

Employee knew or ought reasonably to have known to be confidential . . .
so far as they shall have come to his/her knowledge during his/her
employment by the Company . . .

Ex. 1 at 5, ¶ 9. Exide was concerned that his work as an industry expert could compromise the secrecy of Exide's confidential information. Exide's outside counsel, Donald Russell, wrote to Dr. Stevenson (copying Polypore's counsel) to remind him of his contractual obligations. Ex. 2, 3. As that letter reveals, Polypore's description of the letter (Mot. ¶ 4) as a threat to sue Dr. Stevenson "if he submitted a report and testified in this matter" is false. The letter said that Exide expected Dr. Stevenson to comply with his contractual obligations, and that "Exide Technologies will take action, if necessary, to protect the confidentiality of its proprietary information." Ex. 2.

When he received the letter, Dr. Stevenson requested a copy of the employment agreement, which was sent to him immediately. Ex. 4, 5. The next day, March 20, Dr. Stevenson requested a call with Barbara Hatcher, Exide's General Counsel, "to clarify what exactly does Exide not want me to do? Are Exide asking me not to be the expert witness in this instance? If that is the case can Exide please request me to stop the activity." Ex. 6. A telephone call with Dr. Stevenson, Mr. Russell, and Ms. Hatcher was arranged that afternoon. See Ex. 7-10.

In that call, Mr. Russell told Dr. Stevenson that the company had no wish to interfere with his activities but, knowing virtually nothing about the matters on which he would testify or the sources of information on which he would rely, had concerns about Exide's confidential information. Dr. Stevenson stated that he would address the testing and qualification of separators and the worldwide market for separators. He said that his opinion on the first subject was based on widely known industry standards and practices,

and that his opinion on the second was based on the observation that many separator producers and battery manufacturers operated plants in countries throughout the world. Russell Decl. ¶ 6.

The second observation seemed odd to Mr. Russell, because the fact that producers have plants in multiple countries does not indicate a single geographic market that encompasses all of those countries. Seeking clarification, he asked Dr. Stevenson if he expected to testify that products were shipped from one region (*e.g.*, Europe) to another (*e.g.*, North America). That question had a direct bearing on Exide's confidentiality concerns. Whether a battery manufacturer could easily substitute separators produced in Europe for separators produced in North America depends not just on prices and shipping costs, but on battery manufacturing processes, product design, product quality, and performance standards, among other things. Those subjects entailed a significantly greater possibility of implicating confidential Exide information. Russell Decl. ¶ 7.

Later in the conversation, Dr. Stevenson made clear that, in his view, his expert report would not disclose or rely on confidential information. His comments, however, did not reference testimony he would give in a deposition or hearing. To avoid any miscommunication, Mr. Russell explained that Exide's concerns extended to disclosures in testimony, as well as in an expert report. Dr. Stevenson indicated he was unsure about the potential scope of his deposition or hearing testimony. Russell Decl. ¶ 8.

The telephone conversation was amicable and brief – perhaps twenty minutes. Dr. Stevenson stated that he would terminate his work as an expert witness if Exide asked

him to do so, but Exide made no such request. At the end of the call, Dr. Stevenson was told that Exide would promptly provide a further response. Russell Decl. ¶ 9.

The following Monday, March 23, Mr. Russell sent an email to Dr. Stevenson stating, “You have assured us that in the course of your work as an expert witness for Polypore, you have not had, and do not expect to have, any need to rely on or to disclose Exide’s confidential information. In light of that assurance, we have no objection to your continuation of that work – provided, of course, that in the course of such work, you will not use or disclose confidential information in violation of the continuing obligations under your employment agreement.” Ex. 11.

In reply, Dr. Stevenson asked for “a statement from Exide on what they consider the scope of these obligations. . . I would like to be 100% clear on what I can and can not discuss on any forthcoming events before I proceed further.” Ex. 12. Mr. Russell wrote that, rather than discussing the scope of the obligations “in the abstract” it would be more productive for Dr. Stevenson to ask for the company’s view about specific information. Ex. 13. Dr. Stevenson replied by asking about provisions in a side letter to the employment agreement. See Ex. 14; Ex. 1 at 10, ¶¶ 4-5. He repeated his description of his expert report and the sources upon which it was based, and expressed concern about the risk that he could discuss confidential information in a deposition or other testimony. Ex. 14. A response the same day told Dr. Stevenson that the side letter was inapplicable (emphasizing that Exide was NOT asking him to forego any employment); that the expert report, as he described it, would not violate his contractual obligations; and that he should talk to Polypore’s counsel about the possible scope of disclosures in a deposition. Ex. 15.

