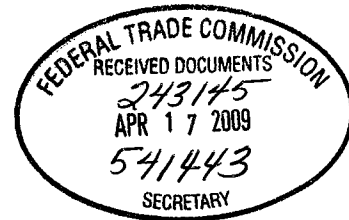


ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of)	Docket No. 9327
)	
)	
)	
Polypore International, Inc.)	
a corporation)	Public Document

**RESPONDENT’S MOTION FOR SANCTIONS DUE TO EXIDE TECHNOLOGIES’
INTERFERENCE WITH RESPONDENT’S EXPERT WITNESS**

Pursuant to Rules 3.38 and 3.42 of the Federal Trade Commission Rules of Practice, Respondent Polypore International, Inc. (“Polypore”), by and through counsel, submits its Motion for Sanctions Due to Exide Technologies’ Interference with Respondent’s Expert Witness.

The Commission has an interest in protecting the integrity of its administrative litigation process. In this case, as set forth below, there is ample evidence that Exide Technologies (“Exide”) has interfered with Respondent’s expert witness, Dr. James Mark Stevenson (“Dr. Stevenson”). Exide’s conduct is sufficiently serious to warrant action by the Commission.

1. On December 18, 2008, Respondent’s Counsel identified Dr. Stevenson as an expert witness in this matter. Pursuant to the Scheduling Order (as amended by this Court’s February 4, 2009 order) (“Amended Scheduling Order”) in this case, Respondent’s designation was served on Complaint Counsel; it was not served on any third party, nor was it filed as a matter of public record in this proceeding.

2. Pursuant to the Amended Scheduling Order, the deadline for Respondent’s Counsel to submit Dr. Stevenson’s expert witness report was March 20, 2009.

3. On March 19, 2009, Dr. Stevenson was finalizing his expert report for submission the following day.

4. Also on March 19, 2009, however, Dr. Stevenson was informed by counsel for Exide, third-party customer in this proceeding, and an affiliate of Dr. Stevenson's former employer, that Exide had "concerns" over Dr. Stevenson's acting as an expert witness in this case and threatening him with the possibility of a lawsuit if he submitted a report and testified in this matter. *See* Exide's Counsel's March 19, 2009 letter attached as Exhibit A hereto. The letter referred to a confidentiality agreement, but did not include a copy of the alleged agreement or any reference that it was 25 years old. Moreover, the letter expressly claimed "concerns" over Stevenson's work as an expert for Polypore.

5. March 19, 2009 was the first time Exide had raised any confidentiality concerns about Dr. Stevenson's engagement as an expert witness in this proceeding.

6. Later that day, counsel for Respondent contacted Exide's counsel by telephone to discuss his March 19 letter and to request a copy of the "Confidentiality Agreement." In that telephone conversation, Exide's counsel admitted that he had known about Respondent's designation of Dr. Stevenson as an expert for some time but stated that he had been "too busy" to do something about it until then. When directly asked, Exide's counsel refused to disclose how he learned of Dr. Stevenson's designation as an expert witness other than to say that it "was public knowledge."

7. Exide's counsel provided to Respondent's counsel a copy of the "Confidentiality Agreement" referred to in Exide's counsel's March 19, 2009 letter. Then and only then, did it come to light that the confidentiality agreement was part of a 25-year old employment agreement and subject to the laws of the United Kingdom. Dr. Stevenson has not been employed by Exide for over two years.

8. On information and belief, later on March 20, 2009 Dr. Stevenson had a telephone conversation with outside counsel for Exide, Donald Russell (“Russell”), and in-house counsel for Exide’s General Counsel, Barbara Hatcher (“Hatcher”). During that conversation, Russell asked Dr. Stevenson about the nature of his expected testimony at the hearing in this matter. Russell also asked Dr. Stevenson if he intended to offer an opinion as to whether battery separator suppliers could sell battery separator products in the United States – a subject clearly not within the scope of the so called 25-year confidentiality provision.

9. Further on information and belief, during conversations between Dr. Stevenson, Russell and Hatcher on March 20, 2009, Dr. Stevenson asked several times for guidance from Exide as to its supposed concern over the possibility of Dr. Stevenson’s disclosure of “confidential” information during his testimony. After he generally described the nature of his report, Russell and Hatcher advised Dr. Stevenson that his report did not appear to be a problem as to Exide’s supposed concern over confidentiality. Russell and Hatcher, however, continued in that conversation and Russell, in subsequent communications with Dr. Stevenson, to insist that his testimony in a deposition and at the hearing could reveal Exide confidential information.

10. Out of fear of reprisal from Exide, Dr. Stevenson did not file his expert report on March 20, and has not filed it since then.

