic is not allowing Exide the option of {

}

(CCFOF 1271; RX01693 at 001, *in camera* {

}).

{

}. (CCFOF 1276).

1536. Moreover,

(Seibert, Tr. 5681-82, *in camera*). In addition, {

(Seibert, Tr. 5682-83, *in camera*; RX01724, *in camera*). {

}. (Gillespie, Tr. 5849-50, *in camera*).

{

. (RX01724, *in camera*; Seibert, Tr. 5683, *in camera*).

For example,

(RX01724, *in camera*). Similarly,

. (RX01724, *in camera*). {

}.

Response to Finding No. 1536:

The statement that Exide's {

}. The validity and

trustworthiness of Respondent's one-sided statements in the ongoing dispute over {

} should be given little or no weight. The statements are solely intended to further

Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

Mr. Gillespie testified that {

}. (Gillespie, Tr. 5849-5850, *in camera*). {

}

(RX01693 at 002, *in camera* (emphasis added)). {

}. (CCFOF 1261, 1283, 1288).

{

}. (Gillespie, Tr. 5799, 5804-5805, 58221-5823, *in camera*).

1537. {

. (Seibert, Tr. 5683, *in camera*).

.” (RX01717, *in camera*; Gillespie, Tr. 5848-49, *in camera*; Seibert, Tr. 5683-84, *in camera*). Here,

. (Seibert, Tr. 5676-77, 5732, *in camera*).

Response to Finding No. 1537:

{

} (RX01693 at 002, *in camera* (emphasis added)). This is corroborated by Mr. Gillespie’s testimony that {

}. (Gillespie, Tr. 5849-5850, *in camera*). {

}. (CCFOF 1261, 1283, 1288).

To the extent that Respondent alleges that it was unaware of the {

}. During the first half of

2009, Exide had informed Daramic of its intention to {

}. (CCFOF 1261-1262, 1267-1268).

Daramic knew precisely {

}.
}

(RX01720 at 019, *in camera*). Moreover, on June 2, 2009 Mr. Seibert acknowledged that

Daramic had received {

}. (CCFOF 1264; PX5076

(Seibert, Dep. at 10-11, *in camera*).

{

}. (CCFOF 1262). {

}. (Gillespie, Tr.

5792-5793, *in camera*). {

}. (Gillespie, Tr. 5830-5831, *in camera*).

{

}. (Gillespie, Tr. 5831-5832, *in camera*).

1538. {

* * *

}.
(Gillespie, 5842-43, *in camera*).

Response to Finding No. 1538:

To the extent that Respondent alleges that Exide will in fact have {
}, such allegation is contradicted by the facts in the
record. Daramic {

}. (Gillespie, Tr. 5860, *in camera*; CCFOF 1283-1288). {

}. (Gillespie, Tr. 5799, *in camera*).

Respondent's allegation that Exide {

}. (CCFOF 1267-

1268). Mr. Gillespie testified that {

}. (Gillespie, Tr. 5818, 5823, 5829, *in camera*).

{

}. (CCFOF 1276).

1539. {

in camera).

. (Seibert, Tr. 5680-81,

Response to Finding No. 1539:

{

}. (Gillespie, Tr. 5860, *in*

camera; PX5076 (Seibert, Dep. at 38, *in camera*); CCFOF 1283-1288). {

}. (Gillespie, Tr.

5822, *in camera*; *see also* Gillespie, Tr. 5803, *in camera*). {

}. (Gillespie, Tr. 5799, *in camera*; Seibert, Tr. 5706-5707, *in camera*).

1540. {

. (Seibert, Tr. 5677-78, *in camera*). {

}. (RX01693, *in camera*; Seibert, Tr. 5679-80, *in camera*).

{

.” (Gillespie, Tr. 5862, *in camera*). Yet

. (Gillespie, Tr. 5846, *in camera*).

{

}.
}

(Gillespie, Tr. 5849, *in camera*). In any event,

. (Seibert, Tr. 5672, *in camera*).

Response to Finding No. 1540:

The statement in the first sentence attributed to Mr. Gillespie is being offered for the truth of the matter asserted, not for the state of mind of the one testifying to the statement, and thus, is inadmissible hearsay and should be stricken. (Order on Post Trial Briefs, dated June 16, 2009; *see also* CCRF 1519). Mr. Seibert's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Seibert, Tr. 5677-5678, *in camera*). Mr. Gillespie's testimony cited by Respondent with respect to his discussion with Daramic is hearsay and cannot be offered for the truth of the matter asserted. (Gillespie, Tr. 5849, *in camera*).