Mr. Russell and Ms. Hatcher have had no communication with Dr. Stevenson since that email exchange on March 25.

ARGUMENT

I. EXIDE HAS ACTED PROPERLY TO PROTECT ITS LEGITIMATE INTEREST IN CONFIDENTIALITY

A. Exide's Conduct Was Appropriate

Polypore cites no statute, regulation, case, order, treatise, or article that suggests, let alone states, that Exide's conduct is improper. There is a very good reason for that omission. Exide has acted properly at all times, and there is no legal or factual basis for suggesting otherwise. Polypore's core allegation, that Exide has improperly "interfered" with Dr. Stevenson, is proved false by the exhibits to Polypore's own motion.

1. Polypore implies, but refuses actually to state, that Dr. Stevenson would not disclose confidential information from Exide as an expert witness. If his testimony would not breach any confidences, it would be inaccurate to say that Polypore is making a mountain out of a molehill, *because there is no molehill*. Exide has unequivocally stated, time after time, that it has no objection to Dr. Stevenson's work as an expert witness if he does not disclose Exide's confidential information. See Ex. 11. ("In light of that assurance, we have no objection to your continuation of that work"); Ex. 15 ("we are NOT asking you to forego any employment opportunities"); Ex. 17 ("Exide has no objections to his work for Polypore, so long as he complies with his continuing obligations under his employment contract"); Ex. 19 ("If Dr. Stevenson does not disclose confidential Exide information, he is perfectly free to do as he chooses.").

2. Polypore also implies, but never explicitly argues, that it would be improper for Exide to assert its contractual rights to prevent disclosures of confidential

information in *public* testimony by Dr. Stevenson. That position, of course, lacks any legal support. No expert witness has a right to offer paid testimony in violation of contractual obligations; no party has a right to procure the testimony of an expert that would violate contractual non-disclosure commitments. In fact, expert witnesses routinely sign nondisclosure agreements in which they promise that confidential information obtained in the course of one engagement will not be used or disclosed in another engagement or for another purpose. Polypore probably has asked its own experts for such a commitment. If enforcing such agreements is impermissible “interference” with an expert witness, such agreements would be pointless.

It is not just private agreements that impose such restrictions. The protective order *in this case* states, in Section 10, that confidential material may be disclosed to experts “only for the purposes of the preparation and hearing of this Matter, or any appeal therefore, *and for no other purpose whatsoever.*”¹ Experts who receive confidential material must execute a declaration (Protective Order App. A) that they will “use such Confidential Material only for the purpose of preparing for this proceeding . . . *and for no other purpose*” and that they will “use such Confidential Material and the information contained therein *solely* for the purpose of rendering consulting services to a party to this Matter.” (Emphasis added.)

These restrictions unquestionably serve legitimate purposes, just as restrictions on the disclosure of a business’s confidential information serve legitimate purposes. Yet, under Polypore’s purported notions of what expert witnesses must be permitted to do, the Commission would be improperly interfering with an expert’s testimony in another case

¹ The Protective Order would not prohibit Dr. Stevenson from using or disclosing confidential information obtained through his Exide employment; it applies only to material obtained through discovery.

if the Commission reminded that expert of confidentiality obligations under the Protective Order. Polypore's argument virtually refutes itself.

3. Polypore's principal contention appears to be that Exide acted improperly because the Protective Order and the opportunity to obtain in camera treatment for confidential information provides complete protection for Exide. This contention, too, is patently wrong.

It is wrong, first, because Dr. Stevenson's contract (like the Protective Order) contains no exception for disclosures made in a closed proceeding. The contract prohibits Dr. Stevenson from "us[ing] for his/her own or another's advantage or reveal[ing] to any person, firm or company" confidential information obtained through his Exide employment. Ex. 1 at 5.