11. Since March 20, Dr. Stevenson has repeatedly requested that Exide advise him as to Exide’s interpretation of the scope of the confidentiality provisions and sought confirmation that it would not file a lawsuit against him if he were to proceed with this engagement as an expert witness for Respondent, submit a report and testify in a deposition and at the hearing. See e-mails from Mark Stevenson to Don Russell, dated March 23, 2009 and March 25, 2009 attached as Exhibit B. Exide has refused to provide such assurances to Dr. Stevenson. See e-

mails from Don Russell to Mark Stevenson, dated March 23, 2009, March 24, 2009 and March 25, 2009, attached as Exhibit C.

12. As a result of Exide's March 19, 2009 letter, Respondent was forced to seek a modification of the Amended Scheduling Order for the purpose of extending certain deadlines as related to Dr. Stevenson. *See* Respondent's Motion for Extension of Time, March 24, 2009.¹

13. The fact that Exide chose to communicate with Dr. Stevenson by letter on March 19, 2009, the day before Dr. Stevenson's report was due to be submitted reflects a calculated move to interfere with Dr. Stevenson's testimony. Exide's counsel had innumerable opportunities to raise their concerns about Dr. Stevenson directly with Respondent's Counsel during multiple depositions that occurred weeks before Dr. Stevenson was due to submit his report,² but instead chose to threaten Respondent's witness with a lawsuit the day before his expert report was due for submission.

14. Moreover, as note previously, information concerning Dr. Stevenson's engagement by Respondent as an expert witness in this proceeding is not publicly available information. Respondent's identification of Dr. Stevenson as an expert witness was not filed with the Commission nor is such information available on the Commission's website. That information could only have come to Exide from counsel for the FTC.

15. Exide's communications with Dr. Stevenson also reflect an inappropriate interference with Respondent's witness. Exide's question to Dr. Stevenson, in substance, of "do you intend to testify that other suppliers could sell into the United States" reflects Exide's intentions to interfere with this witnesses' testimony. Such a question cannot be linked to any

¹ On March 24, 2009, Administrative Law Judge Chappell granted Respondent's Motion for Extension of Time. *See* March 24, 2009 Order Granting Respondent's Motion for Extension of Time

² Indeed, Exide's Counsel sat through several depositions of Exide's witnesses, including as recently as March 10, 2009, and never expressed any concern about the confidentiality of Dr. Stevenson.

legitimate concern about “confidential information.” The question reflects that Exide is only concerned with preventing Dr. Stevenson from testifying in this matter (or influencing Dr. Stevenson’s testimony as to certain topics) and has no real concern of his potentially violating the terms of a twenty-five year old confidentiality agreement.

16. Exide’s true intention of preventing Dr. Stevenson from testifying in this matter is further reflected in Exide’s Counsel’s comment to Dr. Stevenson that his submission of an expert report in this proceeding would not be a problem in terms of the purported confidentiality agreement, but that confidentiality concerns remained over what Dr. Stevenson might say testifying in deposition and in court, while refusing to identify the source of those concerns.

17. In a letter dated March 26, 2009, Respondent’s counsel expressed its concern over Exide’s conduct and suggested that Exide’s “concern” over Dr. Stevenson’s testimony at the deposition and in court could be handled under the existing protective order. A copy of Eric Welsh’s letter of March 26, 2009 to Russell is attached as Exhibit D.

18. On March 27, 2009, Exide’s counsel responded to Respondent counsel’s March 26, 2009 letter. A copy of Russell’s letter of March 27, 2009, is attached as Exhibit E, but left unresolved Exide’s alleged “concern” about Dr. Stevenson’s deposition or trial testimony and without any indication that it could be protected under the protective order.

19. Dr. Stevenson has repeatedly sought clarification of his obligations under the purported confidentiality agreement from Exide and assurances that Exide will not take any legal action against him should he testify in court in this matter. See Exhibit B hereto.

20. Exide has refused to give any such assurances. See Exhibit C hereto.

21. Dr. Stevenson has advised Respondent’s Counsel that he cannot move forward as an expert witness without such assurances from Exide.

22. In a final effort to try to resolve this situation outside of motion practice, Respondent's counsel spoke with Exide's counsel on April 15, 2009. In that telephone conversation, Respondent's counsel outlined an approach for addressing Exide's alleged concern over confidentiality. Respondent's counsel forwarded this proposal in written form to Exide's counsel later that day. A copy of Respondent's Counsel's email to Exide's counsel of April 15, 2009 is attached as Exhibit F.