{

} (Gillespie, Tr. 5861, *in camera*).

Contrary to Respondent's assertion, Mr. Gillespie did not {

}. (CCFOF 1267, 1272). {

}.

(Gillespie, Tr. 5792-5793, *in camera*).

{

}. (Gillespie, Tr. 5860, *in camera*;

CCFOF 1283-1288). {

}. .

(Gillespie, Tr. 5799, *in camera*; Seibert, Tr. 5706-5707, *in camera*).

1541. {

. (Seibert, Tr. 5684-85, *in camera*;

Gillespie, Tr. 5840-41, *in camera*; RX01681, *in camera*).

. (Gillespie, Tr. 5840,

in camera).

.” (RX01681, *in camera*). {

. (Gillespie, Tr. 5839, *in camera*). Again, Gillespie’s
testimony is not credible.

Response to Finding No. 1541:

{

}. (CCFOF 1283). {

}. (CCFOF 1286). {

}. (CCFOF 1283, 1285-1286). {

}. .

(CCFOF 1328-1330). {

}. (Gillespie, Tr. 5822, *in camera*; see also Gillespie, Tr. 5803, *in camera*).

{

}.

(RX01681, *in camera*).

Contrary to Respondent's spurious allegation, there is nothing inconsistent between {

} (Gillespie, Tr. 5839, *in camera*

(emphasis added)). It is simply disingenuous for Respondent to pull a few words from Mr. Gillespie's testimony out of context, and then have the audacity to use the redacted quote to attack his credibility.

1542. {

. (Gillespie, Tr. 5836-37, *in camera*).

. (Gillespie, Tr. 5843; RX01726).

Response to Finding No. 1542:

This finding is outside of the scope of the proffered facts, because it is not evidence that supports any of the four proffers. In fact, Mr. Seibert clearly testified that {

} (Seibert, Tr. 5701, *in camera*; see also CCFOF 1258).

{

} (Gillespie, Tr. 5822, *in camera*). {

} (Gillespie, Tr. 5836, *in camera*). {

} that Exide's Industrial Energy segment informed investors as recently as November 5, 2009 that it believes that "a slow recovery is underway." (RX01726 at 006). {

} (Gillespie, Tr. 5800, 5832, *in camera*). {

} (Gillespie, Tr. 5866-5867, *in camera*).

{

} (Gillespie, Tr. 5821-5822, 5867, *in camera*). {

} (Gillespie, Tr. 5805, 5822-5823, *in camera*). {

}. (CCFOF

1341-1342).

{

}. (CCFOF 1276).

1543. {

Response to Finding No. 1543:

Respondent's unsupported allegations are entirely without basis. {

}. (CCFOF 1261-1266). {

}. (CCFOF 1261-1262). {

}.

(Gillespie, Tr. 5792, 5860, *in camera*; CCFOF 1262). {

}. (CCFOF 1264). {

}. (RX01676 at 001,

in camera; CCFOF 1265). Furthermore, Daramic knew precisely {

}. (RX01720 at 019, *in camera*).

{

} (Gillespie, Tr. 5832, *in camera*). {

}. (Gillespie, Tr. 5832, *in*

camera). {

}.

(Gillespie, Tr. 5832, *in camera*). {

}. (Gillespie, Tr. 5800, 5832, *in camera*).

{

}. (Gillespie, Tr. 5813, 5832, *in camera*; CCFOF 1267-1268). {

} (RX01679 at 002, *in camera*).

{

}. (See CCRF 1604).

1544. {

. (RX01679, *in camera*; RX01693, *in camera*).

Response to Finding No. 1544:

{

}.
}

(RX01720 at 019, *in camera*).

{

}.
}

(Gillespie, Tr. 5805, *in camera*). {

}. (CCFOF 1267-1270). {

}. (Gillespie, Tr. 5859, *in camera*). According to Mr.

Gillespie, {

} (Gillespie, Tr. 5859, *in camera*).

{

}. (Seibert, Tr. 5672-5673, *in camera*; CCFOF 1288).

1545. {

005, *in camera*).

.” (RX01720 at

Response to Finding No. 1545:

{

}. (RX01720 at 019, *in camera*).

1546. {

. (RX01693, *in camera*;
RX01680, *in camera*; RX01685, *in camera*; Seibert, Tr. 5681, 5684, *in camera*).

