

ORIGINAL



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of _____

Polypore International, Inc.,
a corporation. _____

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)
) Docket No. 9327
)
)

) PUBLIC DOCUMENT
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**RESPONDENT'S STATUS REPORT ON RESPONDENT'S MOTIONS TO COMPEL
EXIDE TECHNOLOGIES AND ENTEK INTERNATIONAL, LLC PURSUANT TO
SUBPOENAS DUCES TECUM**

Pursuant to the Order dated January 30, 2009, Respondent hereby files its report on the status of the production of documents by Exide Technologies ("Exide") and ENTEK International, LLC ("ENTEK") and the pending motions to compel filed by Respondent with respect to such subpoenas.

I. STATUS OF EXIDE'S PRODUCTION OF DCOUMENTS

On November 10, 2008, Respondent served a Subpoena Duces Tecum on Exide (the "Exide Subpoena"). The Exide Subpoena seeks the production of documents from Exide on numerous issues vital to Respondent's defense in this matter. On January 12, 2009, following Exide's production of only six pages of documents, Respondent served a motion to compel Exide to produce documents requested by the Exide Subpoena. Exide has responded to that motion. In its motion to compel, Respondent noted that in light of the deadlines it faced for discovery and the issuance of expert reports, Respondent had served subpoenas *ad testificandum* on Exide and several of its employees, including Mr. Pradeep Menon, Douglas Gillespie, Alberto Perez and Gordon Ulsh for depositions on January 14-16, 2009 and that Exide's counsel requested that those depositions be rescheduled to the week of January 19, 2009. In its motion, Respondent also noted "it is of paramount importance that the documents requested by Respondent's subpoena duces tecum be produced immediately in order to allow Respondent to

properly review and analyze such documents in preparation for the noticed deposition examinations.” Memorandum in Support of Respondent’s Motion to Compel Exide Technologies to Produce Documents Requested by Subpoena Duces Tecum, p. 3. The Exide depositions went forward in Georgia on January 21, 22 and 23, 2009.

Following the submission of the Exide motion, Exide has produced 4,935 additional documents with the last installment of over 3,000 pages being sent by letter dated January 19, 2009, which was not received by counsel for Respondent until January 20, one day before the start of the depositions in Georgia. *See Exhibit A hereto.* Respondent had little opportunity to review any of these Exide documents before traveling to Georgia for the depositions. Respondent has not received any production from Exide since this submission on January 19.

Exide did not state in its letter of January 19 whether its production was complete. On February 2, 2009, counsel for Respondent spoke over the telephone with counsel for Exide regarding the status of its production. Counsel for Respondent was advised by counsel for Exide that Exide’s production was not complete, that the production would continue to be made and it was anticipated that the production would be complete sometime between February 15 and February 28, 2009.

Exide’s rolling production has been prejudicial to Respondent. Exide produced documents late and has not yet completed its production. Respondent did not have the opportunity to review the overwhelming majority of Exide’s production to date prior to the depositions due to Exide’s producing the documents to Respondent virtually on the eve of the depositions in Georgia. Of course, Respondent still does not have many documents which Exide’s counsel has vaguely represented will be produced sometime in the second half of February 2009. Moreover, virtually all of the Exide witnesses were unable to answer questions fully at the depositions. Respondent did not have necessary documents available to it from Exide

to be able to adequately examine the witnesses during these depositions and to use those documents to try to refresh recollections. The situation has resulted in incomplete discovery to Respondent's prejudice which may necessitate further motion practice.

Exide's documents and deposition testimony remain important to the development of Respondent's defense in this matter and the preparation of its expert reports. As the schedule currently exists, discovery ends February 14 and Respondent's expert reports are due on February 20. As it stands now, only incomplete evidence has been gathered from Exide and every indication is that it will not be complete until *after* the discovery deadline and *after* the deadline for expert reports. Moreover, to the extent further examination will be necessary of Exide witnesses with respect to this overdue production, that will not occur before the current deadlines given Exide's intended schedule.

Respondent respectfully submits that its motion to compel Exide to produce documents has not been rendered moot, that Respondent's motion should be granted and appropriate relief should be afforded Respondent including the resumption of depositions of Exide witnesses to examine these witnesses on subjects covered by the documents that were produced on January 19 or thereafter.

II. STATUS OF ENTEK PRODUCTION

On November 10, 2008, Respondent served its Subpoena Duces Tecum on ENTEK (the "ENTEK Subpoena"). As with the Exide Subpoena, the ENTEK Subpoena requests documents vital to Respondent's defense in this matter. Having received few documents in response to the subpoena, Respondent on January 12, 2009 served a motion to compel ENTEK to produce documents. ENTEK has responded to that motion. Since the filing of that motion, ENTEK has produced 3,763 documents to Respondent. Respondent is in the process of reviewing ENTEK's

production and has not yet determined the completeness of its production. ENTEK's counsel has advised that it considers the production to be complete.

Respondent has scheduled the deposition of Daniel Wertz of ENTEK for February 10, 2009. One of the subjects to be examined at this deposition will be ENTEK's production of documents under the subpoena. It is believed that at that deposition, Respondent will be able to verify the completeness of ENTEK's production. Respondent therefore, with respect to its motion to compel ENTEK, respectfully requests that the motion be held in abeyance pending the outcome of that deposition.