23. Exide's counsel responded to Respondent's Counsel's proposal of April 15, 2009, steadfastly rejecting it and offering no constructive solution to address its alleged concerns. A copy of Exide Counsel's email of April 15, 2009 is attached as Exhibit G. Exide Counsel's April 15, 2009 email further demonstrates Exide's intention of preventing Dr. Stevenson from testifying in this matter. Exide's supposed concerns can be addressed easily under the existing protective order and rules of the FTC. Indeed, on April 9, 2009, Exide filed a motion for *in camera* treatment of certain of its documents which the FTC and Respondent intend to use as exhibits at trial. Clearly, Exide is aware that concerns over confidentiality can be adequately addressed in this manner. Indeed, in that motion, Exide asked for confidentiality for 44 documents and – in contrast to its manufactured objection that it is not clear how long confidential treatment would be provided to Dr. Stevenson's testimony, Exide was able to specify the duration requested for the confidential treatment as to its documents, none of which exceeded 3 years and 23 of which were less than 3 years. See Exide Technologies' Motion for In Camera Treatment of Certain Material Designated as Trial Exhibits, pending before Judge Chappell. Instead of working to address its "concerns" in this manner, Exide has chosen to continue to stonewall.

24. Indeed, the absurdity of Exide's position is highlighted by the fact that even if Dr. Stevenson had knowledge of Exide confidential information, which Exide has failed to

demonstrate, and assuming that Dr. Stevenson were a current employee of Exide, Respondent would be entitled to depose Dr. Stevenson and call him as a witness at the hearing in this matter in any event. In such a situation, Exide could handle any concerns over confidentiality through the protective order and seeking in camera treatment at trial – exactly what Respondent has proposed and Exide has rejected here.

25. It is abundantly clear from the above facts that Exide's current actions are simply the latest chapter in its efforts to obstruct Respondent's efforts to defend itself in this matter. Respondent has already been embroiled in motion practice with Exide in this matter. After serving a subpoena duces tecum on Exide for documents relevant to this matter on November 10, 2008, Exide made a paltry production of only 6 documents by January 12, 2009. In order to comply with then existing deadlines, Respondent had scheduled the depositions of Exide witnesses for January 21, 22 and 23, 2009. Due to the lack of production by Exide, however, Respondent was forced to move to compel production on January 12, 2009. In that motion, Respondent also requested the opportunity to question Exide's witnesses on the documents that had not been produced by Exide timely in this matter. Respondent, reserving its rights, proceeded with the depositions of the Exide witnesses on the above scheduled dates.

26. Judge Chappell granted Respondent's motion by Order dated February 5, 2009. Following the filing of Respondent's motion to compel, Exide produced an additional 85,883 pages of documents to Respondent in this matter with over 78,100 pages being produced on February 16, 2009. Accordingly, at the time Respondent took the depositions of the Exide witnesses in January, Respondent was in possession of only 9% of the Exide production. This delay was prejudicial to Respondent's defense, and while Respondent tried to reduce the harm by resuming a deposition of Mr. Gillespie on March 10, 2009, due to impending deadlines, Respondent's deposition of Mr. Gillespie was limited, and Respondent was forced to forego

further examinations of Exide's other witnesses. Exide's conduct here with respect to Dr. Stevenson is simply another calculated effort to interfere with Respondent's presentation of its defenses in this matter.

27. Exide's interference with Dr. Stevenson has resulted in extreme prejudice to Respondent. Third-parties, like Exide, should not be able to benefit from such tactics.

WHEREFORE, Respondent prays that the Administrative Law Judge enter an order finding that Exide has intentionally and improperly interfered with Respondent's expert witness and interfered with justice, and provide appropriate relief to Respondent. Respondent respectfully requests that the Administrative Law Judge enter an order (a) providing that Exide's relief is *in camera* treatment for any testimony offered by Dr. Stevenson in this matter, whether at deposition or at the hearing, (b) determining that Dr. Stevenson's testimony in this matter will not constitute a breach of any obligation of confidentiality owed by Dr. Stevenson to Exide and (c) precluding Exide from offering any testimony, whether by deposition or otherwise, at the hearing in this case. Finally, Respondent respectfully requests that the Administrative Law Judge order that an inquiry be conducted with respect to Exide's conduct.

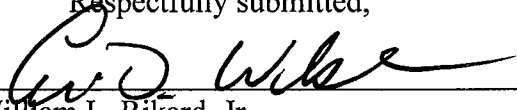
CONCLUSION

For all the foregoing reasons, Respondent Polypore respectfully requests that its Motion for Sanctions Due to Exide Technologies' Interference with Respondent's Expert Witness be granted in all respects and that the Commission enter such relief as it deems appropriate, including the entry of an order limiting Exide's rights to *in camera* treatment for any testimony offered by Dr. Stevenson in this matter, whether at deposition or at the hearing, finding that Dr. Stevenson's testimony in this matter will not constitute a breach of any obligation of confidentiality owed by Dr. Stevenson to Exide, precluding Exide from offering any testimony, whether by deposition or otherwise, at the hearing in this case and awarding Respondent its

attorneys fees and costs. Granting such relief will protect the integrity of the Commission's administrative process.

