

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Allied Universal Corporation and)
Chemical Formulators, Inc.'s Petition to) Docket No. 040086-EI
Vacate Order No. PSC-01-1003-AS-EI)
Approving, as Modified and Clarified, the)
Settlement Agreement between Allied)
Universal Corporation and Chemical)
Formulators, Inc., and Tampa Electric)
Company and Request for Additional)
Relief.)
_____)

**ODYSSEY MANUFACTURING COMPANY'S
EMERGENCY MOTION FOR ABEYANCE**

ODYSSEY MANUFACTURING COMPANY ("Odyssey"), by and through undersigned counsel, and pursuant to Rule 28-106.204, F.A.C., hereby files this Emergency Motion for Abeyance and in support thereof would state and allege as follows:

1. The Petition of Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") in this docket which was filed on January 30, 2004, ("the January 30 Petition") is not Allied/CFI's first attempt to bring this matter before the Commission. The January 30 Petition was preceded by a January 16th Petition in Docket No. 040050-EI (which was withdrawn on January 29, 2004) and a January 13, 2004 "Motion" in Docket No. 000061-EI (which was withdrawn on January 16, 2004).¹

2. As recently as February 9, 2004, Allied/CFI has characterized, in a pleading filed in the Circuit Court action in Dade County, the relationship of Allied/CFI and Odyssey as that of

¹The January 16 Petition was withdrawn after Odyssey brought to the attention of Allied/CFI's counsel the improper disclosure of confidential information. The "Motion" was withdrawn after Odyssey similarly alerted Allied/CFI.

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“fierce competitors in the bleach industry”. Thus, it is impossible to overstate the importance, attention, attorney hours, and significance which have been attached to protecting confidential information in each of Allied/CFI’s filings as referenced hereinabove, in Docket No. 000061-EI (which was closed on December 24, 2001) and in the pending Circuit Court case in which Allied/CFI has sued Odyssey (*Allied Universal Corporation, et al. v. Odyssey Manufacturing Company*, Case No. 01-27699 CA 25 in the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida).

3. Rule 28-106.204(2), F.A.C., requires that motions to dismiss a petition shall be filed no later than 20 days after service of the petition on the party. Any such motion directed to the January 30 Petition must, therefore, be filed no later than February 19, 2004.

4. Consistent with the importance and scrutiny which the use of confidential information has received, in both proceedings before this Commission and in the Circuit Court case, the Court in *Allied Universal Corporation, et al. v. Odyssey Manufacturing Company*, Case No. 01-27699 CA 25 issued a protective order on September 3, 2002.

5. It is the position of Odyssey that each of Allied/CFI’s separate and distinct attempts to initiate this case, as described above in Paragraph 1, violate the Protective Order. On February 13, 2004, Odyssey’s counsel in the pending Circuit Court case filed therein Odyssey Manufacturing Company and Sentry Industries, Inc.’s Emergency Motion for Order to Show Cause, attached hereto in its entirety as Attachment A.²

6. The existence of this particular controversy, and the disregard by Allied/CFI of the

²This breach of the Protective Order should not be confused with the revelations of confidential information which were contained in the January 13 Motion and the January 16 Petition. The confidential information disclosed in those filings, which were withdrawn presumably in part in an attempt to mitigate any damage caused by such disclosure, is in violation of the PSC’s applicable Orders (in Docket No. 000061-EI) to these parties regarding the disclosure of such information, as well as the Protective Order in the Circuit Court case.

Protective Order when it crafted its Petition in this docket, places Odyssey in a position where it cannot effectively move to dismiss the January 30 Petition without itself running the risk of violating the Protective Order in filing such motion to dismiss or other responsive pleading. Simply stated, Odyssey finds itself in a position where the only way it can fully, properly, and completely respond to the improper and unlawful trammeling of the Protective Order embodied by the January 30 Petition would be for Odyssey to violate the Protective Order itself.


7. Until this matter is resolved by the Circuit Court, Odyssey's hands are effectively tied. The Prehearing Officer should place this matter in abeyance until such time as the Circuit Court rules on the motion attached hereto. Odyssey will file a copy of the Circuit Court's decision in this docket within three business days of its rendition.

