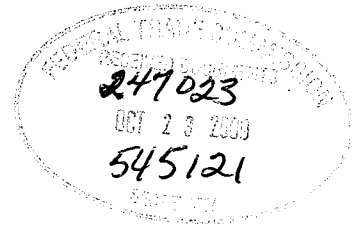


**ORIGINAL**

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



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

**Docket No. 9327**

**PUBLIC**

**RESPONDENT’S RESPONSE TO EXIDE TECHNOLOGIES’ MOTION TO MODIFY  
THE PROTECTIVE ORDER**

Respondent Polypore International, Inc. (“Polypore”) hereby submits its memorandum in opposition to Third Party Exide Technologies’ (“Exide”) Motion to Modify the Protective Order. In its Motion, Exide falsely accuses Mr. Michael Shor (Special Litigation Counsel for Polypore) as well as Parker Poe of improper behavior related to the alleged use of Exide’s confidential information. Contrary to Exide’s contention, no one from either Daramic or Polypore, including Mr. Shor, has had access to Exide’s confidential information. Exide’s argument relies solely on a letter from Mr. Shor which contains no reference to any confidential information provided by Exide under the Protective Order. Exide’s claims appear to be another example of Exide’s back channel with Complaint Counsel in an attempt to divert the resources of Respondent’s counsel as the hearing scheduled on November 4, 2009 quickly approaches. For the reasons set forth below, Respondent respectfully requests that this Court deny Exide’s Motion in its entirety.

**INTRODUCTION**

On October 23, 2008, the Honorable D. Michael Chappell entered a Protective Order Governing Discovery Material permitting the disclosure of confidential information only to

specifically designated parties, including outside counsel for Respondent and Mr. Shor. Even after the entry of the Protective Order, third parties' continued to be concerned about Mr. Shor's access to third party confidential information. In recognition of these concerns, Mr. Shor, voluntarily agreed to be shielded from exposure to third party information designated as *in camera* in order to eliminate any appearance of impropriety. Mr. Shor even wrote a letter to Complaint Counsel on May 1, 2009, explaining "although I was allowed under the Protective Order to review documents produced by other parties, I have not seen any documents produced by East Penn, Exide, or The Moore Company ("Amersil") (the "Permitted Parties"). (See Exhibit A).

### **ARGUMENT**

Contrary to the baseless allegations in Exide's Motion, Mr. Shor neither has, had or will ever have access to Exide's confidential information. He has not seen a single Exide confidential document or for that matter any documents provided by Exide, and he stepped out of the courtroom during the *in camera* portions of the examination of Exide's Gillespie and Bregman at the trial. Parker Poe also carefully protects third party information within its own walls in order to prevent disclosure.

Exide's entire argument seeking modification of the Protective Order is based solely on Mr. Shor's September 23, 2009 letter in which he discusses Daramic's obligations under the existing contract with Exide. Mr. Shor's letter contains no reference to Exide's confidential information -- to which Mr. Shor does not have access.

Further, Mr. Shor's September 23, 2009 letter is eight days before Exide gave confidential information referencing current contract negotiations to Complaint Counsel. In fact, Complaint Counsel first produced Gillespie's Declaration and Exide's purported confidential

information on October 1, 2009. *See* Declaration of Douglas Gillespie attached to Complaint Counsel's Response to Respondent's Second Motion to Reopen the Hearing Record (Oct. 1, 2009). Exide has known about Respondent's request to reopen the hearing record since apparently several days before October 1, 2009. Yet, Exide waited to file this Motion with the Court until after this Court entered an Order reopening the hearing record and less than two weeks before the hearing. The Court should consider the timing of this Motion in evaluating whether Exide is truly concerned about disclosure or is just harassing Polypore. This Motion is merely another example of continued back channel communication between Exide and Complaint Counsel.

Modification of the October 23, 2008 Protective Order as requested by Exide is unnecessary. The current Protective Order provides ample protection for third party confidential information. Exide has no evidence that its confidential information or any information marked *in camera* has been provided to Mr. Shor or any employee at Polypore. In fact, Mr. Shor has voluntarily shielded himself from access to third party confidential information to prevent this very issue.

Parker Poe has taken and will continue to take all necessary and prudent steps to fully comply with the Court's October 23, 2008 Protective Order and shield Polypore employees and Mr. Shor from access to third party confidential information.

### **CONCLUSION**

For the foregoing reasons, an order modifying the Protective Order is unnecessary to adequately protect third party information. Accordingly, Respondent respectfully requests that this Court deny Exide's Motion to Modify the Protective Order.

Dated: October 23, 2009

Respectfully Submitted,

Eric D. Welsh / BRW

William L. Rikard, Jr.

Eric D. Welsh

**PARKER POE ADAMS & BERNSTEIN LLP**

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*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing *Respondent's Response to Exide Technologies' Motion to Modify the Protective Order* 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

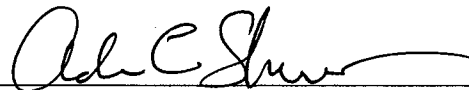
I hereby certify that on October 23, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing *Respondent's Response to Exide Technologies' Motion to Modify the Protective Order* upon:

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

I hereby certify that on October 23, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing *Respondent's Response to Exide Technologies' Motion to Modify the Protective Order* 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  
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**PARKER POE ADAMS & BERNSTEIN LLP**  
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401 South Tryon Street, Suite 3000  
Charlotte, NC 28202  
Telephone: (704) 372-9000  
Facsimile: (704) 334-4706

**EXHIBIT A**

**ATTACHMENT TO RESPONDENT'S RESPONSE TO  
EXIDE TECHNOLOGIES' MOTION TO MODIFY THE  
PROTECTIVE ORDER**

**POLYPORE INTERNATIONAL, INC.  
A CORPORATION**

**DOCKET NO. 9327**

# POLYPORE

INTERNATIONAL, INC.

