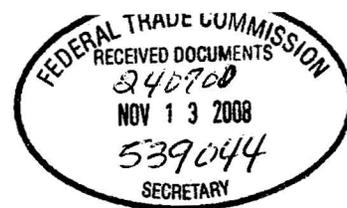


ORIGINAL



**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

**Docket No. 9327
PUBLIC DOCUMENT**

**RESPONDENT'S RESPONSE TO COMPLAINT COUNSEL'S
CROSS-MOTION TO COMPEL RESPONDENT TO COMPLY WITH
FEDERAL TRADE COMMISSION RULES OF PRACTICE § 3.33
SEEKING DISCOVERY THROUGH DEPOSITION**

Pursuant to Federal Trade Commission Rules of Practice ("Rules"), Section 3.38(a), Respondent responds to Complaint Counsel's Cross-Motion to Compel Discovery Through Deposition which was filed at the end of the day on November 6, 2008. Complaint Counsel's Motion to Compel is unnecessary, which Complaint Counsel knows from conversations with Respondent's counsel. Because of several misstatements and mischaracterizations, Respondent is constrained to respond as follows.

Immediately at the conclusion of the pre-hearing scheduling conference on October 22, 2008, Complaint Counsel handed Respondent the eight deposition notices (and its other written discovery). All of the eight notices were for Washington, D.C., and two of them were scheduled eight days later on October 30, 2008. Two days later, after time to review the notices and written discovery, Respondent initiated a telephone conversation with Complaint Counsel to say that the depositions noticed for October 30, 2008, would have to be discussed, that Respondent would not be producing those deponents on that date, and that further conversation would be required to discuss scheduling and the written discovery. A second call was scheduled for October 29, 2008. In the course of that call, Respondent set out the objections that it had to the deposition notices (and the written discovery) and informed Complaint Counsel that by the end of the day

Respondent would send Complaint Counsel a letter stating those objections. Two of the several objections stated were that the depositions must occur in Charlotte and be limited to seven hours. Shortly thereafter, Complaint Counsel¹ called Respondent to inform Respondent that Complaint Counsel agreed that the depositions of Polypore employees would occur in Charlotte and that all fact witness depositions would be limited to seven hours. Respondent thereafter sent a letter to Complaint Counsel expressing its objections to the depositions and acknowledging the agreements on location and the time limitation for each deposition (and the written discovery) (a copy is attached as Exhibit A). After receiving Complaint Counsel's written response, Respondent filed its motion for protective order on November 3, 2008.

Counsel for the parties scheduled a conference call for November 5, 2008, to discuss the scheduling of the three proposed deponents who had not been previously examined in the investigational hearings conducted by the Federal Trade Commission. In that call, Respondent proposed dates for two of the deponents to which Complaint Counsel agreed upon. Respondent then informed Complaint Counsel that Mr. Bob Toth, CEO of Respondent, had been and was out of the country and because of that, Respondent was not ready to propose a date for his deposition. Complaint Counsel wanted a date then. Respondent reminded Complaint Counsel that Mr. Toth is Respondent's CEO, is very busy and that Respondent would be proposing a date as soon as practical after his return to this country. As CEO, Mr. Toth has not only had to deal with the FTC investigation, including making four trips to Washington to speak with the FTC during the investigation, and the defense of the claims made by the FTC, but also, a strike at one of its domestic plants, a strike at an overseas plant, the likely loss of a major customer and the

¹ This call included Robby Robertson, who had not been on the earlier call, and who was not on the next call on November 5, 2008. Mr. Robertson did not sign the motion to compel.

