

As Exide's Motion indicates, the thirteen² exhibits appearing on Complaint Counsel's Proposed Exhibit List and identified on Exhibit A to Exide's Motion consist entirely of emails and other correspondence between Exide and Daramic. (*Exide Technologies' Motion for In Camera Treatment of Certain Highly Confidential Materials*, p. 1). More specifically, {

} (*November 3, 2009 Declaration of Douglas Gillespie in Support of In Camera Treatment*, ¶ 3)(emphasis added). A review of the title of each exhibit identified on Exhibit A to Exide's Motion shows that each exhibit was either sent to, or sent by, Respondent.³

Consequently, as to Respondent, these exhibits are not sufficiently secret. See *Bristol-Myers Co.*, 90 FTC 455 (1977)(outlining the factors to be weighed when determining secrecy). In fact, Respondent has included its own Polypore-produced versions of several of these exhibits on its Proposed Exhibit List⁴, and Respondent possesses a copy of all thirteen exhibits identified on Exhibit A to Exide's Motion as business records.

Further, the disclosure of these exhibits to Polypore is not likely to result "in a clearly defined, serious injury" to Exide. *16 C.F.R. § 3.45(b)*. As stated above, the emails and other correspondence at issue have been previously exchanged between Respondent and Exide in the ordinary course of Respondent's and Exide's business. Exide, in its Motion, does not contend that it would suffer harm should the thirteen exhibits identified on Exhibit A to its Motion be

² PX5001, PX5003, PX5007, PX5017, PX5020, PX5021, PX5025, PX5026, PX5027, PX5028, PX5033, PX5035, and PX5036.

³ Ten of the exhibits were sent to Exide by Harry Seibert (Daramic's Vice President, Business Director), two were sent to Exide by either Phillip Bryson (Polypore's General Counsel) or Michael Shor (Special Counsel to Polypore), and the final exhibit was sent by Exide to Bob Toth (Polypore's President and Chief Executive Officer).

⁴ See Respondent's Fifth Motion for *In Camera* Treatment of Certain Trial Exhibits; pp. 6-7.

disclosed to Respondent. For example, Exide's Motion also seeks *in camera* protection for the September 30, 2009 Declaration of Douglas Gillespie, which Respondent has proposed to use as an exhibit at the hearing of the re-opened Record. As to this proposed exhibit, Exide specifically states that, {

} (*Exide Technologies' Motion for In Camera Treatment of Certain Highly Confidential Materials*, p. 2). Exide makes no such claim of injury as to the disclosure of the emails and other correspondence to Respondent.

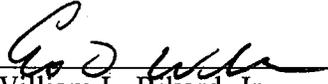
The thirteen specific emails and correspondence which were identified by Exide on Exhibit A to its Motion are the business records of both Exide and Respondent, and in each instance, Respondent is a corresponding party to the email or other correspondence. Therefore, the exhibits are not sufficiently secret as to Respondent and the disclosure of the exhibits to Respondent will not result in an injury to Exide. Respondent should not be prevented from reviewing the thirteen exhibits appearing on Complaint Counsel's Proposed Exhibit List and identified on Exhibit A to Exide's Motion, or precluded from observing testimony in the courtroom related to such exhibits.

CONCLUSION

For the foregoing reasons, Respondent does not object to Exide's Motion but does respectfully request that it be permitted to review the following exhibits listed on Complaint Counsel's Proposed Exhibit list and be permitted to observe testimony in the courtroom related to the following exhibits: PX5001, PX5003, PX5007, PX5017, PX5020, PX5021, PX5025, PX5026, PX5027, PX5028, PX5033, PX5035, and PX5036.

Dated: November 6, 2009

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 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 for In Camera Treatment of Certain Highly Confidential Materials (Public)* 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 November 6, 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 for In Camera Treatment of Certain Highly Confidential Materials (Public)* upon:

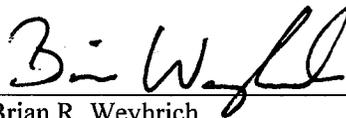
The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

I hereby certify that on November 6, 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 for In Camera Treatment of Certain Highly Confidential Materials (Public)* upon:

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