{

. (Seibert, Tr. 5734-35, *in camera*). Further, the Court finds that

Response to Finding No. 1546:

{

}.

(RX01720 at 019, *in camera*).

{

}. (CCFOF

1273). { ,

}. (CCFOF 1273). {

}. (CCFOF 1264, 1267-1268, 1270).

{

}. (CCFOF 1337-1339). {

}. (Gillespie, Tr. 5813, *in camera*). {

}.

(Gillespie, Tr. 5813, 5830-5833, *in camera*).

1547. {

. (Seibert, Tr. 5684, 5707, 5715, 5723, *in camera*; RX01685, *in camera*). {

. (Seibert, Tr. 5681, 5722, *in camera*).

Response to Finding No. 1547:

Mr. Seibert's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Seibert, Tr. 5681-5722, *in camera*). {

}

(PX5075 (Toth, Dep. at 28, *in camera* ({

}); CCFOF 1330).

{

}. (Seibert, Tr. 5681, 5722, *in camera*).

1548. {

. (Gillespie, Tr. 5807, 5843-44, *in camera*). Gillespie's testimony here, and elsewhere, is not credible. According to Exide's second quarter results, Exide's sales of transportation and industrial batteries are down 29% and 26%, respectively. (Gillespie, Tr. 5843-44; RX01726). Moreover, Exide's free cash has declined 129% from last year, which Gillespie does not dispute. (Gillespie, Tr. 5844).

. (Gillespie, Tr. 5862, *in camera*). This Court does not find Gillespie to be a credible witness.

Response to Finding No. 1548:

Respondent's attempt to besmirch Mr. Gillespie's credibility by arguing that Exide is a financially troubled firm is simply not accurate. {

}. (Gillespie, Tr. 5843, 5861, *in camera*). All of Mr. Gillespie's statements about Exide's financial ability are true and are corroborated by Exide's fiscal second quarter results which showed that that Exide's cash position actually increased by 57% in the fiscal second quarter from \$69.5 million to \$109.2 million, and that gross margins increased from 17.7% to 20.6% versus the prior year. (RX01726 at 005-006, 009). {

}. (Gillespie, Tr. 5844, *in camera*; RX01726 at 005-006, 009).

Given that Exide's cash position is actually much better than it has been in the recent past, Respondent is left trying to use sleight of hand to attack Mr. Gillespie's credibility by citing to an unusual accounting term known as Free Cash Flow. However, even Respondent's citation to free cash flow falls flat, as Exide's second quarter results showed that Exide actually "generated positive free cash flow" in the quarter, while at the same time managing to fund capital investments and restructuring to the tune of \$70.7 million. (RX01726 at 004, 006). Finally, Respondent's last sentence is a legal conclusion unsupported by the evidence.

D. {

1549. {

camera). {

camera). {

in camera; RX01704, *in camera*).

Accordingly, {

." (RX01704, *in camera*; Gillespie, Tr. 5838, *in*

. (Gillespie, Tr. 5838, *in*

). (Toth, Tr. 5750-51,

. (Gillespie, Tr. 5838-39, *in camera*).

Response to Finding No. 1549:

{

}. (RX01687 at

002, *in camera*). {

}. (RX01668 at

002, *in camera* ({

}); RX01669 at 002, *in camera* ({

}). {

}. (Gillespie, Tr. 5810, 5825-

5826, 5829, *in camera*; *see also* CCFOF 1256-1257).

{

}. (Gillespie, Tr. 5838, *in camera*). {

}. (Gillespie, Tr. 5838, 5868, *in camera*). {

}. {

{

}. (CCFOF 1317).

The statements attributed to Mr. Ulsh are being offered for the truth of the matter asserted, not for the state of mind of the one testifying to the statement, and thus, are inadmissible hearsay and should be stricken. (Order on Post Trial Briefs, dated June 16, 2009; *see also* CCRF 1519).

Respondent's last sentence is unsupported by any evidence and is contradicted by testimony and documentary evidence.

1550. Previously, Respondent provided evidence demonstrating that even in Complaint Counsel's SLI market in North America, {
(RFOF 927). {

(RX01668, *in camera*). {

Response to Finding No. 1550:

The first and last sentence of this finding are outside of the scope of the proffered facts as they address issues that are unrelated to the proffered facts. {

{ (CCRF 927).

{

}. (See CCRF 1549 above).

{

}.

(CCFOF 1262-1265, Gillespie, Tr. 5862, *in camera*). {

}

1551. {

Response to Finding No. 1551:

Respondent's finding of fact is a legal conclusion unsupported by the evidence.