Dated: April 17, 2009

Respectfully submitted,



William L. Rikard, Jr.
Eric D. Welsh
PARKER POE ADAMS & BERNSTEIN, LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 372-9000
Facsimile: (704) 335-9689
williamrikard@parkerpoe.com
ericwelsh@parkerpoe.com

Attorneys for Respondent

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

In the Matter of

**Polypore International, Inc.
a corporation**


Docket No. 9327

PUBLIC DOCUMENT

STATEMENT PURSUANT TO SCHEDULING ORDER

I, Eric D. Welsh, Esq., on behalf of Parker Poe Adams & Bernstein LLP (“Parker Poe”) as counsel for Polypore International, Inc. (“Polypore”), hereby represent that Parker Poe has conferred with Exide’s Counsel and Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by its Motion for Sanctions Due to Exide Technologies’ Interference with Respondent’s Expert Witness and have been unable to reach such an agreement. Parker Poe and Exide’s Counsel discussed these issues in written correspondence on March 26, 2009, March 27, 2009 and April 16, 2009 and over the telephone on April 16, 2009. Parker Poe and Complaint Counsel discussed these issues in written correspondence on March 26, 2009 and March 31, 2009. As a result of this correspondence, Polypore, Exide and Complaint Counsel are at an impasse with respect to the issue raised in Respondent’s motion.

Dated: April 17, 2009



Eric D. Welsh
PARKER POE ADAMS & BERNSTEIN, LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
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Telephone: (704) 372-9000
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ericwelsh@parkerpoe.com

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

In the Matter of)

Docket No. 9327

Polypore International, Inc.)
a corporation)

PUBLIC DOCUMENT

PROPOSED ORDER

Upon consideration of Respondent's Motion for Sanctions Due to Exide Technologies' Interference with Respondent's Expert Witness, any opposition thereto, and the Court being fully informed,

IT IS HEREBY ORDERED, that Respondent's Motion is GRANTED.

Specifically, it is hereby ORDERED that Dr. Stevenson shall be permitted to testify in this matter, at deposition and at trial, that such testimony will not be deemed a breach of any obligation of confidentiality owed by Dr. Stevenson to Exide and all such testimony will be in camera, and it is further

ORDERED that Exide is precluded from offering any testimony, whether by deposition or otherwise, at the hearing in this case, and it is further

ORDERED that Exide shall pay to Respondent its costs and legal fees incurred in connection with this motion.

D. Michael Chappell
Administrative Law Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Motion for Sanctions Due to Exide Technologies' Interference with Respondent's Expert Witness***, 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 April 17, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Motion for Sanctions Due to Exide Technologies' Interference with Respondent's Expert Witness*** upon:

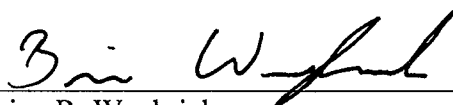
The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
oalj@ftc.gov

I hereby certify that on April 17, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Motion for Sanctions Due to Exide Technologies' Interference with Respondent's Expert Witness*** upon:

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

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

Donald J. Russell, Esq.
Robbins, Russell, Englert, Orseck,
Untereiner & Sauber LLP
1801 K Street, N.W., Suite 411
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Brian R. Weyhrich
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Donald J. Russell

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March 19, 2009

BY MAIL AND EMAIL

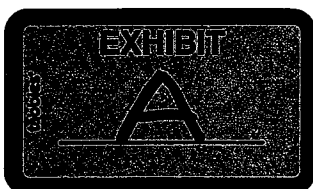
Dr. James Mark Stevenson
213 Higher Lane
Lymm
Cheshire
WA13 ORN
United Kingdom

Dear Dr. Stevenson:

I am writing to you on behalf of Exide Technologies, which has retained me to protect the company's interest in preserving the confidentiality of its proprietary information. It has come to our attention that you have contracted to serve as an expert witness in litigation brought by the United States Federal Trade Commission against Polypore International, Inc.

As you know, your employment by Exide was conditioned on a contractual commitment that requires you to keep secret all confidential information that you acquired during your employment with the company. The contract also prohibits your use of such information to your own or another's advantage. Confidential information includes, among other things, any technical or commercial information as well as information about research and development projects or planned research and development projects concerning products or manufacturing processes. Your contractual obligation to maintain the confidentiality of such information did not terminate when your employment with Exide ended, but continues so long as the information remains confidential.

We have concerns that your work as an expert witness for Polypore may conflict with your continuing obligations under your employment agreement. We believe that there is a risk that your work as an expert witness will require the disclosure of confidential information in your testimony or, at the very least, in your discussions with counsel for Polypore. We expect you to



ROBBINS, RUSSELL, ENGLERT, ORSECK & UNTEREINER LLP

Dr. James Mark Stevenson
March 19, 2009
Page 2

comply fully with your contractual obligations, but Exide Technologies will take action, if necessary, to protect the confidentiality of its proprietary information.