8. Clearly, Odyssey's current dilemma is not one of its own making. Odyssey does not seek by this request any stay of these proceedings to its own advantage or to the disadvantage of Allied/CFI, the Commission, its staff, or the public at large. Initially, Allied/CFI is in no position to complain that it considers time of the essence with regard to the January 30 Petition since its repeated filings and withdrawals, as described in Paragraph 1 above, have already delayed the resolution of these issues (and increased the expense to Odyssey). Furthermore, Odyssey represents to the Prehearing Officer that it is ready, willing, and able to file a responsive pleading to the January 30 Petition within ten business days of any order lifting the abatement requested by this Motion.

9. Counsel for Odyssey has consulted with counsel for Allied/CFI and counsel for TECO states that TECO does not oppose the Motion. Counsel for Allied/CFI states that he is unable to take a position on this Motion as of the time of its filing. Counsel for Allied/CFI will communicate Allied/CFI's position on the Motion to the Commission on Monday, February 16, 2004.

WHEREFORE and in consideration of the above, Odyssey respectfully requests that the Prehearing Officer abate this matter until such time as the Circuit Court rules on the Emergency Motion for Order to Show Cause or, in the alternative, should the Prehearing Officer deem that this matter should not be abated, that Odyssey's time to respond to the January 30 Petition, as contemplated by Rule 28-106.204, F.A.C., be extended until ten business days after the Circuit Court rules on the Emergency Motion for Order to Show Cause.

Dated this 13th day of February, 2004.



WAYNE L. SCHIEFELBEIN, ESQ.
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Attorneys for
ODYSSEY MANUFACTURING CO.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Emergency Motion for Abeyance has been furnished as indicated to the following on this 13th day of February, 2004:

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by hand delivery


JOHN L. WHARTON, ESQ.

odyssey\abeyance.req 040086

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NO. 01-27699 CA 25

ALLIED UNIVERSAL CORPORATION,
A Florida Corporation; and CHEMICAL
FORMULATORS, INC., a Florida
Corporation,

Plaintiffs,

v.

ODYSSEY MANUFACTURING
COMPANY, a Delaware Corporation;
and SENTRY INDUSTRIES, INC.,
a Florida Corporation,

Defendants.

**ODYSSEY MANUFACTURING COMPANY AND SENTRY INDUSTRIES, INC.'S
EMERGENCY MOTION FOR CONTEMPT AND FOR SANCTIONS**

Defendants, Odyssey Manufacturing Company ("Odyssey") and Sentry Industries, Inc. ("Sentry"), by and through undersigned counsel, move for entry of an Order holding Plaintiffs and Plaintiffs' Counsel (collectively, the "Alleged Contemnors") in contempt for violating this Court's September 3, 2002, Protective Order, and imposing sanctions for said violation(s) against the Alleged Contemnors, jointly and severally, and in support thereof state a follows:

1. On September 3, 2002, this Court entered a Protective Order (the "Protective Order") "upon the consent and agreement of Plaintiffs" who were, at that time, represented by Kenneth A. Hoffman, Esq. ("Hoffman"), J. Stephen Menton, Esq. ("Menton"), and Daniel K.

1
RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSEL, P A.

Bandklayder, Esq. ("Bandklayder") (collectively, "Plaintiffs' Counsel"). A copy of the Protective Order is attached hereto as Exhibit A.

2. Pursuant to Paragraph 1(A) of the Protective Order, the following materials were deemed confidential: "[a]ny written, recorded or graphic material or documents, tangible items or any other form of information that a party produces in this case, which a party, in good faith, believes to contain trade secrets or confidential, sensitive or proprietary commercial information as provided by Rule of Judicial Administration 2.051[c](9)(A)(ii)" (the "Confidential Information"). (emphasis added)

3. Paragraph 3(A) of the Protective Order provides that Confidential Information shall not "[b]e disclosed, disseminated, published or made public to anyone but the parties and attorneys of record in this case, their personnel, agents and staff of counsel, expert witnesses, lay witnesses, court reporters and deponents as is necessary for the conduct of the case," and that "[a]ttorneys of record and the parties hereto shall see that each person to whom this information is disclosed has read this agreement, and signs an affidavit in the form attached hereto . . . agreeing to be bound thereby." (emphasis added)

4. Paragraphs 3(B) and 3(C) of the Protective Order further provide, respectively, that no Confidential Information shall be used "for any purpose whatsoever, except for pretrial preparation and trial of this action," or "in any manner in connection with any other action or proceeding, except in accordance with the terms hereof." (emphasis added)

