

ORIGINAL



UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman  
Pamela Jones Harbour  
Jon Leibowitz  
J. Thomas Rosch

\_\_\_\_\_  
In the Matter of \_\_\_\_\_  
Polypore International, Inc., \_\_\_\_\_  
A corporation. \_\_\_\_\_

Docket No. 9327  
Public

THE MOORE COMPANY'S MOTION FOR *IN CAMERA* TREATMENT OF  
DOCUMENTS DESIGNATED BY  
RESPONDENT POLYPORE INTERNATIONAL, INC.

Non-Party The Moore Company moves, pursuant to Federal Trade Commission ("FTC") Rule 3.45(b) of the FTC's Rules of Practice, 16 C.F.R. § 3.45(b), for an order allowing *in camera* treatment of certain documents designated by Respondent Polypore International, Inc ("Polypore") as proposed trial exhibits (the "Designated Documents"). A table setting forth the Designated Documents is attached hereto as Exhibit A. In support of this motion, The Moore Company refers to the accompanying Declaration of Guy Dauwe ("Dauwe Decl.").

I. Procedural Background

Complaint Counsel and Respondent Polypore have made numerous discovery requests of The Moore Company relating to The Moore Company's subsidiary Amer-Sil's battery separator business. The Moore Company designated those non-public, commercially-sensitive materials it produced in response to the discovery requests as "Confidential" in accordance with 15 U.S.C. § 46(f) and 16 C.F.R. § 4.10(a)(2). The Moore Company also produced materials pursuant to the

Protective Order Governing Discovery Material that was entered by the Court on October 23, 2008.

By letter dated March 27, 2009, Polypore informed The Moore Company that it intended to introduce evidence containing “Confidential Material” as that term is defined in the Protective Order. See Letter from Eric Welsh dated March 27, 2009, attached hereto as Exhibit B.

Contrary to the requirements of the Protective Order,<sup>1</sup> Polypore did not specifically identify which documents or records it intended to use at trial; instead, Polypore’s letter merely stated that the Confidential Material “may be in the form of documents The Moore Company has produced to Polypore’s Counsel, documents The Moore Company has produced to the Federal Trade Commission, documents used in depositions of The Moore Company’s witnesses, and/or the deposition testimony or transcripts of The Moore Company’s witnesses.” Id.

On April 9, 2009, given the uncertainty as to the specific documents Polypore intended to use at trial, The Moore Company filed a Motion For Extension of Time to Seek *In Camera* Treatment of the documents designated by Polypore. By Order dated April 14, 2009, this Court granted The Moore Company’s Motion For Extension of Time to Seek *In Camera* Treatment, and directed Polypore to inform The Moore Company by April 17, 2009, with specificity, which documents it intended to introduce at trial. The Moore Company was directed to file its motion for *in camera* treatment for such documents, not including affidavits, by April 24, 2009 -- one week after Polypore was required to make its specific designations.

On April 17, 2009, Polypore provided The Moore Company with “a list identifying evidence” Polypore “may introduce at the May 12, 2009 hearing” in this matter. See Letter from Eric Welsh dated April 17, 2009, attached hereto as Exhibit C. According to Polypore’s letter,

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<sup>1</sup> The Protective Order states that counsel who plans to introduce into evidence at a hearing any document containing Confidential Material produced by a third party is required to provide 10 days notice to the third party for purposes of allowing that party to seek *in camera* treatment of such documents. See Protective Order, paragraph 12.

this list specified “The Moore Company’s documents and witness testimony which Polypore intends to introduce at trial” . . . “subject to information learned during the April 23, 2009 deposition of Mr. Guy Dauwe.” Id. Polypore’s list identified over 160 individual Bates ranges of documents, consisting of approximately 1566 pages of evidence. The sheer volume of documents designated by Polypore rendered it impossible for The Moore Company to comply with the one-week deadline for seeking *in camera* treatment, in part due to the strict standards governing *in camera* applications and the level of detail and specificity required to support such applications. See, e.g., In re Hoechst Marion Roussel, Inc., 2000 FTC LEXIS 138 (Sept. 19, 2000).

On April 23, 2009, Complaint counsel and counsel for Polypore deposed Guy Dauwe, the Managing Director of Amer-Sil, in Washington, D.C. At the close of Mr. Dauwe’s deposition (approximately 3:00 pm), counsel for The Moore Company was informed by Polypore’s counsel that it had narrowed its proposed trial designations. On April 24, 2009, The Moore Company filed a motion for an extension of time to seek *in camera* treatment of the documents designated by Polypore on April 23, 2009. On April 28, 2009, the Court granted the motion in part, and set a deadline of May 1, 2009 for The Moore Company to file this motion for *in camera* treatment.