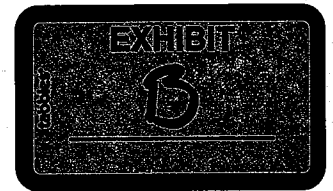
If you have any questions concerning this matter, please feel free to contact me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Donald J. Russell".

Donald J. Russell
Counsel for Exide Technologies

cc: Barbara Hatcher
William Rickard



----- Original Message -----

From: Mark Stevenson

To: Russell, Don

Sent: Monday, March 23, 2009 10:02 PM

Subject: Re: Your work for Polypore

Dear Mr Russell,

Thank you for getting back to me as quickly as you have done so. I appreciate Exide's statement in this matter. I would also request that , as you offer , a statement from Exide on what they consider the scope of these obligations. I have read my Confidentiality agreement that you sent together with the attached letter which sought to qualify the scope. The attached letter seemed to relate principally to development projects . I would like to be 100 % clear on what I can and can not discuss on any forthcoming events before I proceed further.

Thank you for your assistance

Yours sincerely
Mark Stevenson

- ---- Original Message -----

From: Russell, Don

To: Mark Stevenson

Sent: Monday, March 23, 2009 8:34 PM

Subject: Your work for Polypore

Dear Mr. Stevenson,

Thank you for your prompt reply to my letter of March 19, 2009. You have assured us that in the course of your work as an expert witness for Polypore, you have not had, and do not expect to have, any need to rely on or to disclose Exide's confidential information. In light of that assurance, we have no objection to your continuation of that work -- provided, of course, that in the course of such work, you will not use or disclose confidential information in violation of the continuing obligations under your employment agreement.

If you have any questions concerning Exide's views on the scope of those obligations, please

4/16/2009

feel free to contact. me.

Donald J. Russell

Robbins, Russell, Englert, Orseck,

Untereiner & Sauber LLP

1801 K Street N.W., Suite 411L

Washington, D.C. 20006

www.RobbinsRussell.com

drussell@robbinsrussell.com

202-775-4502 (Direct Dial)

202-775-4510 (Fax)

----- Original Message -----

From: Mark Stevenson

To: Russell, Don

Sent: Wednesday, March 25, 2009 10:52 AM

Subject: Re: Your work for Polypore

Dear Mr Russell,

Thank you your response on this matter.

I am trying not to be pedantic on this but I need complete peace of mind that I am not going to concern Exide in anything that I state.

Looking at the side letter in the Service Agreement and in particularly points 4 and 5 and I quote
Point 4.

The nature of your employment and the continual changes of projects make it difficult to define precisely the areas of confidential information which the Company wish to protect through the use of a constraint under Clause 10 at some future date . The Company's intention is that is that the specific areas should be defined in the event of your leaving Chloride employment at the time when it becomes appropriate to do so. You may at any time request that the Company should so specify the areas of possible constraint within fourteen (14) days.

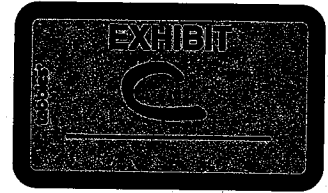
Point 5.

In this connection it is envisaged that the areas of confidential information will be deemed to include all recent research projects and development projects as well as all planned development projects concerning products and manufactured processes with which you have been directly involved or on which you have had access to information. It will also be deemed to include any such projects which have been or are being dealt with by employees who report directly or indirectly to you . It should not be deemed to cover any information on such projects which is a matter of public knowledge as a result of authorized publication.

As discussed with yourself and Barbara Hatcher the scope of my expert witness in the Polypore is to give an opinion on the global nature of the lead acid battery industry and the testing and approval in the use of polyethylene separators particularly in Motive Power cells . The opinion on the global nature of the business is derived from knowledge of the industry and the many examples one can see publically on this . The opinion on the use of polyethylene separators again is formed from my 35 years in the business . In the report I have prepared , but not yet approved for release, no where do I mention any research or development projects I have worked on or indeed Exide in any Technical sense. There are no tests mentioned that are specific to Exide . Given this I think that the report does not infringe the Confidentiality issue but I still require assurance on this. I am also concerned on your comment about the stages after the report such as the deposition and the risk that I could discuss confidential information. As I have never been through this process I envisaged myself at deposition to stick to the scope of the report only and offer no opinions outside of this.
I would appreciate the Company's view on this.

Thank you
Yours sincerely
Mark Stevenson

4/16/2009



----- Original Message -----

From: Russell, Don

To: Mark Stevenson

Sent: Monday, March 23, 2009 8:34 PM

Subject: Your work for Polypore

Dear Mr. Stevenson,

Thank you for your prompt reply to my letter of March 19, 2009. You have assured us that in the course of your work as an expert witness for Polypore, you have not had, and do not expect to have, any need to rely on or to disclose Exide's confidential information. In light of that assurance, we have no objection to your continuation of that work -- provided, of course, that in the course of such work, you will not use or disclose confidential information in violation of the continuing obligations under your employment agreement.