{

}. (Hall, Tr.

2748, *in camera*). {

}. (See CCRF

1549 above).

{

}.
}

{

}. (RX00072 at 054-

061, *in camera*). {

}

(RX00072 at 056, *in camera*). In comparison, the best { } offered to Exide by Daramic for

{

}. (RX01668 at 002, *in camera*; Seibert, Tr. 5656, *in camera*). {

}. (RX00072 at 056, *in camera*; RX01668 at 002; Seibert, Tr. 5656, *in camera*).

1552. Similarly,

camera). {

. (RX01687 at 002, *in*

Response to Finding No. 1552:

{

}. (Gillespie, Tr. 5829, *in camera*; see also CCFOF

279, 283-284, 462, 471, 788-789). {

}. (Gillespie, Tr. 5823, *in camera*). {

}.
}

{

}. (Gillespie, Tr. 5825-5826, *in camera*).

{

}. (Gillespie, Tr. 5826-5827, *in*

camera). {

}. (Gillespie, Tr. 5829, *in camera*).

{

}. (Gillespie, Tr. 5828, *in camera*).

{

} (Gillespie, Tr. 5818, *in*

camera). {

} (Gillespie, Tr. 5829-5830, *in camera*). {

}. (Gillespie, Tr. 5829, *in camera*). {

}. (CCFOF 132-1324; 1281-1282, 1315). {

}. (Gillespie, Tr. 5869-5871, *in camera*; CCFOF 1315).

{

}. (CCFOF 1334-1336, 1341-1342).

1553. Based on the foregoing, including specifically

Response to Finding No. 1553:

Respondent's allegations are legal conclusions, unsupported by the evidence. (See CCRF 1549-1552 above).

E. {Toth Reaches Out to Exide's CEO}

1554. Respondent's Chief Executive Officer, Robert Toth ("Toth"), testified at the hearing on November 12, 2009. Toth's testimony went uncontradicted by Complaint Counsel. This Court finds Toth to be a credible witness and credits his testimony in this hearing.

Response to Finding No. 1554:

This finding states a legal conclusion. Moreover, Respondent does not state the pages of Mr. Toth's testimony that it claims "went uncontradicted." Despite these shortcomings, Mr.

Toth was contradicted by Mr. Gillespie regarding Exide's willingness to {

. Mr. Toth testified that {

} (Toth, Tr. 5762, *in camera*). However, Mr. Gillespie testified that {

}. (CCFOF

1281). In October 2009, after Daramic {

}. (Gillespie, Tr. 5815, *in camera*). A purchase order is a "firm commitment" and "by definition" is also a contract. (Gillespie, Tr. 5815, 5865-5866, *in camera*). Mr. Gillespie testified that Exide {

}. (Gillespie, Tr.

5815-5816, 5865-5866, *in camera*).

In addition, Complaint Counsel's responses to Respondent's proposed findings 1589 and 1601 also provide evidence undermines Mr. Toth's credibility.

1555. {

. (Toth, Tr. 5737-38, 5776, *in camera*).

{

. (Toth, Tr. 5777, *in camera*).

Response to Finding No. 1555:

This finding contradicts Respondent's third proffer. According to the finding, it was {

}.
}

In addition, this finding's suggestion that {

} is

contradicted by the evidence. Polypore, through its corporate finance personnel and its Daramic business unit, began {

}. (PX5075 (Toth, Dep. at 8-9), *in camera*; Toth,

Tr. 5775-5777, *in camera*). Mr. Toth, Polypore's CEO recalled {

}. (PX5075 (Toth, Dep. at 9), *in camera*; Toth,

Tr. 5775-5777, *in camera*). Likewise, the finding's suggestion that Respondent's decision

{

}. (Seibert, Tr. 5718-5719, *in camera*). When asked what the {

} (PX5076, Seibert Dep. at 84-85, *in*

camera).

1556. Around the same time,

. (Toth, Tr. 5737-39,

5741, *in camera*; Seibert, Tr. 5645, *in camera*).

Response to Finding No. 1556:

This finding reflects self-serving testimony regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

Moreover, {

} (CCFOF 1074).

{

} (CCFOF 1069-

1078). {

} (CCFOF 1317, 1322).

a. {

-

1557. {

. (Toth, Tr. 5738-39, *in camera*).

Response to Finding No. 1557:

This finding reflects self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

1558. {

. (Toth, Tr. 5739, *in camera*). From the very beginning, {

. (Toth, Tr. 5739, *in camera*).