But Polypore's contention is wrong for another reason. The Protective Order and in camera treatment for confidential information disclosed by Dr. Stevenson will not fully protect Exide's legitimate confidentiality interests. Consider, for example, Polypore's suggestion that Dr. Stevenson's work as an expert presents no greater risk than Exide would face if he were a current employee, in which case Polypore could subpoena his testimony and Exide could address concerns about confidentiality through the Protective Order and by seeking in camera treatment. That argument ignores the fundamental differences between a current Exide employee and a former employee serving as Polypore's expert. If a current employee is deposed, Exide will know exactly what information was disclosed in the testimony. If the information is highly confidential, Exide can invoke the Protective Order and, if necessary, seek in camera treatment.

Throughout that process, the Protective Order prohibits Polypore's counsel from disclosing the information to others, including the business executives of Polypore.

Confidential information disclosed by an expert is handled much differently. First, if Dr. Stevenson were to disclose confidential information to Polypore's counsel, the protective order does NOT prohibit Polypore's counsel from disclosing the information to Polypore executives or to anyone else. Second, if Dr. Stevenson were to disclose confidential information in his expert report, Polypore alone would decide whether to designate the report as confidential. Exide would have no role in that process; if Polypore failed to designate the report as confidential, Exide would learn that its confidential information had been disclosed only after a public disclosure had occurred, at which point the damage could not be undone. Similarly, if Dr. Stevenson were to disclose confidential information in public testimony in a hearing, the confidentiality would be irrevocably lost.

These problems are not solved merely by designating a report as confidential or presenting the expert's testimony in camera. Commission rules require a determination whether in camera testimony should continue to receive in camera treatment, and for how long. If the expert's testimony is presented in camera, Exide will have no knowledge if the testimony revealed confidential information. For that reason, Exide could not argue that in camera treatment should be maintained, or that the material should remain in camera for any particular period of time. Even though Exide would be the party most affected by public disclosure, and the party with the most knowledge about the reasons for in camera treatment, Exide would be shut out of the process. Contrary to Polypore's claims, in camera treatment is no panacea.

4. Polypore's suggestion that Exide has been unwilling to clarify Dr. Stevenson's obligations under the employment agreement is also specious. When Dr. Stevenson requested a copy of the agreement, Exide provided it immediately. Ex. 5. When he raised question concerning two paragraphs in a side letter, he was promptly told that the company did not believe those provisions governed, because Exide was NOT asking him to forego any employment opportunities. Ex. 15. When he described generally the subjects of his report and the sources upon which he relied, he was told that, as described, "the report will not violate your obligations under the agreement." *Ibid.* And Dr. Stevenson repeatedly was told that if he was unsure whether information was or was not confidential, Exide would promptly respond. Ex. 13 ("[Y]ou may have questions about whether specific information is, or is not, considered by the company to be confidential at this time. We would be happy to state the company's position with regard to any specific information you identify for us."); Ex. 15 ("If you choose to [ask the company if it regards certain Exide information as confidential], the company will attempt to provide a prompt response."); Ex. 17 ("[I]f he was in doubt whether specific information that he obtained through his employment with Exide was or was not confidential in Exide's view, he could ask Exide and get a prompt response."); Ex. 19 ("[I]f he is unsure whether Exide would regard certain information as confidential or not, we would promptly tell him Exide's view, so that he can avoid any inadvertent disclosure."). Despite these repeated offers from Exide, Dr. Stevenson has never made such a request.

What Exide has not done, for good reason, is offer blanket consent to disclosures of information that has not even been identified. Thus, when Dr. Stevenson asked for

“assurance” that his report did not violate confidentiality requirements, Exide responded that, as described, the report would not violate the agreement, but added the appropriate caveat that “Exide cannot confirm that this is the case because we have not seen the report, and we assume that Polypore, for understandable reasons, would not authorize release of the report to us.” Exide then reminded Dr. Stevenson that if he was unable to provide the report, he could identify specific information to obtain Exide’s view about its confidentiality. Ex. 15.

B. There Is No Substance Behind Polypore’s Innuendos

Polypore attempts to bolster its charges by pointing to circumstances that supposedly suggest improper conduct or motives. These are merely smoke and mirrors.