If you have any questions concerning Exide's views on the scope of those obligations, please feel free to contact me.

Donald J. Russell

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Untereiner & Sauber LLP

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Washington, D.C. 20006

www.RobbinsRussell.com

drussell@robbinsrussell.com

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202-775-4510 (Fax)

4/16/2009

----- Original Message -----

From: Russell, Don

To: Mark Stevenson

Sent: Tuesday, March 24, 2009 2:38 PM

Subject: RE: Your work for Polypore

Dear Mr. Stevenson,

We believe the language in the employment agreement is clear and requires no additional explanation or clarification, and that it would not be productive to attempt to address any questions about the scope of the obligations in the abstract.

However, we understand that you may have questions about whether specific information is, or is not, considered by the company to be confidential at this time. We would be happy to state the company's position with regard to any specific information you identify for us.

Don Russell

4/16/2009

----- Original Message -----

From: Russell, Don

To: Mark Stevenson

Sent: Wednesday, March 25, 2009 3:35 PM

Subject: RE: Your work for Polypore

Dear Dr. Stevenson,

Thanks for your response. I want to try to answer your questions as clearly as possible, but ultimately I think you will have to rely on your own judgment and the advise of the attorneys with whom you are working.

Here is what I can say:

First, the letter that you quote speaks to a situation in which, pursuant to section 10 of the agreement, the company has asked you forego certain employment opportunities. I hope we have made it clear that we are NOT asking you to forego any employment opportunities.

Second, if your report is based on publicly available information and knowledge that is widely known in the industry, and does not contain confidential information obtained through your employment with Exide, then release of the report will not violate your obligations under the agreement. Of course, Exide cannot confirm that this is the case because we have not seen the report, and we assume that Polypore, for understandable reasons, would not authorize release of the report to us. However, I assume you would be free to ask the company if it regards certain information that you obtained from Exide as confidential (without disclosing your report). If you choose to do so, the company will attempt to provide a prompt response.

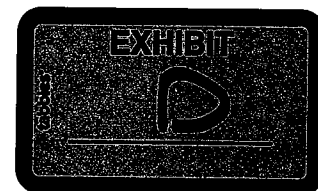
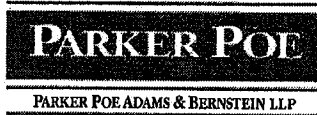
Third, with respect to the possible scope of disclosures that may be called for in a deposition, I recommend that you consult with the attorneys for Polypore with whom you have been working.

We appreciate your cooperation in this matter.

Sincerely,

Don Russell

4/16/2009



Eric D. Welsh
Partner
Telephone: 704.335.9052
Direct Fax: 704.335.9755
ericwelsh@parkerpoe.com

Attorneys and Counselors at Law

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401 South Tryon Street
Suite 3000
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Telephone 704.372.9000
Fax 704.334.4706
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March 26, 2009

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Donald J. Russell, Esq.
Robbins, Russell, Englert, Orseck,
Untereiner & Sauber, LLP
1801 K Street N.W., Suite 411L
Washington, DC 20006

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

Dear Don:

I have been provided a copy of your letter dated March 19, 2009 to Dr. James Mark Stevenson concerning his engagement as an expert witness in this matter. I understand that my partner, William L. Rikard, Jr., spoke with you on the telephone on March 19 with respect to your letter. I also understand that during that call you advised Mr. Rikard that you had become aware of Dr. Stevenson's engagement in this matter as an expert prior to that day but that you were "too busy" to raise the issue before then. I also understand that during your conversation with Mr. Rikard you had stated that the information regarding Dr. Stevenson's engagement as an expert was public.

Since receiving a copy of your letter and your conversation with Mr. Rikard, we have conducted further inquiry into this matter. We are greatly troubled by Exide's improper conduct in this matter. While you state that the information regarding Dr. Stevenson's engagement was "public", that information was not filed with the Commission and is not available on the Commission website. We had, however, advised the FTC Complaint Counsel with respect to this matter and while you refused to respond to Mr. Rikard's question as to whether you learned of this information from Complaint Counsel, the facts would certainly indicate that that was the source. It would certainly be consistent with what we learned in discovery regarding Exide's communications with Complaint Counsel in this matter. This close relationship was further evidenced by the lunch that you and your client had with Complaint Counsel at the continued deposition of Douglas Gillespie on March 10, 2009. The fact that you chose to send this letter threatening Dr. Stevenson with a lawsuit the day before his report was due to be submitted reflects a calculated move to interfere with this witness's testimony.