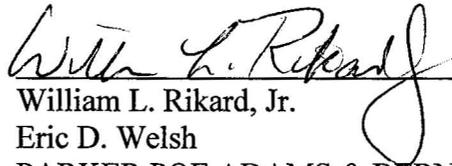
ongoing operations of Polypore and its Celgard and Membrana divisions. Accordingly, scheduling Mr. Toth's deposition is more complicated than other personnel, particularly given the heavy travel schedule required by the demands of his position. **At no time, has Respondent refused to produce Mr. Toth for a deposition.** Complaint Counsel was told specifically that upon Mr. Toth's return, a date or dates would be obtained and proposed for his deposition. In fact, on November 11, 2008, Respondent proposed a specific date for Mr. Toth's deposition and is waiting for a response from Complaint Counsel. It is apparently the product of imagination that Mr. Toth, "after receiving a notice of deposition in this matter, simply left the country and is totally incommunicado according to counsel."²

With respect to the remaining people upon whom Complaint Counsel has issued notices of deposition, if the Court determines that their depositions should proceed, Respondent will take necessary action to schedule those depositions at mutually convenient times for Respondent and Complaint Counsel. Respondent is certain that if this Court determines to permit the remaining depositions to go forward (whether limited or otherwise), Respondent and Complaint Counsel will be able to agree upon a mutually acceptable schedule of depositions.

² Similarly, Complaint Counsel's contention that Respondent is trying to delay matters is misplaced. Delay is occurring as the result of Complaint Counsel's failure to turn over third-party discovery. Rather than initiate efforts immediately after the scheduling hearing in order to produce those materials promptly, Complaint Counsel delayed and only began to turn over materials beginning November 6, 2008. Since then, Complaint Counsel has sent two additional submissions, the latest only arriving on November 11, 2008. Respondent still does not know whether Complaint Counsel has turned over all materials as requested.

Dated: November 12, 2008

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) 334-4706

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 November 13, 2008, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Response to Complaint Counsel's Cross-Motion to Compel Respondent to Comply with Federal Trade Commission Rules of Practice § 3.33 Seeking Discovery Through Deposition***, 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

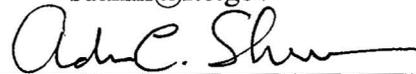
I hereby certify that on November 12, 2008, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Response to Complaint Counsel's Cross-Motion to Compel Respondent to Comply with Federal Trade Commission Rules of Practice § 3.33 Seeking Discovery Through Deposition*** 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 November 12, 2008, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Response to Complaint Counsel's Cross-Motion to Compel Respondent to Comply with Federal Trade Commission Rules of Practice § 3.33 Seeking Discovery Through Deposition*** 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



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

EXHIBIT A

PARKER POE

PARKER POE ADAMS & BERNSTEIN LLP

Attorneys and Counselors at Law

William L. Rikard, Jr.

Partner

Telephone: 704.335.9011

Direct Fax: 704.335.9689

williamrikard@parkerpoe.com

Three Wachovia Center

401 South Tryon Street

Suite 3000

Charlotte, NC 28202-1942

Telephone 704.372.9000

Fax 704.334.4706

www.parkerpoe.com

October 29, 2008

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

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

Steven Dahm, Esq.
Federal Trade Commission, Room 6133
601 New Jersey Ave., NW
Washington, DC 20001
sdahm@ftc.gov

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

Dear Robby and Steve:

As we discussed over the telephone this afternoon, we have a number of objections to the discovery propounded by the FTC in this matter. In a subsequent call in which Robby participated, it appears that some of the issues are resolved. Unfortunately, others persist. Here is a list of the issues that we discussed.

First, the FTC has served on us eight deposition notices. Of these notices, five of these witnesses were previously examined by the FTC during the investigational phase of this case. Certain of those individuals were deposed for multiple days (Messrs. Tucker and Riney) and one was deposed for a prolonged period of approximately 11 hours (Mr. Hauswald). These examinations were exhaustive of the issues set forth in the Complaint and any further examination of the witnesses on these areas would be duplicative. Since Steve advised us that he intends to use the investigational hearings in any manner permitted by the Administrative Law Judge in this matter, we simply do not see any reason to have further duplicative and burdensome examinations of these witnesses. If you are aware of any precedent that requires these witnesses be deposed for a second time, please bring it to our attention immediately and we will consider it.