Response to Finding No. 1558:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5739, *in camera*).

Mr. Toth lied to Mr. Gillespie when he told him that the {

} . In

fact, Polypore intended on {

}.

(RX01692 at 002, *in camera*). Moreover, {

} . (CCFOF 1292). Respondent

was considering {

} . (CCFOF 1293-1295). Daramic had only {

} . (CCFOF 1298). The testimonial and documentary evidence proves that Respondent was going to {

} . (CCFOF 1299-1302,

1304-1306). In fact, even under the scenario in which {

} . (RX01692 at 002, *in camera*; *see also* CCFOF 1306).

In addition, this finding's contention that Daramic was {

} . (CCRF 421-428).

1559. At that time,
camera).

. (Toth, Tr. 5739-40, *in*

Response to Finding No. 1559:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5739-5740, *in camera*).

This finding contradicts Respondent's third proffer that {

}. As the finding makes clear, {

}. (See CCRF 1558). The finding's self-serving testimonial evidence that {

} is irrelevant to the proffers. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide. The decision to {

}. (CCFOF 1297-1298).

1560. {

. (Toth, Tr. 5739-40, *in camera*).

Response to Finding No. 1560:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5739-40, *in camera*).

This finding provides the self-serving testimonial evidence of Mr. Toth regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Mr. Toth's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

In addition, the finding's statement that {
 } are being offered for the truth of the matter asserted, not for the state of mind of Mr. Toth, and thus, are inadmissible hearsay and should be stricken. (Order on Post Trial Briefs, dated June 16, 2009; *see also* CCRF 1566). Notwithstanding Respondent's attempt to use Mr. Gillespie's statement in this finding for the truth of the matter asserted after agreeing that it was only being "offered for the state of mind of Mr. Toth," Respondent misstates Mr. Toth's testimony. (Toth, Tr. 5740, *in camera*). Mr. Toth {

}

(Toth, Tr. 5740, *in camera*). Mr. Gillespie is responsible for Exide's separator purchases, not Mr. Ulsh. (Gillespie Tr. 5788-5789, *in camera*).

1561. {

. (RX01685, *in camera*).

Response to Finding No. 1561:

This finding is outside the scope of the proffered facts because it is not evidence that supports any of the four proffers. Specifically, it does not support the allegation that Exide decided to move { } of its PE separator purchases for { } to another supplier. Nor does it support the allegation that it appears unlikely that Daramic {

}. (Toth, Tr. 5742, *in camera*).

Response to Finding No. 1563:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5741, 5742, *in camera*).

The finding provides self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

Moreover, Respondent's statement that {
} is not supported by the evidence. There is simply no evidence to support Respondent's suggestion in this proposed finding and in RFF1560 that {

}. (Toth, Tr. 5740-5742, *in camera*; see also CCRF 1560).

1564. {

. (Toth, Tr. 5742, 5744 *in camera*). {

Response to Finding No. 1564:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5742, 5744, *in camera*).

This finding provides only self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

Moreover, Respondent's conclusion that {

} First, there is simply no evidence regarding the reason for the alleged {

}.⁵ If, in fact, there was {

} could have been for a myriad of reasons, none of which have anything to do with {
}. Perhaps there was a family emergency. The record is silent. If this fact was central to Respondent's proffers, Respondent should have deposed Mr. Ulsh, or called Mr. Ulsh to testify. But rather than learn the truth, Respondent prefers to make wild, unsupported conclusions. Notwithstanding Respondent's spurious allegations, {

}. (Toth, Tr. 5744).

Second, the evidence establishes that {

}. (See e.g., Gillespie, Tr. 5822-5823 {

⁵ Mr. Toth testified that {
finding, in an attempt to demean {

}. (Toth, Tr. 5742, *in camera*). However, Respondent's
}

};

CCFOF 1317 (Daramic has repeatedly refused to {

}); CCFOF

1059 {

}; CCFOF 1064 {

} (PX1050, *in camera*; Bregman Tr. 2901-2902, *in*

camera)); CCFOF 1067 (Exide believes that negotiations with Daramic are {

}. (Gillespie, Tr. 3002, *in camera*). In fact, while there is no evidence that {

}. (See generally, CCFOF

1079-1088; see also (PX0265 at 004, *in camera*; PX0194 at 022, *in camera* {(

}).

1565. At that time,

. (Toth, Tr. 5742-43, *in camera*; RX01712 at 001, *in camera*).