1. Polypore is fond of describing Exide’s agreement with Dr. Stevenson as a “25-year old agreement” as if the date of the agreement has legal significance. Despite the innuendo, Polypore offers nothing to demonstrate that the agreement is not valid and binding today. The more relevant date, of course, is December 31, 2006, the date when Dr. Stevenson left Exide. Polypore does not dispute that information that was confidential on that date may still be confidential today.

2. Polypore hints that there is something nefarious about Complaint Counsel’s disclosure to Exide that Dr. Stevenson had been designated as an expert. Exide is not aware of any basis for believing it was improper for Complaint Counsel to disclose – much less for Exide to receive – this information. And, aside from innuendo, Polypore offers no argument that it was improper.

3. Polypore claims to have been prejudiced by the timing of Exide’s letter to Dr. Stevenson, but that claim is absurd on its face. Exide sent its letter to Dr. Stevenson

on Thursday, March 19, at 11:38 a.m. Exide informed Dr. Stevenson that “we have no objection to your continuation of that work” as an expert on Monday, March 23, at 4:34 p.m., barely more than two working days later. Exide’s prompt response to Dr. Stevenson, after he provided information about the nature of his work, belies any suggestion that Exide was trying to interfere with his work as an expert.

4. Polypore’s charge that Exide interfered with Dr. Stevenson by asking for general information about his geographic market analysis is wrong as a matter of law and as a matter of fact. As a legal matter, we know of no rule that prevents *any* person from asking an expert witness about the testimony he intends to give, much less a rule that prohibits inquiries germane to an ongoing contractual relationship. As a factual matter, the charge of “interference” is ludicrous on this record. Polypore alleges only that Exide asked a question. There is no allegation that Exide urged Dr. Stevenson to reconsider his testimony or even expressed an opinion about the testimony. Nor is there any allegation that *Dr. Stevenson* regarded the question as interference, in any way, shape, or form. Most telling of all, in the next communication from Exide to Dr. Stevenson after the question was asked, Exide informed Dr. Stevenson that “we have no objection to your continuation of that work.”

5. Polypore attempts to infer improper motives from the fact that Exide told Dr. Stevenson that his expert report, as described, would not violate contractual obligations, but did not give Dr. Stevenson the same assurance for his testimony. There is nothing improper here. Dr. Stevenson told Exide that his expert report was not based on and would not disclose confidential information; he did not offer those assurances about his testimony, because he did not know what cross-examination he might be

subjected to. Exide did not use that uncertainty to suggest to Dr. Stevenson that he should not testify; Exide told him, instead, to consult with Polypore's counsel! Ex. 15 (“[W]ith respect to the possible scope of disclosures that may be called for in a deposition, I recommend that you consult with the attorneys for Polypore with whom you have been working.”). What else would Polypore have Exide do?

The record shows clearly that Exide has acted appropriately at all times.

II. THERE IS NO BASIS IN LAW FOR POLYPORE'S MOTION OR ITS REQUESTED RELIEF

Polypore has not merely failed to identify any improper conduct; it has also failed to identify any legal authority for its motion or for the relief it has requested.

Polypore purports to bring its motion pursuant to Rules 3.38 and 3.42 of the Commission's Rules Of Practice. Neither rule is applicable. Rule 3.38 applies to discovery matters only, but Polypore's motion is unrelated to any discovery dispute. Moreover, the sanctions authorized by that rule may be imposed only on parties. See Rule 3.38(b) (“If a *party* or an officer or agent of a *party* fails to comply with any discovery obligation . . .”) (emphasis added). So, too, for the sanctions authorized by Rule 3.42((h). See Rule 3.42(h) (“Any *party* who refuses or fails to comply with a lawfully issued order or direction of an Administrative Law Judge . . .”) (emphasis added). Exide is not a party to this proceeding. Neither rule provides authority for the motion.

Polypore has also failed to provide evidence that would permit any factual findings. Polypore offers no affidavit, declaration, or other evidence. Of particular note, although Polypore claims that Dr. Stevenson fears reprisal, has been interfered with, and

will not testify unless Polypore's motion is granted, there is no evidence *from Dr. Stevenson* to support those allegations.