CONCLUSION

Given the many difficulties encountered by Respondent with third parties which has led to the filing of the within motions as well as several other motions, some of which remain pending¹, and certain difficulties experienced in obtaining discovery from Complaint Counsel, Respondent has moved to amend the scheduling order to permit a slight adjustment to the remaining deadlines and hearing date.² Respondent respectfully submits that even more reason exists to grant Respondent's pending motion to amend the scheduling order in light of the continuing difficulties experienced with Exide, noted above, and the fact that significant discovery will not be completed before the discovery cutoff and date for submission of expert

¹ In addition to the within motions, Respondent opposed EnerSys's motion to limit and for attorney's fees, which motion Judge Chappell denied by Order dated January 15, 2009. Respondent has yet to receive any documents from EnerSys pursuant to the subpoena. Respondent also served a motion to compel The Moore Company to produce documents in response to its subpoena, and has opposed a motion to limit filed by the Moore Company with respect to the subpoena. Those motions remain pending and Respondent has not received any documents from The Moore Company. Finally, Entek has sought to limit Respondent's depositions of Rob Keith and Mr. Fraser-Bell by filing motions to quash. Respondent has opposed Entek's motions to quash, which also remains pending.

² Complaint Counsel has opposed Respondent's motion to amend the scheduling order and in the process, has made several misleading and incorrect statements. Among other incorrect statements is Complaint Counsel's assertion regarding Parker Poe's involvement in the investigational phase of this matter. Hogan & Hartson, not Parker Poe, represented Respondent during the investigational phase. Parker Poe had a very limited role of interviewing certain custodians of documents to collect documents but did not produce or review the documents. Complaint Counsel also wrongly states that a one-month extension would somehow harm consumers without offering a shred of support for this accusation and which ignores the fact that the so-called price increase was actually simply an energy surcharge passed on to all customers. Finally, Complaint Counsel incorrectly suggests that Rule 3.51's current provision that an initial decision be filed within one year of issuance of the Complaint is somehow applicable to this matter which was filed long before the amendment of the Rule. Even if applicable, the Complaint

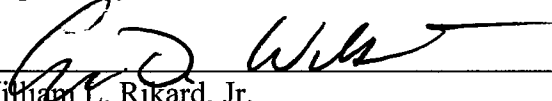
reports, including discovery of Ms. Tracy Tang, formerly with Anpei in Taiwan, scheduled for February 24, 2009 and Complaint Counsel's deposition of Nippon Steel & Glass in Osaka Japan on February 27, 2009.

For the foregoing reasons, Respondent respectfully requests that the Court (1) grant Respondent's motion to compel Exide Technologies, order that Exide produce all documents responsive to the Exide Subpoena to Respondent immediately and provide Respondent such other and further appropriate relief including ordering the resumption of the Exide depositions of Exide and Messrs. Ulsh, Gillespie, Menion and Perez as to Exide documents produced on or after January 19, 2009 and (2) hold the motion to compel of ENTEK International, LLC in abeyance pending the outcome of the deposition of Mr. Daniel Wertz on February 10, 2009. Respondent has been moving forward diligently with discovery and other work in preparing for the trial in this matter.

was filed on September 9, 2008. A one month extension on the hearing to May 14, 2009, even with a four week hearing, would not jeopardize any one-year deadline for rendering a decision.

Dated: February 3, 2009

Respectfully Submitted,



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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing ***Respondent's Status Report on Motions to Compel Exide Technologies and ENTEK International, LLC***, 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 February 3, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Respondent's Status Report on Motions to Compel Exide Technologies and ENTEK International, LLC*** upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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Washington, DC 20580
oyalj@ftc.gov

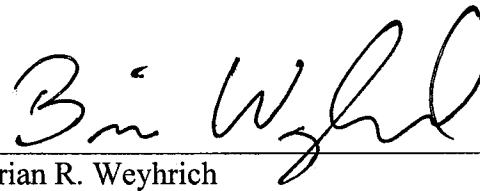
I hereby certify that on February 3, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Respondent's Status Report on Motions to Compel Exide Technologies and ENTEK International, LLC*** upon:

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EXHIBIT A

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A large, stylized watermark of the word "COPY" is positioned in the upper right quadrant of the page.

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January 19, 2009

VIA FEDEX

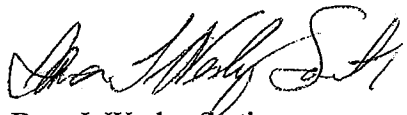
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Re: Subpoena *Duces Tecum* to Exide Technologies, Inc.

Enclosed in response to the subpoena *duces tecum* issued to Exide Technologies in connection with *In re Polypore International, Inc.* (FTC Docket No. 9327) is a CD containing ETI_0001863 through ETI_0004931. We are providing TIFF images with matching text files, native Excel files, a .CSV data load file, and .DII and .LOG image load files. The images and disk have both been labeled "CONFIDENTIAL-FTC Docket No. 9327."

Please contact me if I may be of assistance with this data.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana I. Wesley Sarti", is located below the word "Sincerely,".

Dana I. Wesley Sarti
Litigation Support Coordinator
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Tel: 202.775.4497

cc: D. Russell
B. Hatcher