May 1, 2009

*BY ELECTRONIC MAIL  
CONFIDENTIAL AND PROPRIETARY*

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

**Re: Polypore International, Inc., FTC Docket No. 9327**

Dear Mr. Robertson:

Thank you for taking the time to speak with me over the past few days. I am writing to address and, hopefully, allay, any concerns that have been raised concerning my activities on behalf of Polypore in connection with the referenced matter pending before the FTC. It is my understanding that some third parties are under the impression that I may have violated the terms of the Protective Order entered in the case and, more particularly, the terms of representations that I made to the Court in connection with the Court's consideration and entry of that Order. To be clear, I have assiduously avoided taking any actions which could be construed as violating the terms of the Protective Order or at odds with my representations to the Court. Consequently, I do not believe that I have, at any time, violated either the letter or the spirit of my representations to the Court or the Protective Order. Let me address these separately.

#### Contract Negotiations

I represented to the Court that I had not participated in any contract negotiations on behalf of Daramic since August 2008 and that I would not participate in any such negotiations for a period of two years. My intent in making that representation is that I would not participate in the negotiation of the terms and conditions of any extension of an existing contract or a new contract. Since I made that representation, and as I have defined it, I have not, in fact, participated in any contract negotiations on behalf of Daramic. I did, on behalf of Polypore/Daramic, communicate with antitrust counsel for Trojan Battery to see if it was possible to exclude a new contract between Daramic and Trojan (not yet signed) from the scope of any right of rescission

Robert J. Robertson, Esq.  
May 1, 2009  
Page 2

that might be awarded to Daramic's customers in the event the FTC prevails in this matter. I do not believe that the foregoing communication violated the representation I made to the Court as it did not involve the negotiation of the terms and conditions of a new contract; rather, it addressed only the possible implementation of a contract that was under negotiation by others.

#### Document Review

Pursuant to the terms of the Protective Order, I was permitted to review documents produced by third parties in this case. Since the Order was entered, and by agreement with the some parties, I have not seen any documents produced by the following parties, whether produced to the FTC during the investigative hearing phase of this matter or pursuant to subpoenas issued by Polypore: Entek, Hollingsworth & Voth, IGP, Johnson Controls, Trojan Battery Company and Warburg Pincus (the "Excluded Parties"). Similarly, although I was allowed by the Protective Order to review documents produced by other parties, I have not seen any documents produced by East Penn, Exide or The Moore Company (Amersil) (the "Permitted Parties"). The only third-party documents I have seen are a very small subset of the documents produced by EnerSys. With respect to those items, I would estimate that I saw fewer than fifty (50) documents, they were viewed in the offices of Parker Poe, no documents were removed from Parker Poe's offices, no copies were made and none had anything to do with any contract negotiations between EnerSys and Daramic or the current dispute between EnerSys and Daramic over Daramic's recently announced price increase.

As this case proceeds to and through trial, it will not be necessary for me to review any documents produced by any third party, other than those of the Permitted Parties which have been designated as exhibits by Complaint Counsel and Polypore. However, in order to alleviate any concerns that might have been raised, I will add EnerSys and Amersil to the list of "Excluded Parties" and will not review any documents or designated trial exhibits from those companies. I will continue to have access to the designated exhibits of the remaining Permitted Parties, but I will only review those outside of the Polypore offices.

#### Litigation support

In an email dated November 7, 2008 from Eric Welsh to Steven Dahm of your office, Mr. Welsh reiterated my representation to avoid involvement with contract negotiations, but stated that "if called on, [I] may assist Daramic in any legal action involving its customers." Since that date, I have assisted Daramic in disputes with Trojan and with EnerSys. I assisted in preparing the complaint against Trojan and I drafted and sent a demand letter to EnerSys. I have not been involved in any contract negotiations with either Trojan or EnerSys, having only assisted Daramic with its legal action against these two customers.



Robert J. Robertson, Esq.

May 1, 2009

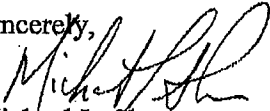
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Employment Status

When the Protective Order was under consideration, I advised the Court that I was not employed by Polypore, that I was employed by Carolina Legal Staffing and served as Special Counsel to Polypore. That was true until March 1, 2009. At that time, I entered into a Consulting and Confidentiality Agreement directly with Polypore. Pursuant to that agreement, I am an independent contractor providing legal services to Polypore in connection with this matter and any other matter for which Polypore might require my services, subject of course to the limitations previously identified. I am still identified as "Special Counsel" but I also have been designated as the Company's Director of Litigation. However, I am not an employee of Polypore and receive no benefits from the company.

I trust this allays any concerns that any third party may have had about my involvement in this matter and on behalf of Polypore. I will continue to provide services to Polypore consistent with the representations I made to the Court and to Complaint Counsel. Should you have any additional concerns, please let me know.

Sincerely,



Michael L. Shor  
Special Counsel  
Polypore International, Inc.