Response to Finding No. 1565:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5742-5743, *in camera*).

This finding provides only self-serving testimonial and documentary evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

In addition, Respondent's citation to October 23, 2009 redacted email as evidence to support what Mr. Toth said to { } should be viewed with a large degree of skepticism. The October 23, 2009 redacted email from Mr. Toth to {

}.
}

(RX01681, *in camera*). It is obvious that RX01712, Mr. Toth's self-serving redacted email that contemplates a {

}.
}

1566. {

. (Toth, Tr. 5742-43, *in camera*).

(Toth, Tr. 5744, *in camera*).

}.
}

Response to Finding No. 1566:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5742-5743, 5744, *in camera*).

This finding provides only self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

In addition, the finding's statement that Mr. Ulsh and {

} are being offered for the truth of the matter asserted, not for the state of mind of Mr. Toth, and thus, are inadmissible hearsay and should be stricken. (Order on Post Trial Briefs, dated June 16, 2009; *see* CCRF 1519).

Even if one were to assume the alleged hearsay statements were true, Respondent obviously ignored the admonition, and {

}. (CCFOF 1287, 1338, 1335-1336).

1567. {

. (Toth, Tr. 5743-44, *in camera*).

Response to Finding No. 1567:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5743-5744, *in camera*).

This finding contradicts Respondent's third proffer that {

}. As the finding makes clear, Daramic had {

} . (See CCRF 1558). The finding's self-serving testimonial evidence that {
} is evidence that the
{

} . (CCFOF 1297-1298). Likewise, the validity and trustworthiness of Respondent's one-sided statement that {
} should be given little or no weight since it related to ongoing negotiations. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

1568. {
} . (RX01704, *in camera*).

Response to Finding No. 1568:

The finding's statement of what Mr. Ulsh agreed to is being offered for the truth of the matter asserted, not for the state of mind of Mr. Toth, and thus, are inadmissible hearsay and should be stricken. (Order on Post Trial Briefs, dated June 16, 2009; CCRF 1566).

b. {
}

1569. {
} . (Toth, Tr. 5745, *in camera*; RX01703, *in camera*).

Response to Finding No. 1569:

This finding contradicts Respondent's third proffer that {
} regarding its separator purchases from Daramic. The three
{

}

(RX01703, *in camera*). According to the finding, Mr. Toth met {

}. (RX01703, *in camera*).

{

}. (CCFOF 1292). Respondent was considering {

}. (CCFOF

1293-1295). The testimonial and documentary evidence proves that Respondent was going to

{

}. (CCFOF 1299-1302; 1304-1306). In fact, even

under the scenario in which {

}. (CCFOF 1306).

Moreover, the agenda states that {

}. (RX01703, *in camera*). Mr.

Toth conceded that on the stand. (Toth, Tr. 5777-5778, *in camera*). Yet, Respondent has told

this Court {

}. (RFOF 421; RFOF 425 - RFOF 426).

Obviously, Respondent's earlier findings are incorrect. Daramic's contemplation of {

} is strong evidence that, but for the merger, Microporous

would have been viable and would it would have been an aggressive competitor taking share

from Daramic.

1570. {

} . (Toth, Tr. 5745-46, *in camera*).

Response to Finding No. 1570:

See Response to Finding No. 1569, above.

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5745-5746, *in camera*).

1571. {

. (Toth, Tr. 5745-46, *in camera*). As Toth explained:

Response to Finding No. 1571:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5745-5746, *in camera*).

This finding's statement that Daramic desired to retain a {

} . {

} . (CCFOF 1312-1313, 1315-1318, 1320, 1322). {

} . (CCFOF 1317).

In fact, Mr. Toth's testimony was that {

} (Toth, Tr. 5746, *in camera*. Emphasis added).

But, as noted above, Daramic did not just seek a {

} . Moreover, {

} (RX01867 at 002, *in camera*, see also CCFOF 1279-1280). Thus, for Mr. Toth to testify that he was willing to accept a { } is disingenuous because { } (CCFOF 1324).

1572. { } (Toth, Tr. 5746-47, *in camera*).

Response to Finding No. 1572:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5746-5747, *in camera*).

This finding is outside the scope of the proffered facts because it is not evidence that supports any of the four proffers. Specifically, it does not support the allegation that Exide decided to move { } of its PE separator purchases for { } to another supplier, or that Exide will in fact have { } worth of separators in storage. Nor, does it support the allegation that it appears unlikely that Daramic will retain any small amount of business from Exide in { }. It also does not support the allegation that Daramic decided to { } because of Exide's actions.