Polypore also asks for remedies that would be clearly contrary to law. First, Polypore requests an order that Dr. Stevenson's testimony "will not be deemed a breach of any obligation owed by Dr. Stevenson to Exide." This remedy would be improper for three reasons. First, Polypore has not even described the substance of Dr. Stevenson's testimony. Obviously there is *some* risk that the testimony would reveal confidential matters – why else would Dr. Stevenson need any reassurance? But Polypore asks for a blank check that would permit *any* disclosure, no matter how sensitive the information. Second, Polypore asks, in essence, for a declaratory ruling on the rights of Exide and Dr. Stevenson under the confidentiality agreement. We know of no authority – Polypore certainly cites none – that would authorize a declaratory judgment by the Commission concerning a contract, when neither of the contracting parties is a party in the Commission's proceeding, when neither has requested such a judgment, and when there is no claim that the contract violates any law enforced by the Commission. Third, even if adjudication of such a declaratory judgment would be permissible in other circumstances, *this* is a contract between a U.K. corporation and a U.K. citizen, which by its express terms is to be "governed by and construed in accordance with the Law of England." Ex. 1 at 9, ¶ 13. Even assuming jurisdiction over this extra-territorial matter (which is doubtful), Polypore has provided no explanation how its proposed remedy could be imposed or enforced in light of the parties' intent to be governed by the Law of England.

Polypore's most bizarre remedy, however, is its request that Exide be "precluded from offering any testimony" at the hearing. Exide, which is not a party, cannot "offer

any testimony” under any circumstances. Exide can only provide witnesses whose testimony can be offered by Complaint Counsel or Polypore. Polypore’s transparent objective is to prevent *Complaint Counsel* from offering the testimony of Exide witnesses. That would be an extraordinary remedy for at least two reasons. First, Polypore has not suggested any impropriety by Complaint Counsel, so the suggestion that a sanction should be imposed on Complaint Counsel makes no sense. Second, the purpose of these proceedings is to protect the *public* interest in competitive markets. Excluding probative testimony can only produce a less-informed decision by the Commission, detracting from the public purpose of this proceeding.

Polypore’s request for this remedy demonstrates who is trying to interfere with testimony in this proceeding. It is not Exide.

CONCLUSION

Respondent’s Motion For Sanctions Due To Exide Technologies’ Interference With Respondent’s Expert Witness should be denied.

Dated: April 27, 2009

Respectfully submitted,



Donald J. Russell

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Counsel for Exide Technologies, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2009, I caused to be filed via hand delivery and electronic mail delivery an original and two copies of the foregoing Exide Technologies' Opposition To Respondent's Motion For Sanctions, 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, N.W., Rm H-135
Washington, D.C. 20580
secretary@ftc.gov

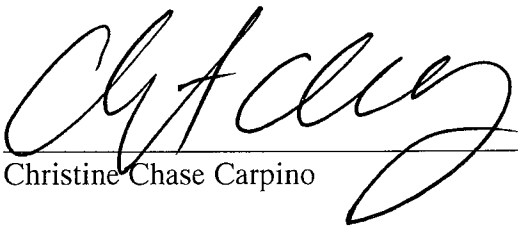
I hereby certify that on April 27, 2009, I caused to be served one copy via electronic mail delivery and two copies via hand delivery of the foregoing Exide Technologies' Opposition To Respondent's Motion For Sanctions upon:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
oyalj@ftc.gov

I hereby certify that on April 27, 2009, I caused to be served by first class mail delivery and electronic mail delivery a copy of the foregoing Exide Technologies' Opposition To Respondent's Motion For Sanctions upon:

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Christine Chase Carpino

DECLARATION OF DONALD RUSSELL

1. I, Donald Russell, submit this declaration in support of Exide Technologies' Opposition To Respondent's Motion For Sanctions, submitted in *In the Matter of Polypore International, Inc.*, FTC Docket No. 9327.
2. I am an attorney with the law firm Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP in Washington, D.C. I represent Exide Technologies.
3. Exide's General Counsel, Barbara Hatcher, requested my assistance to ensure that confidential information from the company would not be disclosed in connection with Dr. James Mark Stevenson's service as an expert witness for Polypore International, Inc. in this FTC proceeding. Until December 31, 2006, Dr. Stevenson was Exide's Vice President for Manufacturing, Industrial Energy Europe. Dr. Stevenson's employment contract (Ex. 1) required him to maintain the secrecy of certain confidential information he obtained in the course of his employment.
4. The documents attached as Exhibits 2-19 to Exide's opposition are true and correct copies of email and other correspondence between me and Dr. Stevenson, and between me and Polypore's counsel, concerning that subject.
5. After receiving a letter from me (Ex. 2) that reminded Dr. Stevenson of his obligations under his employment contract, Dr. Stevenson asked me to arrange a telephone call with Ms. Hatcher. Ex. 6-10. In response to that request, Ms. Hatcher and I called Dr. Stevenson in the afternoon of Friday, March 20, 2009.
6. In that call, I indicated to Dr. Stevenson that the company had no wish to interfere with his activities but, knowing virtually nothing about the matters on which he would testify or the sources of information on which he would rely, had concerns about Exide's confidential information. Dr. Stevenson stated that he expected to address two subjects – the testing and qualification of separator products, and the worldwide nature of the

market for separators. He stated that his opinion on the first subject was based on widely known industry standards and practices, and that his opinion on the second was based on the observation that many separator producers and battery manufacturers operated plants in countries throughout the world.

7. The second observation seemed odd to me, because the fact that producers have plants in multiple countries does not indicate that there is a single geographic market that encompasses all of those countries. I asked for clarification by asking Dr. Stevenson if he expected to testify that products were shipped from one region (*e.g.*, Europe) to another (*e.g.*, North America). I asked that question so that I could better assess the risk that Dr. Stevenson's work as an expert witness might compromise sensitive Exide information. In my understanding, the question whether a battery manufacturer could easily substitute separators produced in Europe (or Asia) for separators produced in North America requires consideration not just of prices and shipping costs, but of battery manufacturing processes, product design, product quality, and performance standards, among other things. If Dr. Stevenson intended to address those subjects, there would be a significantly greater possibility that his opinions would be based on (and perhaps would reveal) confidential information that he obtained while employed by Exide.

8. Later in the conversation, Dr. Stevenson made clear that, in his view, his expert report would not disclose or rely on confidential information. His comments, however, focused on his expert report, but did not reference the testimony he would likely give in a deposition or at a hearing. To avoid any miscommunication, I explained that Exide's concerns were not limited to disclosures in his expert report, but also included disclosures during testimony at a deposition or hearing. Dr. Stevenson indicated he was unsure about the potential scope of his deposition or hearing testimony.

9. Near the end of the conversation, Dr. Stevenson offered (without any prompting or request by Exide) to terminate his work as an expert witness if Exide wanted him to do so. He was not asked to do so. He was told that Exide would provide a further response as soon as possible. The telephone conversation on March 20 was amicable and brief –

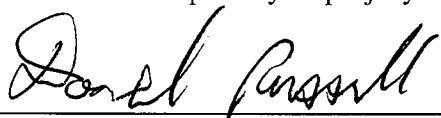
perhaps twenty minutes long. At no time during that conversation did I or Ms. Hatcher threaten to sue Dr. Stevenson or take any other action against him, or suggest that he should not work as an expert witness for Polypore.

10. The next business day, Monday, March 23, 2009, I sent an email to Dr. Stevenson telling him that, in light of his assurances that he did not expect to rely on or disclose Exide's confidential information, Exide had no objection to his continuation of his work as an expert witness for Polypore. Ex. 11.

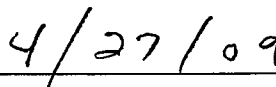
11. A series of email exchanges, which are attached as Ex. 12-15, followed that communication.

12. Neither I, nor Ms. Hatcher, have had any communication with Dr. Stevenson concerning his work as an expert witness other than the communications contained in the attached exhibits and the single telephone conversation on March 19, 2009 that is described above.

I declare under penalty of perjury that the foregoing is true and correct.



Donald Russell



Date

TAB

2

AN AGREEMENT made the 1st day of September
One thousand nine hundred and eighty four

BETWEEN

CHLORIDE MOTIVE POWER

A Division of Chloride Industrial Batteries Limited

whose registered office is at P O Box 1, Salford Road, Over Hulton,
Bolton, BL5 1DD

of the one part and Dr James Mark Stevenson

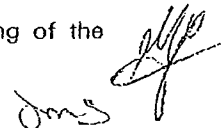
of 117, Davyhulme Road, Davyhulme, Manchester, M31 2BX.