5. Additionally, Protective Order provides that "[t]he attorneys of record and the parties hereto shall be responsible for the actions of their personnel and staff and expert witnesses in the event the provisions of this Order are violated." (emphasis added)

6. On December 18, 2003, the Alleged Contemnors deposed Mr. Stephen Sidelko, president of Odyssey, in this matter (the "Deposition"). Mr. Sidelko's testimony concerned matters involving trade secrets, as well as confidential, sensitive and proprietary information. The confidential and proprietary information produced by Mr. Sidelko at his deposition was both recorded and transcribed and, therefore, is within scope of Paragraph 1(A) of the Protective Order. As will be discussed in greater detail in Paragraph 10 below, there is no doubt that the Alleged Contemnors understood and "in good faith believe[d]" that Mr. Sidelko's Deposition contained "trade secrets or confidential, sensitive or proprietary commercial information."

7. On January 13, 2004, the Alleged Contemnors twice filed portions of the Deposition with the Public Service Commission ("PSC") in Docket No. 000061-EI; (a) once partially redacted¹ and attached to their Motion to Reopen Docket, and (b) once unredacted with their Notice of Intent to Request Specified Confidential Classification.² Upon filing with the PSC, the Motion (including the attached Deposition excerpts) was placed on the Internet by the

¹ It should be noted that nowhere does the Protective Order allow one to disclose, disseminate or publish Confidential Information such as the Deposition, whether same is redacted or not, without first obtaining leave from this Court. See, Protective Order, ¶3(E)

² Rule 25-22.006(3)(a)(1), F.A.C. (governing requests that information provided to the PSC be held confidential) states in relevant part:

Material obtained outside of an inquiry. Material obtained by the Commission or its staff outside of an inquiry shall be subject to inspection and examination pursuant to Section 119.07(1), Florida Statutes.... Prior to the staff obtaining any material, a utility or other person may receive temporary exemption from Section 119.07(1) by filing a notice of intent to request confidential classification. The notice of intent to request confidential classification shall be filed with the Division of the Commission Clerk and Administrative Services and shall have appended thereto a copy of any written request for the material to which it relates.... To maintain continued confidential handling of the material the utility or other person must, within 21 days after the staff has obtained the material, file a request for confidential classification with the Division of the Commission Clerk and Administrative Services. Absent good cause shown, failure to file such a request within 21 days shall constitute a waiver of confidentiality." (emphasis added)

PSC—a common agency practice known to the Alleged Contemnors—where it remained for a minimum of two days. The Motion openly discussed the Deposition and, in fact, was predicated almost exclusively on the Deposition and the contents thereof.³

8. On January 16, 2004, the Alleged Contemnors twice again filed portions of the Deposition with the PSC, this time in Docket No. 040050-EI; (a) once partially redacted⁴ and attached to their Petition, and (b) once unredacted with their Notice of Intent to Request Specified Confidential Classification.⁵ The Petition was likewise placed on the Internet by the PSC— again, a common agency practice known to the Alleged Contemnors—where it remained for approximately two weeks. Like the prior filings, the Petition openly discussed the Deposition, and also was predicated almost exclusively on the Deposition and the contents thereof.⁶

9. On January 30, 2004, the Alleged Contemnors twice, yet again, filed portions of the Deposition (adding the *errata* sheet)⁷ with the PSC, this time in Docket No. 040086-EI; (a) once partially redacted⁸ and attached to their Petition and (b) once unredacted with their Notice of Intent to Request Specified Confidential Classification. Like the previous filings, this Petition

³ As the Alleged Contemnors filed no Notice of Intent to Seek Special Confidential Classification with regard to the partially redacted Motion and attachments, this partially redacted filing remains to date a part of the State of Florida's public records.

⁴ See footnote 1, *supra*.

⁵ Twenty-one days passed without the Alleged Contemnors filing, in accordance with Rule 25-22.006(3)(a), F.A.C., "a request for confidential classification with the Division of the Commission Clerk and Administrative Services" "[t]o maintain continued confidential handling of the material." See footnote 2, *supra*

⁶ As the Alleged Contemnors filed no Notice of Intent to Seek Special Confidential Classification with regard to the partially redacted Petition and attachments, this partially redacted filing, also, remains to date a part of the State of Florida's public records.