To the extent this finding is intended to suggest that the Daramic business is { } (CCFOF 6; PX2160 at 83). Moreover, Daramic's financial statements provide strong evidence that the business is profitable. (CCRF 278).

1573. { } (Toth, Tr. 5746-47, *in camera*).

Response to Finding No. 1573:

This finding is outside the scope of the proffered facts because it is not evidence that supports any of the four proffers. Specifically, it does not support the allegation that Exide decided to move { } of its PE separator purchases for { } to another supplier, or that Exide will in fact have { } worth of separators in storage. Nor, does it support the allegation that it appears unlikely that Daramic will retain any small amount of business from Exide in { }. It also does not support the allegation that Daramic decided to { } because of Exide's actions.

This finding provides only self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide.

1574. {

. (Toth, Tr. 5746-47, *in camera*).

Response to Finding No. 1574:

See Response to Finding No. 1571. The finding's statement that Daramic sought to retain { }.

(CCFOF 1312-1313, 1315-1318, 1320, 1322). Daramic has repeatedly refused to {

}. (CCFOF 1317).

Moreover, if Daramic sought to retain

} (CCFOF 1281, 1315). {

} (Gillespie, Tr.

5815, *in camera*). A purchase order is a “firm commitment” and “by definition” is also a contract. (Gillespie, Tr. 5815, 5865-5866, *in camera*). Mr. Gillespie testified that Exide {

} (Gillespie, Tr. 5815-5816, *in camera*).

1575. Consequently, {

. (Toth, Tr. 5746, *in camera*). As Toth elaborated at the November 12, 2009 hearing, “

.” (Toth, Tr. 5746, *in camera*)(emphasis added).

Response to Finding No. 1575:

The finding’s statement that {

} is self-serving testimonial

evidence regarding contentious negotiations between Daramic and Exide and is not supported by the evidence. First, Daramic’s {

} Exide’s {

} (RX01665 at 004, *in camera*). But,

} (RX01669 at 002, *in camera*). In contrast,

{

}.
}

(RX00072 at 56, *in camera*). {

}.⁶ (RX00072 at 056, *in camera*; RX01668 at 002; Seibert, Tr. 5656, *in camera*).

Second, Daramic was never willing to {

}. (RX01669 at 002, *in camera* (Exide proposed {

}); Gillespie, Tr. 5808-5810, *in camera*; see

also CCFOF 1321). Third, Daramic's {

}. (Gillespie, Tr. 5807-5808, *in*

camera; see *also* CCFOF 1326-1327). Fourth, all of Daramic's proposed {

}. (CCFOF 1316-1322).

In addition to the above, Daramic offered other {

⁶ All three potential SLI suppliers in North America (Daramic, Entek and Microporous) were actively competing for {
}. (Gilchrist, Tr. 423, 466-467, *in camera*). During this same time period, {
(Roe, Tr. 1685-1686, *in camera*; Hall, Tr. 2884, *in camera*). {
}. (RX00072, *in camera*).

} (RX01665 at 002, *in camera*; RX1250 at 001, *in camera*; RX01668 at 002, *in camera*). {

} (RX01668 at 002, *in camera*; RX01687, *in camera*). Second, Exide sought to have {

} (RX01665 at 002, *in camera*). Daramic refused to agree to this {

} (RX01668 at 002, *in camera*). Third, Exide sought a {

} (RX01668 at 002, *in camera*).

Moreover, { }

{

} (RX01714 at 003, *in camera*; RX01720 at 039, *in camera*). Similarly, Daramic never agreed to Exide's request for {

} (RX1714, *in camera*). In fact, contrary to Mr. Toth's testimony that Daramic offered Exide {

} (RX1714, *in camera*).

In addition, most of the contractual terms that Daramic has offered to Exide are {

(Gillespie, Tr. 5864-5865, *in camera*).

} (RX01668 at 002, *in camera*; RX01720, *in camera*;
RX01714 at 003-004, *in camera*). The North American Supply Agreement is the same {

}. (CCFOF 1270, 1326-1327).

Regarding Mr. Toth's testimony relating to his desire to {

}. (See CCRF 1571).

1576. {

(Toth, Tr. 5772, *in camera*).

. (Toth, Tr. 5747, *in camera*).

Response to Finding No. 1576:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5747, 5772, *in camera*).