(hereinafter called 'the Employee') of the other part.

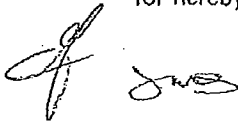
WHEREBY IT IS AGREED as follows:—

1. In this Agreement:—

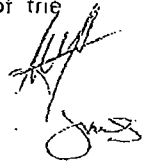
- (a) "Approving Authority" means the Board of Directors of the Company or a person designated in writing by the Board of Directors of the Company as the Approving Authority.
- (b) "Associated Company" means any company (other than a Group Company) in which the Company or any of the Group Companies holds not less than Twenty-One per cent of the issued equity share capital thereof.
- (c) "The Company" means Chloride Motive Power (A Division of C.I.B.L.) or any company substituted as the employer for the time being of the Employee pursuant to Clause 4(c).
- (d) "General Manager" means the general manager for the time being of the Company.



- (e) "Group Company" shall mean any company which is for the time being a subsidiary or holding company of the Company or a subsidiary of such holding company.
 - (f) The expressions "subsidiary" "holding company" and "equity share capital" shall bear the meanings ascribed thereto in Section 154 of the Companies Act 1948.
 - (g) "Terms of Employment for Staff" shall mean the terms and conditions of employment for staff of the Company for the time being in force.
2. THE Company shall employ the Employee and the Employee shall with effect from 1st September 1984 serve as Technical Manager - Quality Assurance - Chloride Motive Power (A Division of C.I.B.L.).
- (or in such other appointment or appointments as may from time to time be agreed). The Company shall be at liberty from time to time to appoint any other person or persons to act jointly with the Employee.
3. THE Company shall pay to the Employee during the period of his/her employment a salary at the rate of £ 14,200.00 per annum inclusive of any remuneration to which the Employee may be entitled as a director of the Company or any Group Company or Associated Company in the United Kingdom (or such higher rate as may from time to time be determined and notified by the Company to the Employee). The said salary shall be payable by twelve equal monthly payments.
4. (a) Subject to paragraph 4(d) below the Employee shall during working hours devote the whole of his/her time attention and skill to the duties of his/her employments at such locations in the United Kingdom as the approving Authority or General Manager may reasonably require and shall faithfully and diligently perform such duties and exercise such powers as may from time to time be assigned to or vested in him/her and shall obey the reasonable and lawful directions of the Approving Authority or General Manager.
- (b) The Employee may be required by the Approving Authority or General Manager in pursuance of his duties hereunder to perform services in the United Kingdom not only for the Company but also for any other Group Company or any Associated Company without further or other remuneration than is provided for hereby.

Two handwritten signatures in black ink, one larger and more stylized than the other, positioned at the bottom left of the page.

- (c) Another Group Company in the United Kingdom may at any time be substituted as the employer of the Employee by not less than one months notice in writing. Such substitution shall not in any way affect any other of the terms of this Agreement which shall remain unchanged.
 - (d) If the Employee is required under this Clause to perform services for the Company or any Group Company or Associated Company (other than on a temporary basis) at a place other than his/her then existing place of employment or another company is substituted as the Employer as provided in Clause 4(c) and it is in consequence reasonably necessary (in the opinion of the Approving Authority) that he/she should change his/her place of residence in order to be able properly to perform such services the Company will (by way of grant or otherwise) give or procure to be given such financial assistance in relation to removal expenses or otherwise in accordance with the Company's Assisted Relocation Scheme for the time being in force.
 - (e) The Employee shall not be obliged to go or reside outside the United Kingdom except for visits reasonably required by the Approving Authority or the General Manager in connection with the performance of his/her duties.
 - (f) Notwithstanding the foregoing provisions of this paragraph the Employee may with the Employer's consent enter into a separate contract of employment with a Group Company abroad for services to be performed on behalf of that Company entirely outside the United Kingdom.
5. THE appointment of the Employee shall be subject to termination:—
- (a) on the part of the Employee at any time if he/she gives not less than three months prior notice in writing to the Company;
 - (b) on the part of the Company at any time if it gives not less than six months prior notice in writing to the Employee;
 - (c) automatically by effluxion of time at the end of the month in which the Employee reaches his/her normal retirement date under the Rules of the Chloride Pension Scheme applicable to him/her;