⁷ It should be noted that the Alleged Contemnors filed the Deposition with the PSC before it was completed and, therefore, before Odyssey and Sentry were afforded the opportunity to cross-examine, and before Mr. Sidelko was given the opportunity to read and review his testimony, as he is entitled to do. Accordingly, Mr. Sidelko was compelled to file the *errata* sheet to correct certain misstatements and misunderstandings, which could have otherwise been clarified or corrected on cross examination. In fact, to date Mr. Sidelko's Deposition has still not be completed, and is not currently scheduled for completion.

was placed on the Internet by the PSC (which the Alleged Contemnors knew would occur) where it remains to this date. Again, this Petition openly discusses the Deposition, and is predicated almost exclusively on the Deposition and the contents thereof.⁹

10. The foregoing allegations of Paragraphs 8, 9 and 10 are all supported by the Affidavit of Wayne L. Schiefelbein, filed by Defendants contemporaneously herewith and in support of this Motion.

11. The conduct of the Alleged Contemnors in: (a) noticing their intent to request confidential classification of the unredacted deposition portions they provided to the PSC in PSC Docket No. 000061-EI; (b) noticing their intent to request confidential classification of the unredacted deposition portions they provided to the PSC in PSC Docket No. 040050-EI; (c) noticing their intent to request confidential classification of the unredacted deposition portions they provided to the PSC in PSC Docket No. 040086-EI; (d) partially redacting the deposition portions they attached to their motion in PSC Docket No. 000061-EI; (e) partially redacting the deposition portions they attached to their petition in PSC Docket No. 040050-EI; (f) partially redacting the deposition portions they attached to their Petition in PSC Docket No. 040086-EI; and (g) noting in the Petition they filed in PSC Docket No. 040086-EI that the filing replaced the filing in PSC Docket No. 040050-EI "to avoid the potential disclosure of information that could be viewed as confidential," all conclusively demonstrates that the Alleged Contemnors were, at the times of each and every one of their PSC filings, fully conscious of the fact that the

⁸ See footnote 1, *supra*.

⁹ As the Alleged Contemnors filed no Notice of Intent to Seek Special Confidential Classification with regard to the partially redacted Petition and attachments, this partially redacted filing, also, remains to date a part of the State of Florida's public records

Deposition is "Confidential Information" as it "contain[s] trade secrets or confidential, sensitive or proprietary commercial information."

12. Despite this Court's clear mandate in the Protective Order, the Alleged Contemnors intentionally elected to copy, duplicate, reproduce, disclose, disseminate, publish, make public, and otherwise use the Deposition a minimum of twice each in connection with three different PSC proceedings, each and every time in knowing and willful violation of Subparagraphs 3(A), (B), (C), (D), and (F) of the Protective Order. See Exhibit A.

13. This Motion for Contempt and For Sanctions is filed on an emergency basis because PSC Docket No. 040086-EI remains open and (a) Defendants must timely respond to the Alleged Contemnors' Petition therein, and (b) the Court's decision regarding this Motion will substantially and directly impact Defendants' response in the PSC action.

WHEREFORE, pursuant to Paragraph 10 of the Protective Order and this Court's inherent authority to use its contempt powers to enforce its mandates, Defendants, Odyssey and Sentry, respectfully request entry of an Order:

- (a) finding the Alleged Contemnors in contempt of the Protective Order entered by this Court, based upon the conduct set forth above;
- (b) requiring the Alleged Contemnors to withdraw from the PSC any and all Confidential Information;
- (c) enjoining the Alleged Contemnors from making any further filings of Confidential Information in violation of the Protective Order, and providing for the imposition of significant monetary penalties for any such further violation(s);
- (d) requiring the Alleged Contemnors to reimburse Odyssey and Sentry the reasonable fees and costs associated with the filing and maintenance of this Motion;

- (e) requiring the Alleged Contemnors to reimburse Odyssey and Sentry the reasonable fees and costs associated with responding to the Alleged Contemnors' repeated administrative filings in violation of the Protective Order; and
- (f) providing such other and further civil remedies and/or relief as the Court deems just and proper.

Respectfully submitted,

RUDEN, McCLOSKEY, SMITH,
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By: 

GLENN N. SMITH, ESQ.
Florida Bar No. 165334
BRYAN S. GREENBERG
Florida Bar No. 968315
WILLIAM G. McCORMICK
Florida Bar No. 119377


ROSE, SUNDSTROM & BENTLEY, LLP
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(850) 877-6555
Wayne L. Schiefelbein, Esq.
Florida Bar No. 265047

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to: Lawrence D. Silverman, Esq., AKERMAN, SENTERFITT, P.A., One S.E. Third Avenue, 28th Floor, Miami, Florida 33131; Daniel K. Bandklayder, Esq., ANANIA, BANDKLAYDER, ET AL., 100 S.E. 2nd Street, Suite 4300, Miami, Florida 33131; and to Kenneth A. Hoffman, Esq., RUTLEDGE, ECENIA, ET AL., 215 South Monroe Street, Suite 420, P.O. Box 551, Tallahassee, Florida 32302 this 13th day of February, 2004.