I have had several conversations with Dr. Stevenson since this event regarding your letter and his subsequent conversations with you and Ms. Hatcher on this subject. I found the content

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

Donald J. Russell, Esq.
March 26, 2009
Page 2

of what he told me to be equally disturbing. It is apparent to me that Exide is only concerned about preventing Dr. Stevenson from testifying in this matter and has no real concern of his potentially violating the terms of a twenty-five year old confidentiality agreement embedded in an employment agreement. Indeed, your question to Dr. Stevenson, in substance, of "do you intend to testify that other suppliers could sell into the United States" reflects Exide's intentions to interfere with this witness's testimony. Finally, Ms. Hatcher's and your apparent comments that while Dr. Stevenson's report in this matter, as generally outlined by Dr. Stevenson in the call, would not be a problem in terms of his confidentiality agreement, but that concerns remained over his testifying in court reflects again Exide's true intentions of preventing Dr. Stevenson from testifying in this matter. Indeed, Exide's position is apparently that it will sue Dr. Stevenson for testifying in a court of law. Absurd! I remind you that there is a far-reaching protective order in place in this case which would protect any confidential information of Exide from disclosure to my client whether in deposition or at trial. You have produced documents to us (many belatedly) and sat through a number of Exide depositions, all of which are subject to the terms of the confidentiality order which was provided to you months ago. You expressed no concern then about confidentiality or Dr. Stevenson. Dr. Stephenson left Exide's employment over two years ago. Any purported concerns over confidentiality could be addressed prior to trial. Instead of raising any such concern directly with us, which you had innumerable opportunities to do so, you chose instead to threaten our witness with a lawsuit the day before his report was due for submission.

Dr. Stevenson has forwarded to me your recent e-mail communications in this matter. Although he has asked for clarification of his obligations and assurance from your client that they will take no legal action against him for testifying in a court of law in this matter, you and your client have refused to give those assurances. Dr. Stevenson has advised that he cannot move forward as an expert witness without such assurances. Exide's conduct here is resulting in great prejudice to my client and we intend to bring this matter to the attention of Judge Chappell as soon as possible. We will ask Judge Chappell to look into this matter and provide appropriate relief to my client.

Sincerely yours,



Eric D. Welsh

EDW/mnb

cc: William L. Rikard, Jr., Esq.
J. Robert Robertson, Esq.

ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP

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Donald J. Russell

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March 27, 2009

By Email and U.S. Mail

Eric D. Welsh, Esq.
Parker, Poe, Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, N.C. 28202

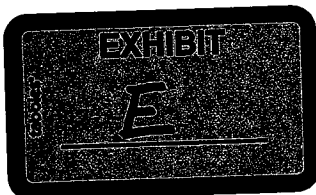
Re: In the Matter of Polypore International, Inc., Docket No. 9327

Dear Mr. Welsh:

Your letter of March 26, 2009 is riddled with factual inaccuracies and allegations that are entirely false. I see no point in trying to correct all of them, but your central charge – that Exide has tried to prevent Dr. Stevenson from testifying as an expert witness for Polypore – is one that I will not leave unanswered.

We have made it perfectly clear to Dr. Stevenson, orally and in the email correspondence that you reference, that Exide has no objection to his work for Polypore, so long as he complies with his continuing obligations under his employment contract. We also told him that if he was in doubt whether specific information that he obtained through his employment with Exide was or was not confidential in Exide's view, he could ask Exide and get a prompt response. After hearing his assurances that his work did not involve information specific to Exide or its products and processes, we told him that the work as described would not be in conflict with his confidentiality obligations. We absolutely did not tell Dr. Stevenson that he would be sued for testifying. When Dr. Stevenson asked about the potential scope of questioning in a deposition, we advised him to consult with you.

Dr. Stevenson, as you know, was a high level executive at Exide through the end of 2006, and therefore had access to information that was and still is highly confidential. It is entirely



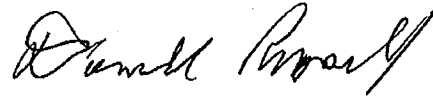
ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP

Eric D. Welsh
March 27, 2009
Page 2

appropriate for Exide to protect the confidentiality of that information by reminding Dr. Stevenson of his contractual obligations. At the same time, we have assured him that we do not seek in any way to interfere with work that is consistent with those obligations.

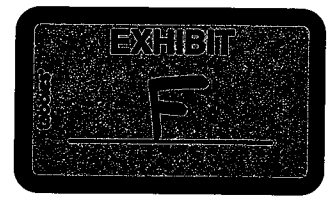
In short, Exide's actions in this matter have been entirely appropriate.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donald Russell", written in a cursive style.

Donald J. Russell

cc: J. Robert Robertson



Welsh, Eric D.

