



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 RESPONDENT’S MOTION TO COMPEL
EXIDE TECHNOLOGIES PURSUANT TO SUBPOENA *DUCES TECUM***

I.

On January 13, 2009, Respondent submitted a motion to compel non-party Exide Technologies (“Exide”) to produce documents (“motion to compel”). On January 22, 2009, Exide submitted its opposition. By Order dated January 30, 2009, Respondent was directed to provide a status report. Respondent submitted its status report on February 3, 2009.

For the reasons set forth below, Respondent’s motion to compel Exide to produce documents is GRANTED.

II.

Respondent states that it served its subpoena *duces tecum* on Exide on November 10, 2008 (“Exide subpoena”). Respondent states that Exide did not file any motions or objections in response to the subpoena and has been engaged in negotiations to narrow the scope of the subpoena. As of January 13, 2009, Respondent asserts, Exide had produced only six documents in response to the Exide subpoena, thus prompting Respondent to file its motion to compel. In its motion to compel, Respondent noted that it needed responsive documents from Exide prior to the depositions of Exide employees, scheduled for and taken the week of January 19, 2009.

In its opposition, Exide states that it has been working diligently to complete its compliance at the earliest practicable date, but that the breadth of the subpoena has required a time-consuming effort for compliance. Exide says that it recognizes that the documents requested by the subpoena are potentially relevant to the proceeding and thus Exide does not contest Respondent’s right to issue such subpoena.

Respondent, in its status report, states that Exide produced 3,763 documents to Respondent one day before the start of the depositions of Exide employees. Thus, Respondent asserts, Respondent was unable to adequately prepare for the depositions. Further, Respondent

states, counsel for Respondent was advised by counsel for Exide that Exide's production was not yet 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.

III.

Exide's documents and deposition testimony are relevant to Respondent's defense in this matter, as Exide has acknowledged. While Exide has taken steps to comply with Respondent's subpoena request, Exide has failed to fully comply in a timely manner.

Respondent's motion to compel is GRANTED. Exide shall have ten calendar days to complete production. In addition, Respondent shall have the opportunity, if needed, to resume the depositions of Exide witnesses to examine them on subjects covered by the documents that were produced on January 19, 2009 or thereafter.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: February 5, 2009