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.

By: _____


WILLIAM G. McCORMICK
Florida Bar No. 119377

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

CASE NO. 01-27699 CA 25

RECEIVED

AUG 28 2002

B.S.G.

ALLIED UNIVERSAL CORPORATION, :
a Florida Corporation; and CHEMICAL :
FORMULATORS, INC., a Florida :
Corporation, :
:

Plaintiffs, :
:

vs. :
:

ODYSSEY MANUFACTURING :
a Delaware Corporation; :
SENTRY INDUSTRIES, INC., :
a Florida Corporation, :
:

Defendants. :
:

Agreed (B.S.G.)

PROTECTIVE ORDER

THIS CAUSE having come on to be heard upon Defendants', Odyssey Manufacturing Company and Sentry Industries, Inc., Motion for Protective Order, and upon the consent and agreement of Plaintiffs Allied Universal Corporation and Chemical Formulators, Inc., it is hereby ORDERED that the parties to this action, in order to provide protection of confidential and proprietary information and trade secrets of the parties and facilitate the discovery in this action, shall be governed by the following:

1. The following materials shall be deemed confidential (the "Confidential Information"):

A. Any written, recorded or graphic materials or documents, tangible items or any other form of information that a party produces in this case, which a party, in good faith,

believes to contain trade secrets or confidential, sensitive or proprietary commercial information, as provided by Rule of Judicial Administration 2.051(9)(A)(ii);

2. The herein-described Confidential Information shall be designated as such by stamping the word "Confidential" on the document or by any other reasonable method as agreed to by the parties.

3. That Confidential Information shall not:

A. Be disclosed, disseminated, published or made public to anyone but the parties and attorneys of record in this case, their personnel, agents and staff of counsel, expert witnesses, lay witnesses, court reporters and deponents, as is necessary for the conduct of the case. Attorneys of record and the parties hereto shall see that each person to whom this information is disclosed has read this agreement, and signs an affidavit in the form attached hereto as Exhibit "A" agreeing to be bound thereby;

B. Be used for any purpose whatsoever, except for pretrial preparation and trial of this action;

C. Be used in any manner in connection with any other action or proceeding, except in accordance with the terms hereof;

D. Be copied, duplicated or reproduced in whole or in part for any purpose whatsoever, except for pretrial preparation and trial of this action, without the prior written consent of counsel for party designating the subject Confidential Information as confidential or prior Order of this Court upon notice;

E. Be made any part of the public record of this case, whether in evidence or otherwise, except as provided herein, although this agreement does not prohibit its use as evidence in the trial of this case. If Confidential Information are used in any deposition

testimony, or interrogatory answer, or other discovery response, or as evidence, or is quoted or disclosed in any affidavit, brief, deposition, transcript or other paper filed in this action, such materials and papers shall be filed only as provided by this Order or such further order as may be entered by the Court. In the event a party wishes to file a document, transcript, or thing containing Confidential Information described in this Order with the Court for any purpose, the party shall first serve the opposing party with the document, transcript, or thing containing the alleged Confidential Information. After service, the parties agree to consult with each other to discuss whether the document, transcript or thing actually contains Confidential Information as described herein. If the parties agree that the document, transcript or thing does not include Confidential Information, the document, transcript, or thing may be filed with the Court. If any of the parties believe that the material served contains Confidential Information, then any of the parties, prior to any filing of the document, transcript, or thing involved, shall apply to the Court pursuant to Rule of Judicial Administration 2.051 for a determination of whether the Confidential Information are confidential as described herein, and the document, transcript or thing involved shall be filed only in a form as specified pursuant to the resulting Court Order; or;

F. Be analyzed, summarized, or contained in any report, summary or analysis, unless such report, summary or analysis or any document containing any such designated information or documentation is considered and treated as Confidential Information subject to this Stipulation and to the protection of the Order of this Court entered pursuant hereto.

