



- After the close of the record, Exide decided to move { } its PE separator purchases for { } to another supplier, and in the span of less than three months, Exide has placed orders from Daramic in excess of { } of PE separators, all requested to be delivered by year end. This amount exceeds any reasonable forecast provided by Exide, is inconsistent with past order patterns and, based on Exide's { }, amounts to approximately { } worth of PE separator[s]. Douglas Gillespie of Exide has admitted to Respondent that Exide's recent purchase orders equate to { } worth of PE separator purchases from Daramic.
- With Exide's purchase orders for more than { } of PE separators from Daramic, Exide does not intend to and will not purchase any additional PE separators from Daramic in either { }.
- In light of Exide's apparent decision not to purchase PE separators from Daramic in { }, Daramic will likely have to { }.
- If Daramic is able to retain any small amount of business from Exide in { }, or thereafter, which appears unlikely, Daramic will only be able to obtain such sales through a { }.

3. In a conference call between counsel for Respondent and Complaint Counsel on Monday, October 19, 2009, Respondent advised Complaint Counsel that it would call only three witnesses at the hearing: Mr. Robert Toth, Mr. Harry Seibert and Mr. Douglas Gillespie of Exide Technologies. Each of those witnesses was identified previously by Respondent in its Second Motion to Reopen the Hearing Record. Respondent does not intend to call Mr. Bryson as a witness.

4. In seeking to re-open the record and present evidence at a half-day hearing, Respondent is mindful of the evidence already before this Court. Respondent does not seek to unnecessarily burden the Court with information regarding its proffer and believes that the evidence can be presented efficiently in the time allotted by the Court through the exhibits and testimony of Messrs. Toth, Seibert and Gillespie. Mr. Bryson's testimony would add nothing to

the evidence and, at best, would be cumulative of the evidence to be presented through the testimony of Robert Toth, Harry Seibert and Douglas Gillespie. In addition, the deposition would more than likely stray into matters covered by the attorney-client privilege which could then lead to further motion practice before this Court. Finally, there is simply no justification for deposing Mr. Bryson since Respondent will not call him as a witness at the hearing, and opposes any effort by Complaint Counsel to do so. In light of these facts, Complaint Counsel's noticing Mr. Bryson's deposition is improper for the intended purpose of annoyance, harassment, undue burden, and increased expense and to preoccupy Respondent with this motion practice rather than preparing for the hearing which is scheduled to occur in two weeks.

5. Pursuant to Rule 3.31(d), the Administrative Law Judge may deny discovery or make any order to protect "any party . . . from annoyance, embarrassment, oppression, or undue burden and expense . . ." FTC Rules 3.31(d).

### **CONCLUSION**

For the foregoing reasons, Respondent respectfully requests that this Court grant its motion and enter a protective order to prohibit Complaint Counsel from taking the deposition of Phillip Bryson, Esq. or calling Mr. Bryson as a witness at the hearing.

Dated: October 23, 2009

Respectfully Submitted,



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*Attorneys for Respondent*

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

<b>In the Matter of</b>	)	<b>Docket No. 9327</b>
	)	
	)	
	)	
<b>Polypore International, Inc.</b> <b>a corporation</b>	)	<b>PUBLIC DOCUMENT</b>

**STATEMENT PURSUANT TO SCHEDULING ORDER**

I, Eric D. Welsh, Esq., on behalf of Parker Poe Adams & Bernstein LLP (“Parker Poe”) as counsel for Polypore International, Inc. (“Polypore”), hereby represent that Parker Poe has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by Respondent’s Motion for Protective Order Regarding Deposition of Phillip Bryson, and has been unable to reach such an agreement.

Parker Poe and Complaint Counsel discussed these issues by telephone on October 19, 2009. During this call, I was present for Parker Poe and J. Robert Robertson, Esq., was present for Complaint Counsel. As a result of this discussion, it was concluded that Polypore and Complaint Counsel were at an impasse with respect to the issues raised in the instant Motion.

Dated: October 23, 2009

Respectfully Submitted,



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

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

**Docket No. 9327**

**PUBLIC DOCUMENT**

**PROPOSED ORDER**

This matter is before the Court on Respondent's Motion for a Protective Order Regarding the Testimony of Philip Bryson. For good cause shown, the Court hereby GRANTS Respondent's Motion and enters a protective order prohibiting Complaint Counsel from taking the deposition of Philip Bryson, Esq. in advance of the hearing scheduled for November 4, 2009, and further prohibiting Complaint Counsel from calling Mr. Bryson as a witness at the hearing.

This the \_\_\_\_ day of October, 2009.

\_\_\_\_\_  
The Honorable D. Michael Chappell  
Chief Administrative Law Judge

**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 ***Motion for Protective Order Regarding Testimony of Phillip Bryson [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 October 23, 2009, I caused to be served one copy via electronic mail delivery and two copies via overnight mail delivery of the foregoing ***Motion for Protective Order Regarding Testimony of Phillip Bryson [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 October 23, 2009, I caused to be served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Motion for Protective Order Regarding Testimony of Phillip Bryson [Public]*** upon:

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