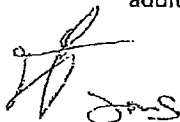
- (d) forthwith by the Company giving written notice to the Employee in the event of the Employee committing any serious breach or repeating or continuing (after warning) any material breach of his/her obligations hereunder, or being guilty of dishonesty, or committing an act of bankruptcy or compounding with his/her creditors;
- (e) automatically on the date of retirement if the Employee applies to retire early under the Rules of the Chloride Pension Scheme applicable to him/her.

6. UPON termination of the appointment for whatever reason:—

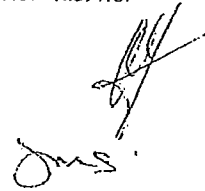
- (a) the Employee shall deliver to the Company all books, documents, papers, materials and other property relating to the business of the Company or any Group Company or Associated Company which may then be in his/her possession or under his/her control;
- (b) the Employee shall forthwith resign his/her position as a director of the Company and of any other Group Company or Associated Company of which he/she may be a Director and upon request forthwith resign any position in or office of the Company or any Group Company or Associated Company and shall transfer to the Company without payment any qualifying shares provided by it;
- (c) the Employee shall not at any time represent himself/herself as being in any way connected with the business of the Company or any Group Company or Associated Company;
- (d) the Employee shall not at any time, either on his/her own account or for any other person, firm or company, endeavour to entice away from the Company or any Group Company or Associated Company an employee of the Company or any Group Company or Associated Company.

7. (a) THIS Agreement is subject to and is deemed to incorporate the Terms of Employment for Staff.

- (b) The Employee shall conform to such hours of work as may from time to time reasonably be required of him/her and shall not be entitled to receive any additional remuneration for work outside his/her normal hours.



- (c) Subject to and in accordance with the conditions laid down in the Terms of Employment for Staff the Employee shall be entitled: —
- (i) at such time or times as may be approved by the Company to holidays without loss of remuneration;
 - (ii) to join the Chloride Pension Scheme applicable to the Employee to which he/she may be entitled at any time in accordance with the Rules of the said Scheme.
- (d) During any period of absence from work due to certified sickness or accident the Employee shall be entitled to his/her remuneration specified in Clause 3 hereof at the full rate hereinbefore referred to in respect of the first fifty-two weeks of such absence and thereafter to remuneration at such rate as the Company may determine being not less than fifty per cent of the full rate hereinbefore referred to. The Company reserves the right to deduct from the Employee's salary any amount of National Insurance Benefits including any earnings related supplement receivable by the Employee in case of sickness.
8. THE Employee shall not during his/her employment hereunder (except in pursuance of due performance of his/her duties hereunder or with the consent in writing of the Approving Authority or the General Manager) undertake any other employment or be directly or indirectly engaged or concerned or interested in any other business or activity whatever (where such engagement concern or interest may reasonably be expected by the Company to interfere or conflict with the performance of his/her duties hereunder) provided that this provision shall not prohibit the holding (directly or through nominees) of quoted investments as long as not more than one per cent of the shares or stock of any class of any one company shall be so held.
9. EXCEPT as authorised by the Approving Authority or General Manager or as required by law, the Employee shall keep secret and shall not at any time (whether before or after the termination of his/her employment) use for his/her own or another's advantage or reveal to any person, firm or company any of the trade secrets or information technical, commercial or otherwise which the Employee knew or ought reasonably to have known to be confidential concerning the organisation or affairs of the Company or of any Group Company or Associated Company so far as they shall have come to his/her knowledge during his/her employment by the Company or any Group Company or Associated Company PROVIDED THAT (subject to clause 10 below) nothing in this paragraph shall prevent the Employee from using his/her own skill in any business in which he/she may be lawfully engaged after his/her employment has ended.

A handwritten signature in black ink, appearing to be 'JMS', is located in the bottom right corner of the page. The signature is written in a cursive style with a long horizontal stroke extending to the right.