From: Welsh, Eric D.
Sent: Wednesday, April 15, 2009 11:58 AM
To: 'Russell, Don'
Cc: Rikard, Jr., William L.
Subject: In re Polypore International, Inc., Docket No. 9327

Don

Further to our conversation this morning, in an abundance of caution and to resolve any concern that Exide has over confidentiality, I propose that Dr. Stevenson's deposition testimony be covered under the protective order. I would also propose that his testimony at the hearing be handled in camera. In return, I ask that Exide advise Dr. Stevenson in writing that if his testimony is covered in this way, Exide will not take any legal action against him with respect to these issues of confidentiality. Please understand that we do not concede that Dr. Stevenson has or would disclose any confidential information of Exide in this engagement. In addition, my silence in this email regarding our view of Exide's intentions should not be taken as our conceding anything on this point either. I am simply trying to keep the discussion focused on the proposal so we can move forward in this matter.

This proposal will give Dr. Stevenson the assurances that he needs to move forward in this matter and will certainly address any concern of Exide with respect to confidentiality. While you raised some question about whether I may have forwarded information that I learned from Dr. Stevenson to my client, please be advised that, while I am not going to divulge to you my communications with my client, I have not provided to my client the specifics of what I have discussed with Dr. Stevenson.

Let me know as soon as possible your client's response to this proposal. If this proposal is not acceptable to your client, we will need to bring the matter to the immediate attention of Judge Chappell.

I look forward to hearing from you.

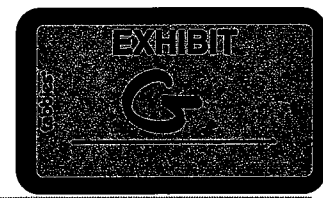
Best regards,

Eric Welsh

Eric Welsh

Partner
Ext. 9052

4/16/2009



Welsh, Eric D.

From: Russell, Don [drussell@robbinsrussell.com]
Sent: Wednesday, April 15, 2009 5:26 PM
To: Welsh, Eric D.
Cc: Rikard, Jr., William L.
Subject: RE: In re Polypore International, Inc., Docket No. 9327

Eric,

Thank you for your proposal. After reviewing it carefully, I have several concerns. First, it is unclear how you can assure that Dr. Stevenson's testimony would be given in camera treatment. It is my understanding that the FTC will be the ultimate arbiter of that question. Second, even assuming that in camera treatment is provided, it is unclear how long that treatment will last. Third, it is not clear what advance notice, if any, Exide would receive before such testimony would be made public, or even whether Exide, if notified, would be given an opportunity to review the testimony prior to its public release. These concerns are magnified by the fact that we have only the vaguest idea of the possible scope of Dr. Stevenson's testimony.

Of course, none of those concerns will matter if Dr. Stevenson's work as a paid expert will not entail the disclosure of confidential Exide information. When Dr. Stevenson assured us several weeks ago that it would not, we indicated to him that we had no objection to his work for you based on that representation.

Our position then and now is simple. If Dr. Stevenson does not disclose confidential Exide information, he is perfectly free to do as he chooses. As we have indicated many times before, if he is unsure whether Exide would regard certain information as confidential or not, we would promptly tell him Exide's view, so that he can avoid any inadvertent disclosure. However, we cannot simply give him and you a blanket assurance, when we do not know what information might be at issue, what protections will or will not be in place to prevent public disclosure, and how long those protections will remain.

Don

From: Welsh, Eric D. [mailto:ericwelsh@parkerpoe.com]
Sent: Wednesday, April 15, 2009 11:58 AM
To: Russell, Don
Cc: Rikard, Jr., William L.
Subject: In re Polypore International, Inc., Docket No. 9327

Don

Further to our conversation this morning, in an abundance of caution and to resolve any concern that Exide has over confidentiality, I propose that Dr. Stevenson's deposition testimony be covered under the protective order. I would also propose that his testimony at the hearing be handled in camera. In return, I ask that Exide advise Dr. Stevenson in writing that if his testimony is covered in this way, Exide will not take any legal action against him with respect to these issues of confidentiality. Please understand that we do not concede that Dr. Stevenson has or would disclose any confidential information of Exide in this engagement. In addition, my silence in this email regarding our view of Exide's intentions should not be taken as our conceding anything on this point either. I am

4/16/2009

simply trying to keep the discussion focused on the proposal so we can move forward in this matter.

This proposal will give Dr. Stevenson the assurances that he needs to move forward in this matter and will certainly address any concern of Exide with respect to confidentiality. While you raised some question about whether I may have forwarded information that I learned from Dr. Stevenson to my client, please be advised that, while I am not going to divulge to you my communications with my client, I have not provided to my client the specifics of what I have discussed with Dr. Stevenson.

Let me know as soon as possible your client's response to this proposal. If this proposal is not acceptable to your client, we will need to bring the matter to the immediate attention of Judge Chappell.

I look forward to hearing from you.

Best regards,

Eric Welsh

Eric Welsh
Partner



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Phone: 704.335.9052 | Fax: 704.335.9755 | www.parkerpoe.com | [vcard](#) | [map](#)

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4/16/2009