## **II. Legal Standard**

16 C.F.R. § 3.45(b) provides that documents shall be placed *in camera* “after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting in camera treatment.” An applicant for *in camera* treatment bears the burden of demonstrating that public disclosure will result in a clearly defined,

serious injury. See H.P. Hood & Sons, Inc., 58 F.T.C. 1184, 1188, 1961 FTC LEXIS 368, \*10-11 (1961).

Demonstrating serious injury requires the applicant to show “that the documents are secret, that they are material to the applicant’s business and that public disclosure will plausibly discourage the future production of such information.” In the Matter of Bristol-Myers Company, 90 F.T.C. 455, 456, 1977 FTC LEXIS 25, \*4-5 (1977). “The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” In re Hoechst Marion Roussel, Inc., 2000 FTC LEXIS 138, \*6 (Sept. 19, 2000) (quoting In the Matter of General Foods Corp., 95 F.T.C. 352, 355 (1980)). In order to sustain this burden of proof, an application for *in camera* treatment must be supported by proper evidence, such as affidavits, to support all factual issues or assertions. See id. \*4.

The following factors are weighed in considering both secrecy and materiality: (1) the extent to which the information is known outside of the applicant’s business; (2) the extent to which the information is known by employees and others involved in the applicant’s business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and to the applicant’s competitors; (5) the amount of effort or money expended by the applicant in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. See In the Matter of Bristol-Myers Company, 90 F.T.C. at 456, 1977 FTC LEXIS 25, \*5 (citing Restatement of Torts § 757, Comment b at 6 (1939)).

An application for *in camera* treatment that is submitted by a third-party should be given “special solicitude,” because such treatment encourages third-party cooperation in future proceedings. See In the Matter of Kaiser Aluminum & Chemical Corporation, 103 F.T.C. 500,

1984 FTC LEXIS 60, at \*2-3 (1984) (“Moreover, as third parties, the requests of these companies deserve special solicitude. As a policy matter, extensions of confidential or in camera treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”); see also The Crown Cork & Seal Company, Inc., 71 F.T.C. 1714; 1967 FTC LEXIS 128, at \*2 (1967) (“Here, on the other hand, petitioner’s plea warrants special solicitude coming as it does from a third party bystander in no way involved in the proceedings whose records, if in camera treatment is denied, will be open to the scrutiny of its competitors including respondent herein.”).

### **III. Argument**

The Designated Documents should be afforded *in camera* treatment because The Moore Company, a nonparty, will suffer a clearly defined, serious injury if the documents are publicly disclosed. Specifically, the Designated Documents contain information that is both secret and material to The Moore Company’s business. Public disclosure would cause great competitive harm to The Moore Company, and this risk of harm is not outweighed by the significance of the information to the present proceeding.

The Designated Documents contain information that is highly confidential and not disclosed outside of Amer-Sil, except insofar as it may be shared confidentially with Amer-Sil’s business partners, usually in the context of non-disclosure agreements. Dauwe Decl. ¶ 6. It is distributed within the company only to those who have a specific need for the information. Id. Amer-Sil maintains all of its records in a locked facility. Id. It does not permit tours of the facility or permit access to any part of the facility where confidential business records are stored, or confidential manufacturing processes take place. Id. Those employees who receive the information typically do so only upon entering into confidentiality agreements that prohibit them

from disclosing the information to others. Id. Amer-Sil guards the confidentiality of this information because of its value to the Company's ongoing business, as well as to its competitors. Id. The information is the product of a significant investment of time and resources, and could not be acquired or duplicated by others in the absence of a similar expenditure of time and resources, if it could be duplicated at all. Id. Additionally, Amer-Sil, and by extension The Moore Company, has sought legal advice and incurred substantial cost to protect the confidentiality of the Designated Documents. Id.

As discussed more fully in the Declaration of Guy Dauwe, The Moore Company seeks *in camera* treatment for the following types of documents:

1. Product Development Information: Several of the Designated Documents contain highly sensitive information related to future Amer-Sil product offerings. See Dauwe Decl. ¶ 8. The confidentiality of this information is critical to Amer-Sil's commercial viability and competitiveness. Id. Amer-Sil has invested and continues to invest hundreds of thousands of dollars in its ongoing efforts to develop new products. Id. It has also invested substantial amounts of money in developing its relationships with its clients and its knowledge of their unique needs. Id. Public disclosure is certain to cause substantial harm to Amer-Sil's business interests because of the advantage that disclosure would provide to Amer-Sil's competitors. Id. Amer-Sil prides itself on its unique process of manufacturing battery separators. Id. Amer-Sil is unaware of any other company in the world that uses the same process or a similar process as Amer-Sil. Id. Amer-Sil believes that its unique process gives its separators a competitive edge. Id.

