

ORIGINAL

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



In the Matter of)
)
)

POLYPORE INTERNATIONAL, INC.,)
Respondent.)
_____)

Docket No. 9327

**ORDER ON NON-PARTIES' SUPPLEMENTAL
MOTIONS FOR *IN CAMERA* TREATMENT**

I.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice, non-parties Johnson Controls, Inc., and The Moore Company separately filed supplemental motions for *in camera* treatment. Neither Complaint Counsel nor Respondent oppose these motions.

An Order on Non-Parties' Motions for *in Camera* Treatment was entered in this matter on May 6, 2009. An Order on Respondent's Second Motion for *in Camera* Treatment was entered in this matter on May 13, 2009. The legal standards that apply to motions for *in camera* treatment, including the instant motions, are set forth in those Orders.

II.

A.

Johnson Controls submitted its Second Motion for *In Camera* Treatment on June 2, 2009. Johnson Controls seeks *in camera* treatment for one exhibit, RX-41. Johnson Controls supports its supplemental motion with a declaration from Rodger M. Hall, Vice President Lead Business for the Power Solutions Division ("Hall Declaration"). Hall declares that RX-41 identifies particular suppliers, identifies a particular technology, discloses long-term pricing, reveals inventory practices, and discusses confidential negotiations. Hall further declares that Johnson Controls will suffer serious commercial injury if the information in RX-41 were to be publicly released.

A review of the Hall Declaration and of the document reveals that RX-41 meets the standards for *in camera* treatment. Johnson Controls has shown that the document is sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. That showing has been balanced against the importance of the information in explaining the rationale of decisions at the Commission. Johnson Control's supplemental motion is, accordingly, GRANTED.

In camera treatment for a period of five years, expiring on June 1, 2014, will be extended to RX-41.

B.

The Moore Company submitted a Motion for *In Camera* Treatment of Deposition Excerpts on May 28, 2009. The Moore Company seeks *in camera* treatment for certain designated portions of deposition testimony provided by Guy Dauwe, Managing Director of Amer-Sil S.A., a subsidiary of The Moore Company and for the Declaration of Guy Dauwe (“Dauwe Declaration”) that the Moore Company provides in support of its motion. Dauwe declares that certain information in the Dauwe deposition testimony is highly confidential and that the disclosure of such information would cause significant harm to Amer-Sil’s commercial and competitive interests. Dauwe further declares that the information is not disclosed outside of Amer-Sil, except insofar as it may be shared confidentially with Amer-Sil’s business partners, and that such information is distributed within the company only to those who have a specific need for the information.

A review of the Dauwe Declaration and of the designated deposition testimony reveals that the information in the excerpts for which The Moore Company seeks *in camera* treatment meets the standards for *in camera* treatment. The Moore Company has shown that the information is sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. That showing has been balanced against the importance of the information in explaining the rationale of decisions at the Commission. The Moore Company’s motion is, accordingly, GRANTED IN PART and DENIED IN PART.

In camera treatment for a period of five years, expiring on June 1, 2014, will be extended to the deposition excerpts listed in Exhibit A to the Declaration of Guy Dauwe.

In camera treatment will not be extended to the Declaration of Guy Dauwe in support of The Moore Company’s motion. The Moore Company did not indicate that the Dauwe Declaration would be offered into evidence by the parties. Accordingly, *in camera* treatment is not appropriate. *In re Crown Cork & Seal Co.*, 71 F.T.C. 1669, 1671 (1967) (“The need for [*in camera* treatment] . . . does not arise until the material is about to be submitted in evidence.”); *In re Lehigh Portland Cement Co.*, 74 F.T.C. 1629, 1631 n.6 (1968) (premature to grant *in camera* treatment where there is a possibility that none of the information will be offered into evidence).

III.

Complaint Counsel shall prepare an order, with a signature line for the Administrative Law Judge, that lists by exhibit number the documents or deposition excerpts that, by this Order, have been granted *in camera* treatment and that sets forth the expiration date of *in camera* treatment for each exhibit.

The non-parties shall inform their testifying current or former employees that *in camera* treatment has been extended to the material described in this Order. At the time that any documents, or portions of documents, that have been granted *in camera* treatment are offered into evidence, or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: June 4, 2009