4. The attorneys of record and the parties hereto shall be responsible for the actions of their personnel and staff and expert witnesses in the event the provisions of this Order are violated

5. Any party may dispute a designation of confidentiality and bring before the Court a request for the Court to determine whether or not confidentiality should or should not apply to particular discovery.

6. Where confidentiality is disputed, the discovery shall be deemed confidential pending the ruling of the Court on the dispute.

7. All Confidential Information furnished to a party pursuant to disclosure or discovery in this action shall be returned to the designating party at the conclusion of this litigation, including any and all copies of such document or documents which in whole or in part contain any such Confidential Information;

8. Any and all documents which contain summaries, reports or analyses of the Confidential Information shall be returned to the designating party at the conclusion of this matter, and any copy of any such summary, report, or analysis retained shall be redacted to exclude all reference, discussion, or analysis of such designated documents or information.

9. Nothing in this Order shall prevent any party from seeking modification of this Order with either written consent of both parties or Court order.

10. It is further and specifically stipulated and agreed by the parties that the Court enter the Order submitted herewith adopting and incorporating the terms of this Confidentiality Agreement and Protective Order and that the Court may use its contempt powers or any other sanctions to enforce the terms of this Agreement and the Order entered pursuant hereto upon the request of any party.

SEP 03 2002

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this ___ day of

_____, 2002.



Honorable Philip Bloom
Circuit Court Judge

Copies furnished to:
Glenn N. Smith, Esq.
Bryan S. Greenberg, Esq.
Lawrence D. Silverman, Esq.
Daniel K. Bandklayder, Esq.
Kenneth A. Hoffman, Esq.

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

CASE NO. 01-27699 CA 25

Florida Bar Nos. 165334 / 968315

ALLIED UNIVERSAL CORPORATION, :
a Florida Corporation; and CHEMICAL :
FORMULATORS, INC., a Florida :
Corporation, :

Plaintiffs, :

vs. :

ODYSSEY MANUFACTURING :
COMPANY, a Delaware Corporation; :
and SENTRY INDUSTRIES, INC., :
a Florida Corporation, :

Defendants. :

STATE OF _____)
) ss.
COUNTY OF _____)

The undersigned, first being sworn, deposes and says:

1 I have received and read the Protective Order entered in the case of *Allied*

3. I will return to Plaintiffs' counsel all protected documents, materials and transcripts in my possession, if any, in the case of *Allied Universal Corporation and Chemical Formulators, Inc. v. Odyssey Manufacturing Company and Sentry Industries, Inc.*, Case No. 01-27699 CA 25, In the Circuit Court of the 11th Judicial Circuit, In and for Miami-Dade County, Florida.

4. I have retained no notes, summaries, documents or drawings nor any information or data taken from the aforesaid protected documents and materials.

FURTHER AFFIANT SAYETH NAUGHT.

Subscribed and sworn to before
me on this ____ day of ____

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

Case No.01-27699 CA25

Florida Bar No. 968315

ALLIED UNIVERSAL CORPORATION, :
a Florida corporation, and CHEMICAL :
FORMULATORS, INC., a Florida :
corporation, :

Plaintiffs, :

v. :

ODYSSEY MANUFACTURING :
COMPANY, a Delaware Corporation, and :
SENTRY INDUSTRIES, INC., a Florida :
corporation, :

Defendants. :

NOTICE OF FILING

Defendants, ODYSSEY MANUFACTURING COMPANY, a Delaware corporation and SENTRY INDUSTRIES, INC., a Florida corporation ("Plaintiffs"), by and through undersigned counsel, hereby notice the filing of the attached original Affidavit of Wayne L. Schiefelbein, Esq., in support of Defendants' Emergency Motion for Contempt and for Sanctions filed with the Court on February 13, 2004.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished, by ~~facsimile transmission and~~ prepaid U.S. Mail, to Lawrence D. Silverman, Esq., AKERMAN, SENTERFITT & EIDSON, P.A., SunTrust International Center, 28th Floor, One Southeast Third Avenue, Miami, Florida 33 131-1704; Daniel K. Bandklayder, Esq., ANANIA, BANDKLAYDER,

BLACKWELL BAUMGARTEN & TORRICELLA, 4300 Nations Bank Tower, 100 Southeast Second Street, Miami, Florida 33131; and to Kenneth A. Hoffman, Esq., RUTLEDGE, ECENIA, PURNELL & HOFFMAN, P.A., 215 South Monroe Street, Suite 420, P.O. Box 551, Tallahassee, FL 32302, this 6 day of February, 2004.