CHARLESTON, SC
COLUMBIA, SC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

J. Robert Robertson, Esq.
Steven Dahm, Esq.
October 29, 2008
Page 2

Second, you have noticed the depositions for Washington, DC. In the same conversation in which Robby participated, he agreed to have the depositions of any Polypore employees proceed in Charlotte. We would be more than happy to make conference room space available for you and your colleagues here in our offices for those depositions at no charge to the government. Once we have either agreed upon who will be deposed, or it has been determined, we will work with you to determine a mutually satisfactory schedule.

Third, as we discussed, we believe it is appropriate that the FTC produce its documentation that it has received from third-parties, including affidavits, and its investigational hearing transcripts for those third-parties before we proceed with the depositions of the Polypore witnesses. We believe that it is only fair given the fact that you have had months to review those materials and shape your case. While we may not be able to show the documents or the testimony to our clients under the Protective Order, we are entitled to receive that information so that we can defend depositions in a manner appropriate for this case. Polypore is entitled to a level playing field in discovery in this case. If you still disagree, please let us know immediately.

On a related matter, however, I am concerned with Steve's comment today that he has not yet contacted all third-parties with respect to the disclosure of their documents and information in this matter under the protective order and has no obligation to produce any of these materials to us absent a formal request. It was certainly our expectation, based on the representation made in the initial disclosures made to the Administrative Law Judge, that you would have promptly contacted these third parties once the Protective Order was entered, which was one week ago. In addition, we do take issue with your statement that you are not required to produce the third-party documents in the investigational hearings to us absent a document request. In fact, in the initial disclosures filed by Complaint Counsel with the Administrative Law Judge, Counsel stated "**Complaint Counsel will provide copies of third-party's documents and materials** 10 days after such time as the Administrative Law Judge has entered a protective order in this matter and the third-parties who submitted the documents have been apprised of their rights under the protective order." Complaint Counsel's Initial Disclosures to Respondent Polypore International, Inc., p. 3 (emphasis added). We reiterate our position that the FTC should have already advised third parties of the protective order and should disclose to us the investigational hearings and documents within 10 days of the issuance of the ALJ's protective order. In order that there be no confusion on the point, and although we do not believe this is necessary, we will be forwarding to you later today our discovery requests which specifically request the production of these documents to us.

Finally, we believe it is appropriate to limit the length of the depositions to seven hours each pursuant to the Federal Rules of Civil Procedure. Robby has agreed to this limitation for fact witnesses. We agree that we will discuss expert witnesses when everyone knows more about them.

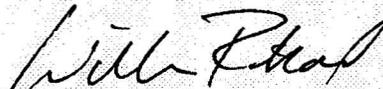
With respect to the interrogatories served by the FTC, we are greatly troubled by the number of interrogatories tendered to Polypore. As you know, the FTC rules limit the number of

J. Robert Robertson, Esq.
Steven Dahm, Esq.
October 29, 2008
Page 3

interrogatories to 25. The Administrative Law Judge in his scheduling order doubled that number for this matter to 50, including subparts. The interrogatories served by the FTC on Polypore are well in excess of the 50-interrogatory limitations. By our count, the interrogatories are at least 116. In addition, interrogatory number 1 asks for further information with respect to the CID's previously propounded to Polypore. If we add the CID's to the interrogatories, the number is actually in excess of 160. On this basis alone, we believe the interrogatories to be objectionable and we ask that the FTC withdraw these interrogatories and propound a new set that will comply with the limitations set by the Administrative Law Judge.

We hope that the FTC will reconsider its position and agree to these final points set forth in this letter. We ask that you please advise us of the FTC's position by no later than 12:00 noon on Friday, October 31, 2008. We hope that we will not have to trouble the Administrative Law Judge with these issues but are prepared to do so if you are unwilling to meet us on these issues. We believe that discovery should be obtained in a manner to avoid unnecessary cost and expense to my client and should not be duplicative or cumulative of prior discovery obtained by the FTC.

Sincerely yours,



William L. Rikard, Jr.

WLR/mnb

cc: Eric D. Welsh, Esq.