Amer-Sil is highly protective of the secrecy surrounding its manufacturing process. Id. No published literature or other publicly-available printed materials on this process exist (other

than non-specific information contained in a patent, which does not reveal any confidential or proprietary information). Id. All such information is highly confidential. Id. ¶¶ 6, 8.

Innovations in the design of Amer-Sil's products are a crucial part of Amer-Sil's competitive advantage over its competitors. Id. ¶ 8. Several of these documents are protected by nondisclosure agreements, as more fully described in Mr. Dauwe's Declaration. Id. ¶ 8.

Because these documents contain information that is critical to Amer-Sil's long-term product development and marketing strategies, The Moore Company requests that the documents be afforded *in camera* treatment for three to ten years, as indicated in Exhibit A. See In the Matter of Evanston Northwestern Healthcare Corp., 2005 FTC LEXIS 38, at \*19-21 (2005) (granting *in camera* treatment for ten years for non-party's business development and strategy documents). Any shorter periods of time would risk substantial commercial and competitive harm to Amer-Sil. Dauwe Decl. ¶ 8.

2. Product Marketing, Customer, and Sales Strategy Information: These documents contain marketing strategy and product development information, including sales strategy, pricing information, prospective customers, and current customers. Dauwe Decl. ¶ 9. This information was assembled at considerable time and expense, and represents a core business asset. Id. Public disclosure of this information would damage Amer-Sil's competitive position because it would provide Amer-Sil's competitors with information regarding Amer-Sil's marketing strategy and product development. Id. Disclosure may also enable customers to gain bargaining leverage over Amer-Sil. Id. Information in this category should be protected for three to ten years, as indicated in Exhibit A, as any shorter periods of time would risk substantial commercial and competitive harm to Amer-Sil. Id.

3. Category 3: Pricing Information. These documents provide information relating to Amer-Sil's product sales ordered by country and individual customer. Dauwe Decl. ¶ 10. Public disclosure of this information would damage Amer-Sil's competitive position, because it would provide Amer-Sil's competitors with information regarding the prices charged by Amer-Sil for specific products sold to specific customers. Id. Amer-Sil's price terms are individually negotiated with each of its customers, taking into account a host of factors that are unique to each customer relationship. Id. In addition, the sales volume information reflected in these documents could be used by competitors of Amer-Sil by revealing where Amer-Sil generates its sales revenue. All of this information is confidential and competitively sensitive. Id. Amer-Sil would suffer substantial competitive harm if it were made part of the public record in this matter. Id. Additionally, the pricing information contained in Exhibits RX1606-08, as well as RX1615 is protected by a nondisclosure agreement. Id. Additionally, some of this information is protected by nondisclosure agreements. Id. This information should be protected for three to five years, as Exhibit A, as any shorter periods of time would risk substantial commercial and competitive harm to Amer-Sil. Id.

As detailed in his Declaration, Mr. Dauwe personally reviewed all of the Designated Documents and determined the length of time for which *in camera* treatment is appropriate based on his assessment of the harm that The Moore Company would suffer if the Designated Documents were publicly disclosed. Dauwe Decl. ¶ 11. Based on that review, The Moore Company has indicated the minimum lengths of time for which the documents should be afforded *in camera* treatment. Id. ¶ 12.

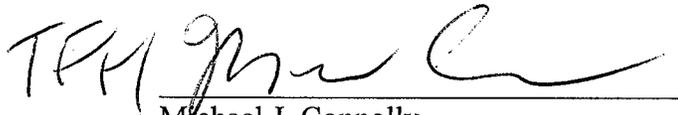
Because it discusses the above listed documents in great detail and specifically as to why they are deserving of *in camera* treatment, the Declaration of Guy Dauwe should also be

afforded *in camera* treatment for a period of ten years, which is the longest period of time for which *in camera* treatment is sought for any document discussed therein.

WHEREFORE, The Moore Company respectfully requests that (1) *in camera* status be granted for the time frames above those documents or portions of documents identified in Exhibit A, and (2) *in camera* status be granted for a period of ten years to the Declaration of Guy Dauwe and its accompanying exhibits.

Respectfully submitted,

THE MOORE COMPANY  
By its attorneys,



Michael J. Connolly  
Laura B. Angelini  
HINCKLEY, ALLEN & SNYDER LLP  
28 State Street  
Boston, Massachusetts 02109-1775  
(617) 345-9000

Dated: May 1, 2009

#### CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2009, I caused a copy of this document to be served upon the following persons via first class mail, postage pre-paid:

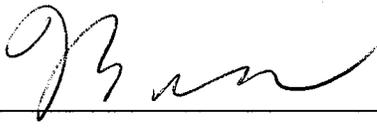
Eric D. Welsh, Esq. [**first-class mail and email**]  
Parker Poe Adams & Bernstein LLP  
Three Wachovia Center, Suite 3000  
401 South Tryon Street  
Charlotte, NC 28202-1935  
(704) 372-9000

J. Robert Robertson, Esq. [**first-class mail and email**]  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Steven Dahm, Esq. [**first class mail and email**]  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Administrative Law Judge D. Michael Chappell [**two by first class mail and by email**]  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room H-106  
Washington, DC 20580

Donald S. Clark [**original and two copies**]  
Secretary of the Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room H-135  
Washington, DC 20580

TFM  \_\_\_\_\_

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

**COMMISSIONERS:**      **William E. Kovacic, Chairman**  
                                 **Pamela Jones Harbour**  
                                 **Jon Leibowitz**  
                                 **J. Thomas Rosch**

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

**ORDER**

Upon consideration of The Moore Company's motion for in camera treatment of certain hearing exhibits designated by Polypore International, Inc., it is hereby ordered that the motion is GRANTED, and the documents identified on Exhibit A of The Moore Company's motion, which is attached hereto, shall be afforded in camera treatment pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b) for the time periods indicated in Exhibit A to the motion, all time periods commencing from the date of this Order.

ENTER:

\_\_\_\_\_  
Administrative Law Judge D. Michael Chappell

DATE:

# **Exhibit A**

Exhibit A

**CATEGORY I: Product Development Information**

<b>Trial Ex. No.</b>	<b>Portion for which <i>In Camera</i> Treatment is Necessary</b>	<b>Date</b>	<b>Begin Doc. No.</b>	<b>End Doc. No.</b>	<b>Length of <i>In Camera</i> Treatment Requested</b>
RX 1622	Entire document	10/10/08	AM 0037744	AM 0037753	10 years
RX 1624	Entire document	12/08/08	AM 0285044	AM 0285069	10 years
RX 1625	Entire document	2007	AM 0290714	AM 0290714	3 years
RX 1629	Entire document	10/16/08	AM 0037251	AM 0037256	10 years

**CATEGORY II: Product Marketing, Customer, and Sales Strategy Information**

<b>Trial Ex. No.</b>	<b>Portion for which <i>In Camera</i> Treatment is Necessary</b>	<b>Date</b>	<b>Begin Doc. No.</b>	<b>End Doc. No.</b>	<b>Length of <i>In Camera</i> Treatment Requested</b>
RX 1612	Entire document	2007	AM 0150896	AM 0150908	10 years
RX 1613	Entire document	8/23/07	AM 0291731	AM 0291741	10 years

RX 1614	Entire document	3/01/08	AM 0295059	AM 0295085	10 years
RX 1619	Entire document	3/31/08	AM 0288909	AM 0288910	5 years
RX 1620	Entire document	7/02/08	AM 0291633	AM 0291634	10 years
RX 1621	Entire document	8/28/08	AM 0069915	AM 0069924	5 years
RX 1623	Entire document	11/26/08	AM 0286572	AM 0286573	3 years
RX 1628	Entire document	2008	AM 0250964	AM 0250999	10 years

**CATEGORY III: Pricing Information**

<b>Trial Ex. No.</b>	<b>Portion for which <i>In Camera</i> Treatment is Necessary</b>	<b>Date</b>	<b>Begin Doc. No.</b>	<b>End Doc. No.</b>	<b>Length of <i>In Camera</i> Treatment Requested</b>
RX 1606	Entire document	01/01/05 - 3/12/05	AM 0026113	AM 0026116	3 years
RX 1607	Entire document	01/01/06 - 3/12/06	AM 0026117	AM 0026119	3 years
RX 1608	Entire document	01/01/07 - 3/12/07	AM 0026120	AM 0026123	3 years

RX 1609	Entire document	01/01/08 – 12/31/08	AM 0026124	AM 0026124	3 years
RX 1615	Page AM0003791	6/16/07	AM 0003789	AM 003802	5 years

# **Exhibit B**

**PARKER POE**

PARKER POE ADAMS & BERNSTEIN LLP

*Attorneys and Counselors at Law*

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March 27, 2009

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

**THE MOORE COMPANY**

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

Ladies and Gentlemen:

My firm represents Polypore International, Inc. ("Polypore") in connection with a matter pending before the Federal Trade Commission entitled In the Matter of Polypore International, Inc., Docket No. 9327 (the "Matter"). The hearing of this Matter is set to begin on May 12, 2009.

Pursuant to the terms of the Protective Order Governing Discovery Material ("Protective Order") (a copy is enclosed) and Rule 3.45(b) of the Rules of Practice for Adjudicative Proceedings before the United States Federal Trade Commission ("Rule 3.45(b)"), you are hereby notified that Polypore's Counsel intends to introduce evidence containing Confidential Material, as that term is defined in the Protective Order, at the May 12, 2009 hearing of this Matter. The Confidential Material may be in the form of documents The Moore Company has produced to Polypore's Counsel, documents The Moore Company has produced to the Federal Trade Commission, documents used in depositions of The Moore Company's witnesses, and/or the deposition testimony or transcripts of The Moore Company's witnesses.

The Confidential Material introduced into evidence at the hearing of this Matter will continue to be subject to the Protective Order, which safeguards against the use or disclosure of confidential information submitted or produced in connection with this Matter. However, please

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

March 27, 2009  
Page 2

be aware that all exhibits entered into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge Chappell. Please let this letter serve as formal notice that pursuant to the terms of the Protective Order and Rule 3.45(b), you may obtain *in camera* treatment for such Confidential Material, or any portion thereof, only by appropriate motion to the Administrative Law Judge. If you have any questions regarding the foregoing, please feel free to contact me.

Sincerely yours,

Handwritten signature of Eric D. Welsh, appearing as "E. Welsh / brw".

Eric D. Welsh

EDW/brw

Enclosure

# **Exhibit C**

**PARKER POE**

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April 17, 2009

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

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

Ladies and Gentlemen:

Following up on my letter of March 27, 2009, below please find a list identifying evidence Polypore International, Inc. ("Polypore") may introduce at the May 12, 2009 hearing of the above-referenced matter. Subject to information learned during the April 23, 2009 deposition of Mr. Guy Dauwe, this list specifies The Moore Company's documents and witness testimony which Polypore intends to introduce at trial. Please be advised that pursuant to the terms of the Protective Order, Rule 3.45(b), and the April 14, 2009 Order Granting Non-Party The Moore Company's Motion for Extension of Time to Seek *In Camera* Treatment, you may obtain *in camera* treatment for such evidence, or any portion thereof, only by appropriate motion to the Administrative Law Judge. If you have any questions regarding the foregoing, please feel free to contact me.

Sincerely yours,

*E. Welsh / BRW*

Eric D. Welsh

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Guy Dauwe – Deposition Date 4/23/09	Entire Transcript
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Deposition No.	Deposition No.
AM0001064	AM0001065
AM0001212	AM0001214
AM0001407	AM0001409
AM0001889	AM0001891
AM0003560	AM0003635
AM0003664	AM0003665
AM0003703	AM0003704
AM0003706	AM0003724
AM0003789	AM0003802
AM0003871	AM0003873
AM0003878	AM0003878
AM0004505	AM0004508
AM0004616	AM0004617
AM0004618	AM0004620
AM0004621	AM0004624

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RALEIGH, NC  
SPARTANBURG, SC

AM0004710	AM0004713
AM0004990	AM0004993
AM0005316	AM0005333
AM0005680	AM0005684
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AM0024765	AM0024766
AM0025166	AM0025168
AM0025294	AM0025303
AM0025434	AM0025443
AM0025546	AM0025549
AM0025554	AM0025556
AM0025574	AM0025576
AM0025642	AM0025649
AM0025685	AM0025687
AM0026044	AM0026049
AM0026050	AM0026055
AM0026076	AM0026078
AM0026113	AM0026124
AM0026468	AM0026473
AM0029342	AM0029343
AM0030196	AM0030197
AM0031699	AM0031700
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AM0032967	AM0032971

AM0036384	AM0036385
AM0036399	AM0036401
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AM0036471	AM0036477
AM0037251	AM0037256
AM0037298	AM0037303
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AM0041738	AM0041747
AM0041755	AM0041755
AM0041782	AM0041787
AM0044611	AM0044616
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AM0103023	AM0103023

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AM0103965	AM0102966
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AM0123793	AM0123793
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AM0124208	AM0124215
AM0124282	AM0124290
AM0124387	AM0124391

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AM0124896	AM0124903
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AM0189311	AM0189319
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AM0286581	AM0286584
AM0286588	AM0286607
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AM0286895	AM0286895
AM0288530	AM0291741

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AM0288883	AM0288884
AM0288909	AM0288910
AM0288981	AM0288982
AM0289059	AM0289059
AM0289971	AM0289972
AM0290714	AM0290715
AM0290817	AM0290836
AM0291296	AM0291297
AM0291633	AM0291634
AM0292412	AM0292434
AM0292813	AM0292912
AM0293831	AM0293847
AM0293964	AM0293985
AM0295059	AM0295085
AM0296387	AM0296394
AM0296397	AM0296405
AM0296408	AM0296416
AM0296419	AM0296427
AM0296430	AM0296442
AM0296468	AM0296479
AM0296611	AM0296619
AM0296622	AM0296637
AM0296638	AM0296645

AM0296648	AM0296655
AM0296763	AM0296767
AM0297189	AM0297192
AM0297259	AM0297264
AM0297265	AM0297270
AM0297422	AM0297424
AM0301507	AM0301518
AM0301526	AM0301576
AM0302100	AM0302111
AM0303951	AM0303977
AM0304250	AM0304253
AM0304255	AM0304280
AM0316430	AM0316451
AM0324410	AM0324452

EDW/brw

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

\_\_\_\_\_ )  
**In the Matter of** )

**Polypore International, Inc.** )  
**a corporation.** )  
\_\_\_\_\_ )

**Docket No. 9327**

**PROTECTIVE ORDER GOVERNING DISCOVERY MATERIAL**

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

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

**DEFINITIONS**

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

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

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

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

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

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

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

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

6. "Respondent" means Polypore.

7. "Party" means the Commission or Polypore.

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

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

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

## TERMS AND CONDITIONS OF PROTECTIVE ORDER

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

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

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

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

shall be treated as Confidential Material.

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

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

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

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

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

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

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

Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential materials as provided by its Rules of Practice; Sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

11. In the event that any Confidential Material is contained in any pleading, motion exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed under seal. To the extent that such material was originally submitted by a Third Party, the Party including the Materials in its papers shall immediately notify the submitter of such inclusion. Confidential Material contained in the papers shall remain under seal until further order of the Administrative Law Judge; provided, however, that such papers may be furnished to persons or entities who may receive Confidential Material pursuant to Paragraphs 9 or 10. Upon or after filing any paper containing Confidential Material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection of any such material expires, a Party may file on the public record a duplicate copy which also contains the formerly protected material.

12. If counsel plans to introduce into evidence at the hearing any document or transcript containing Confidential Material produced by another Party or by a Third Party, they shall provide ten (10) days advance notice to the other Party or Third Party for purposes of allowing that Party or Third Party to seek an order that the document or transcript be granted in camera treatment. If that Party or Third Party wishes in camera treatment for the document or transcript, the Party or Third Party shall file an appropriate motion with the Administrative Law

Judge. Where in camera treatment is granted, a duplicate copy of such document or transcript with the Confidential Material deleted therefrom may be placed on the public record.

13. If any Party receives a discovery request in another proceeding that may require the disclosure of Confidential Material submitted by another Party or Third Party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of Confidential Material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. §4.11(e), to discovery requests in another proceeding that are directed to the Commission.

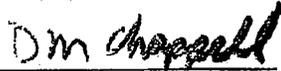
14. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 C.F.R. §4.12.

15. The inadvertent production or disclosure of any Discovery Material, which a Producing Party claims should not have been produced or disclosed because of a privilege, will not be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged Discovery Material not inadvertently been produced or disclosed. The inadvertent production of a privileged document shall not in itself be deemed a waiver of any privileged applicable to any other documents relating to the subject matter.

16. This Protective Order shall not apply to the disclosure by a Producing Party or its counsel of its own Confidential Material.

17. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

ORDERED:

  
D. Michael Chappell  
Administrative Law Judge

Date: October 23, 2008

**EXHIBIT A  
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

\_\_\_\_\_ )  
In the Matter of )

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

Docket No. 9327

**DECLARATION CONCERNING PROTECTIVE ORDER  
GOVERNING DISCOVERY MATERIAL**

I, \_\_\_\_\_, hereby declare and certify the following to be true:

1. [Statement of employment]

2. I have read the "Protective Order" governing Discovery Material ("Protective Order") issued by the Commission on October 23, 2008, in connection with the above-captioned Matter. I understand the restrictions on my access to and use of any Confidential Material (as that term is used in the Protective Order) in this Matter, and I agree to abide by the Protective Order.

3. I understand that the restrictions on my use of such Confidentiality Material include:

- a. that I will use such Confidential Material only for the purpose of preparing for this proceeding, and hearing(s) and any appeal of this proceeding and for no other purpose;
- b. that I will not disclose such Confidential Material to anyone, except as permitted by the Protective Order;
- c. that I will use, store and maintain the Confidential Material in such a way as to ensure its continued protected status; and
- d. that, upon the termination of my participation in this proceeding, I will promptly return all Confidential Materials and all notes, memoranda, or other papers containing Confidential Material, to Complaint Counsel or Respondent's Outside Counsel as appropriate.

4. I understand that if I am receiving Confidential Material as an Expert/Consultant, as that term is defined in this Protective Order, the restrictions on my use of Confidential

Material also include the duty and obligation to:

- a. maintain such Confidential Material in separate locked room(s) or locked cabinet(s) when such Confidential Material is not being reviewed;
- b. return such Confidential Material to Complaint Counsel or Respondent's Outside Counsel, as appropriate, upon the conclusion of my assignment or retention, or upon conclusion of this Matter; and
- c. use such Confidential Material and the information contained therein solely for the purpose of rendering consulting services to a Party to this Matter, including providing testimony in judicial or administrative proceedings arising out of this Matter.

5. I am fully aware that, pursuant to Section 3.42(h) of the FTC Rules of Practice, 16 C.F.R. § 3.42(h), my failure to comply with the terms of the Protective Order may constitute contempt of the Commission and may subject me to sanctions.

Date: \_\_\_\_\_

\_\_\_\_\_  
Full Name [Typed or Printed]

\_\_\_\_\_  
Signature

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

**COMMISSIONERS:**      **William E. Kovacic, Chairman**  
                                 **Pamela Jones Harbour**  
                                 **Jon Leibowitz**  
                                 **J. Thomas Rosch**

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

**DECLARATION OF GUY DAUWE IN SUPPORT OF MOTION FOR *IN*  
CAMERA TREATMENT**

I, **Guy Dauwe**, declare as follows:

1. I am the Managing Director of Amer-Sil, S.A. ("Amer-Sil"). Amer-Sil is a wholly-owned subsidiary of The Moore Company. Amer-Sil exists under the laws of Luxembourg. Amer-Sil's production facilities and offices are located in Zone Industrielle, Kehlen, L-8287, Luxembourg.

2. I have reviewed the pleadings and motions filed by the FTC and by Polypore International, Inc. ("Polypore") in this matter. I submit this declaration in support of The Moore Company's Motion for *In Camera* Treatment of Documents Designated by Polypore.

3. Polypore has informed Amer-Sil that, in this proceeding, it intends to introduce evidence containing "Confidential Material" as that term is defined in the Protective Order Governing Discovery Material (the "Protective Order").

4. I have reviewed the documents designated by Polypore and concluded that certain information in those documents is highly confidential and that the public disclosure of that information would cause significant harm to Amer-Sil's commercial and competitive interests.

5. Those documents for which *in camera* treatment is appropriate are listed in Exhibit A to this declaration.

6. The documents listed in Exhibit A contain information that is highly confidential and generally not disclosed outside of Amer-Sil, except insofar as it may be shared confidentially with Amer-Sil's business partners. It is distributed within the company only to those who have a specific need for the information. Amer-Sil maintains all of its records in a locked facility. It does not permit tours of the facility or permit access to any part of the facility where confidential business records are stored, or confidential manufacturing processes take place. Those employees who receive the information typically do so only upon entering into confidentiality agreements that prohibit them from disclosing the information to others. Amer-Sil guards the confidentiality of this information because of its value to the Company's ongoing business, as well as the competitive harm it would suffer if the information was disclosed. The information is the product of a significant investment of time and resources, and could not be acquired or duplicated by others in the absence of a similar expenditure of time and resources, if it could be duplicated at all. Additionally, Amer-Sil, and by extension The Moore Company, has sought legal advice and incurred substantial cost to protect the confidentiality of the documents listed in Exhibit A.

7. For the convenience of the Court, the documents listed in Exhibit A have been organized into categories, each of which is discussed below.

8. Category 1: Product Development Information. These documents contain executive-level information of the highest confidentiality and materiality. They include information about Amer-Sil's upcoming product releases, sales and marketing strategy, and current and prospective customers. Amer-Sil has invested and continues to invest hundreds of thousands of dollars in its ongoing efforts to develop new products. It has also invested substantial amounts of money in developing its relationships with its clients and its knowledge of their unique needs. Public disclosure of this information is certain to cause substantial commercial and competitive harm to Amer-Sil because of the advantage it would provide to competitors. Amer-Sil prides itself on its unique process of manufacturing battery separators. Amer-Sil is unaware of any other company in the world that uses the same process or a similar process as Amer-Sil. Amer-Sil believes that its unique process gives its separators a competitive edge. Amer-Sil is highly protective of the secrecy surrounding its manufacturing process. No published literature or other publicly-available printed materials on this process exist (other than the non-specific information reflected in a patent, which does not reveal any confidential or proprietary information). All such information is highly confidential. Changes in the design of Amer-Sil's products are a crucial part of Amer-Sil's competitive advantage over its competitors. Publicizing such information would be extremely damaging to Amer-Sil. Public disclosure would also risk substantial commercial and competitive harm to Amer-Sil's customers. Additionally, the information contained in Exhibits RX622, RX1624, RX1628, and RX1629, regarding new products in development, is protected by nondisclosure agreements entered into between Amer-Sil and its existing and prospective customers. It is respectfully submitted that this information should be protected for three to ten years, and that any shorter periods of time would risk substantial commercial and competitive harm to both Amer-Sil and its customer.

9. Category 2: Product Marketing, Customer, and Sales Strategy Information. These documents contain highly sensitive marketing strategy and product development information, including sales strategy, pricing information, prospective customers, and current customers. This information was assembled at considerable time and expense, and represents a core business asset. As reflected in the documents, this information was shared with a limited number of employees within Amer-Sil and with each prospective customer that participated in discussions with Amer-Sil. The other entities that participated in discussions with Amer-Sil understood and desired that the discussions would be confidential. For example, as set forth the document, the information contained in Exhibit RX1620 was shared with Amer-Sil only after Amer-Sil entered into a confidentiality agreement. The product design information provided by Amer-Sil's customer, which is contained in Exhibit RX1621, is also protected by a nondisclosure agreement entered into between Amer-Sil's customer and Amer-Sil. Public disclosure of this information would damage Amer-Sil's competitive position because it would provide Amer-Sil's competitors with information regarding Amer-Sil's marketing strategy and product development, without the attendant cost that Amer-Sil incurred in generating the information, and enable Amer-Sil's competitors to use that information in their own negotiations with Amer-Sil's customers. Disclosure will also enable customers to gain bargaining leverage over Amer-Sil, in that they would obtain information regarding Amer-Sil's confidential negotiations with other current or prospective customers. Disclosure may also significantly disrupt Amer-Sil's customer relationships. It is respectfully submitted that this information should be protected for three to ten years, as indicated in Exhibit A, and that any shorter periods of time would risk substantial commercial and competitive harm to Amer-Sil.

10. Category 3: Pricing Information. These documents provide information relating to Amer-Sil's product sales ordered by individual customer. Public disclosure of this information would damage Amer-Sil's competitive position, because it would provide Amer-Sil's competitors with information regarding the confidential pricing information tailored by Amer-Sil for specific products sold to specific customers. Amer-Sil's price terms are individually negotiated with each of its customers, taking into account a host of factors that are unique to each customer relationship. All of this information is confidential and competitively sensitive. Amer-Sil would suffer substantial competitive harm if it were made part of the public record in this matter. The information contained in RX1615 is also protected by a nondisclosure agreement. It is respectfully submitted that this information should be protected for three to five years, and that any shorter periods of time would risk substantial commercial and competitive harm to Amer-Sil.

11. I personally reviewed all of the documents listed in Exhibit A and determined the length of time for which *in camera* treatment is appropriate based on my assessment of the harm that would be caused by public disclosure.

12. Based on my review of the documents listed in Exhibit A, I have indicated the minimal length of time for which, in my judgment, the documents should be afforded *in camera* treatment.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 1 day of May, 2009 in Kehlen, Luxembourg.

 G. Dauwe  
Guy Dauwe

Nonpublic  
Exhibits  
Redacted