This finding contradicts Respondent's third proffer that Daramic {
}. (See
also CCRF 1555, 1558-1559, 1567, 1569). The {

} (See
also RX01703, *in camera* (handwritten meeting agenda)). The finding does not include a

scenario whereby {

} (CCFOF 1292). The testimonial and documentary evidence proves that Respondent was going to {

} (CCFOF 1299-1302, 1304-1306). In fact, even under the scenario in which {
}. (CCFOF 1306).

In addition, the finding states that one of the {

} Yet, Respondent has told this Court that as a standalone entity, Microporous would {

} (RFOF 421, 425-426). Today, Respondent concedes that {
}. (Toth, Tr. 5777-5778, *in camera*; RX01703, *in camera*). Obviously, Respondent's earlier findings are incorrect. {

} is strong evidence that, but for the merger, Microporous would have been viable and it would have been an aggressive competitor taking share from Daramic.

1577. First, {

(Toth, Tr. 5748, *in camera*).

Response to Finding No. 1577:

Complaint Counsel has no specific response.

1578. { . (RX01706, *in camera*; Toth, Tr. 5747-49, *in camera*).

Response to Finding No. 1578:

Complaint Counsel has no specific response.

1579. { . (Toth, Tr. 5747, *in camera*).

Response to Finding No. 1579:

Complaint Counsel has no specific response.

1580. { . (Toth, Tr. 5780, *in camera*).

Response to Finding No. 1580:

Complaint Counsel notes that this finding's contention that switching production from { } is inconsistent with Respondent's previous findings that { } (See RFOF 180 and CCRF 180).

1581. { . (Toth, Tr. 5747-48, *in camera*).

Response to Finding No. 1581:

This finding contradicts Respondent's third proffer that { } (See also CCRF 1555, 1558-1559, 1567, 1569). Even with {

}. (CCFOF 1298). The testimonial and documentary evidence proves that Respondent was going to {

}. (CCFOF 1299-1302, 1304-1306). In fact, even under the scenario in which {

}. (CCFOF 1306).

1582. Finally, {

(Toth, Tr. 5748-49, *in camera*).

}.
}

Response to Finding No. 1582:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5748-5749, *in camera*).

This finding contradicts Respondent's third proffer that {

}. As the finding makes clear, Daramic had {

}. (See also CCRF 1555, 1558-1559, 1567, 1569, 1581). The finding's self-serving testimonial evidence that {

} is irrelevant to the proffers. The validity and trustworthiness of Respondent's one-sided statements in ongoing negotiations should be given little or no weight. The statements are solely intended to further Respondent's negotiation and litigation posture in its unresolved dispute with Exide. The decision to {

} (CCFOF

1297-1298).

1583. {

. (Toth, Tr. 5749, *in camera*). Clearly, {

. (PX5075 at 008, *in camera*).

Response to Finding No. 1583:

See Response to Finding No. 1582, above.

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5749, *in camera*; PX5075 (Toth, Dep. at 39)).

1584. {

5749-50, *in camera*).

. (Toth, Tr.

Response to Finding No. 1584:

Mr. Toth's testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5749-5750, *in camera*).

This finding's contention that Daramic {

} is contradicted by record

evidence. First, Mr. Seibert admitted {

} (PX5076 (Seibert, Dep. at 81), *in camera*). Yet, there is no evidence that the {

} Second, {

} (Gillespie, Tr. 5815, *in camera*).

A purchase order is a “firm commitment” and “by definition” is also a contract. (Gillespie, Tr. 5815, 5865-5866, *in camera*). Mr. Gillespie testified that Exide {

}. (Gillespie, Tr. 5815-5816, *in camera*). This should have allowed Daramic to {

}. (*See also* CCRF 1555, 1558-1559, 1567, 1569, 1581). The testimonial and documentary evidence proves that Respondent was going to {

}. (CCFOF 1299-1302, 1304-1306). In fact, even under the scenario in which {

(CCFOF 1306).

1585. {

. (Toth, Tr. 5749-50, *in camera*).

. (Toth, Tr. 5749-50, *in camera*). {

Response to Finding No. 1585:

Mr. Toth’s testimony cited by Respondent with respect to his discussion with Exide is hearsay and cannot be offered for the truth of the matter asserted. (Toth, Tr. 5749-5750, *in camera*).

This finding provides only self-serving testimonial evidence regarding contentious negotiations between Daramic and Exide. The validity and trustworthiness of Respondent’s one-sided statements in ongoing negotiations should be given little or no weight. The statements are