Respectfully submitted,

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Florida Bar No. 265047

IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND
FOR DADE COUNTY, FLORIDA

CASE NO. 01-27699 CA 25

ALLIED UNIVERSAL CORPORATION,)
A Florida Corporation; and CHEMICAL)
FORMULATORS, Inc., a Florida)
Corporation,)
)
Plaintiffs,)
)
v.)
)
ODYSSEY MANUFACTURING)
COMPANY, a Delaware Corporation;)
and SENTRY INDUSTRIES, INC.,)
a Florida Corporation,)
)
Defendants.)

AFFIDAVIT OF WAYNE L. SCHIEFELBEIN

BEFORE ME, the undersigned authority, personally appeared WAYNE L. SCHIEFELBEIN, who after being duly sworn deposed said as follows:

1. Your Affiant is an attorney, member in good standing of the Florida Bar, and has been employed by Odyssey Manufacturing Company ("Odyssey") to represent it before the Public Service Commission ("PSC"). All statements herein are based upon my personal knowledge.

2. I was an attorney with the PSC from 1984-1988. Since 1989, I have been engaged in private practice with an emphasis in public utility law. In my law practice, I have gained a strong, day-to-day, working knowledge of PSC rules and procedures.

3. In my capacity as PSC counsel for Odyssey, I have, since the beginning of January, been served with no fewer than six PSC filings (discussed in detail below) made by

Kenneth A. Hoffman, Esq.; J. Stephen Menton, Esq.; and Daniel K. Bandklayder, Esq., in their roles as counsel for Allied Universal Corporation and Chemical Formulators, Inc.

4. On January 13, 2004, Messrs. Hoffman, Menton, and Bandklayder twice filed with the PSC portions of a December 18, 2003, Circuit Court Deposition of Mr. Stephen Sidelko (the "Deposition"), president of Odyssey, with the PSC in Docket No. 000061-EI, once partially redacted and attached to their Motion to Reopen Docket ("Motion") and once unredacted according to their signed and filed Notice of Intent to Request Specified Confidential Classification. The Motion was routinely placed on the Internet by the PSC where it remained for at least two days. Moreover, the Motion openly discussed the Deposition and, in fact, used the Deposition as its alleged basis.

5. On January 16, 2004, Messrs. Hoffman, Menton, and Bandklayder twice again filed portions of the Deposition with the PSC, this time in Docket No. 040050-EI, once partially redacted and attached to their Petition and once unredacted according to their signed and filed Notice of Intent to Request Specified Confidential Classification. Like the Motion, this Petition was routinely placed on the Internet by the PSC where it remained for approximately two weeks. Also as with the Motion to Reopen Docket, the Petition openly discussed the Deposition and, in fact, used the Deposition as its alleged basis.

6. On January 30, 2004, Messrs. Hoffman, Menton, and Bandklayder twice again filed portions of the Deposition (this time including the January 23, 2004, *errata* sheet thereto) with the PSC, this time in a new Docket, No. 040086-EI, once with the Deposition portions partially redacted and attached to their latest Petition and once unredacted according to their signed and filed Notice of Intent to Request Specified Confidential Classification. Like the Motion and the previous Petition, this new Petition was placed on the Internet by the PSC where

it remains to this date. Also like the Motion and the previous Petition, this new Petition openly discussed the Deposition and, in fact, used the Deposition as its alleged basis.

7. In their January 30, 2004, Petition in PSC Docket No. 040086-EI, Messrs. Hoffman, Menton, and Bandklayder noted that the filing replaced the Petition in PSC Docket No. 040050-EI "to avoid the potential disclosure of information that could be viewed as confidential."

8. PSC Docket No. 040086-EI remains open and Odyssey must timely respond to the Petition filed by Messrs. Hoffman, Menton, and Bandklayder therein

FURTHER AFFIANT SAYETH NAUGHT.

Wayne L. Schiefelbein

WAYNE L. SCHIEFELBEIN

STATE OF FLORIDA)
)
COUNTY OF LEON)

SWORN AND SUBSCRIBED before me, the undersigned authority, on this ^{10th} day of February, 2004, in Leon County, Florida, by Wayne L. Schiefelbein who personally appeared before me, is personally known to me, and who took an oath.

Marlon F. Simmons

Notary Public, State of Florida

My Commission Expires:

