

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)	Filed: April 22, 2004
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.)	
_____)	

**NOTICE OF INTENT TO REQUEST
CONFIDENTIAL CLASSIFICATION**

Odyssey Manufacturing Company ("Odyssey"), by and through undersigned counsel and pursuant to Rule 25-22.006(3)(a), Florida Administrative Code, files this Notice of Intent to Request Confidential Classification and states as follows:

1. On April 22, 2004, Circuit Judge Michael B. Chavies signed the Agreed Order on Defendants' Emergency Motion for Contempt and for Sanctions in Allied Universal Corporation, et al, v. Odyssey Manufacturing Company, et al, Case No. 01-27699 CA25 in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida. (Attachment 1). The Agreed Order provides in part that:

The parties are hereby permitted to file any and all documents and deposition transcripts obtained during the captioned matter with the Florida Public Service Commission ("PSC"), Docket No. 040086-EI, subject to said party seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C.

2. Accordingly, concurrently with the Notice, Odyssey is filing an original and one (1) copy of the transcript of the December 18, 2003 deposition of Stephen Sidelko in the aforesaid

DOCUMENT NUMBER - 040086-EI

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circuit court proceeding (Attachment 2), together with the January 23, 2004, Errata Sheet, as signed by Stephen Sidelko (Attachment 3), in an envelope marked "Confidential" with the confidential portions of the transcript and errata sheet highlighted on the copy. Odyssey has also filed fifteen (15) edited copies of said transcript and errata sheet, with the confidential information therein redacted.

3. The vast majority of the information for which confidential classification will be requested is intended to be and is treated by Odyssey as private and has not been publicly disclosed. The balance of the redacted information, on information and belief, is intended to be and is treated by Allied Universal Corporation and/or Tampa Electric Company as private and has not been publicly disclosed. Odyssey will extend its best efforts to collaborate with said parties to ensure that the confidentiality of said balance of the redacted information is preserved.

4. The original of this Notice is being filed in the Division of Records and Reporting and a copy is being served on all counsel of record.

Respectfully submitted this 22nd day of April, 2004.



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Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Intent to Request Confidential Classification has been furnished via Hand Delivery* and/or U.S. Mail to the following on this 22nd day of April, 2004:

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Wayne L. Schiefelbein, Esq.

ATTACHMENT 1

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

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.

Case No.01-27699 CA25

**AGREED ORDER ON DEFENDANTS' EMERGENCY
MOTION FOR CONTEMPT AND FOR SANCTIONS**

THIS CAUSE having come on to be heard on Defendants, ODYSSEY
MANUFACTURING COMPANY and SENTRY INDUSTRIES, INC.'S, Emergency Motion for
Contempt and for Sanctions, and the parties having agreed to the entry of this Order and the
Court otherwise being fully advised in the premises, it is hereby

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. The Court's Protective Order dated September 3, 2002 remains in full force and effect.
2. The parties are hereby permitted to file any and all documents and deposition transcripts obtained during the captioned matter with the Florida Public Service Commission

Case No.01-27699 CA25

("PSC"), Docket No. 040086-EI, subject to said party seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida, this _____ day of March, 2004.

Conformed Copy

APR 22 2004

Michael B. Chavies
CIRCUIT COURT JUDGE
Circuit Court Judge

Copies Furnished:

Glenn N. Smith, RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSELL, P.A., P.O. Box 1900, Fort Lauderdale, Florida 33302

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ATTACHMENT 2

1 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
2 CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

3 CASE NO.: 01-27699 CA 25

4
5
6 ALLIED UNIVERSAL CORPORATION,
7 a Florida Corporation; and CHEMICAL
8 FORMULATORS, INC., a Florida Corporation,
9 Plaintiffs,

10 vs.

11 ODYSSEY MANUFACTURING COMPANY, a
12 Delaware Corporation; and SENTRY
13 INDUSTRIES, INC., a Florida
14 Corporation,

15 Defendants.

16 -----/

17 100 S.E. Second Street
18 Miami, Florida
19 Thursday, December 18, 2003
20 10:00 a.m. - 3:50 p.m.

21 CONTINUED DEPOSITION OF STEPHEN SIDELKO

22 Taken on behalf of the Plaintiff, Allied,
23 before JAMIE TAYLOR, Registered Professional
24 Reporter and Notary Public for the State of Florida
25 at Large, pursuant to a Notice of Taking Deposition
filed in the above cause.

1 APPEARANCES:

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ANANIA BANDKLAYDER BLACKWELL BAUMGARTEN
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DANIEL K. BANDKLAYDER, ESQ.
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Attorney for the Plaintiff

RUDEN MCCLOSKEY, by
GLENN N. SMITH, ESQ.
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Attorney for the Defendants

ALSO PRESENT:

MICHAEL KOVEN

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(Exhibits 4-10 attached hereto. Exhibit 3 was inadvertently not attached.)

1 STEPHEN SIDELKO,
2 having been duly sworn and responded "I do," was
3 examined and testified as follows:
4 DIRECT EXAMINATION

5 BY MR. BANDKLAYDER:

6 Q Okay. Good morning, Mr. Sidelko. You
7 have had your deposition taken before in the case.
8 You understand that this is a continuation of your
9 previous deposition. You're still sworn to tell
10 the truth, under oath, and you know that all your
11 answers are being recorded by our reporter today.

12 A Yes.

13 Q Very well. I'd like to start with Corky
14 Thein. Did there come a point in time when someone
15 offered Mr. Thein a position with Odyssey?

16 A Yes.

17 Q Who first contacted Mr. Thein about
18 that?

19 A I did.

20 Q And how did that come about?

21 A I was going to have to hire somebody to
22 run it. If I didn't hire somebody to run it, it
23 would have been left to me to run. I didn't want
24 to move to Tampa. He was my first, best candidate
25 that I came up with.

1 Q How did you know of Mr. Thein?

2 A Mr. Thein had been selling chlorine and
3 caustic in the Florida market for Occidental
4 Chemical for five to ten years. Sentry Industries
5 was one of his customers.

6 Q Why was it that you felt that he was
7 the best candidate?

8 A I thought he would have been very
9 strong in the sales aspect. He had had experience
10 in selling chlorine gas to municipalities.

11 Q Do you know approximately for how many
12 years he had been doing that?

13 A His career was a salesperson. The same
14 five to ten years.

15 Q Had he ever been involved in bleach
16 sales to your knowledge?

17 A Not to my knowledge.

18 Q When did you first broach the subject
19 with Mr. Thein about his coming to work for
20 Odyssey?

21 A Sometime in the summer of -- possibly
22 the spring, possibly the summer of 1998.

23 Q And was there anything in writing,
24 either from you to him or him to you relating to
25 these discussions?

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1 A No.

2 Q No?

3 A No.

4 Q For example, you never gave him a
5 written offer or a letter or anything like that?

6 A No.

7 Q When I ask if there was anything in
8 writing from him to you or you to him, I don't mean
9 necessarily you individually. I mean from Odyssey
10 or Sentry or anybody on your behalf. Was there

11 anything at all in writing from anyone to or from
12 Corky Thein relating to the possibility of his
13 coming to work for Odyssey?

14 A No.

15 Q So it was all verbal?

16 A Yes.

17 Q And how many conversations
18 approximately would you say you had with him about
19 that?

20 A At least three or four. Maybe a half a
21 dozen.

22 Q What happened during the last
23 conversation?

24 A He told me that he would not be
25 interested in the position.

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1 Q What were the reasons that he was not
2 interested in the position?

3 A What reasons did he give me?

4 Q Yes.

5 A He told me he had another opportunity
6 to start his own business, and after long
7 deliberation, he decided that would be better for
8 him.

9 Q Do you know if he ultimately went out
10 into his own business?

11 A He told me that he did.

12 Q Have you been in touch with him since
13 then?

14 A Yes.

15 Q And did he get his own business
16 started?

17 A I haven't seen any documents that say
18 that he owns it. He says that he owns the
19 business, and he -- as a matter of fact, he's a
20 customer.

21 Q of who?

22 A Allied, Odyssey and Sentry.

23 Q Over what period of time would you say
24 these half a dozen or so conversations took place
25 between you and Mr. Thein? In other words, did it

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1 take place over a week, a month, six months or
2 what's your best estimate?

3 A Five or six months.

4 Q why did they -- why did the
5 conversations continue over such a relatively long
6 time frame?

7 A I don't understand the question.

8 Q well, as I understand it, the subject
9 of the conversations was your proposal to have him
10 become a general manager for Odyssey, is that
11 right?

12 A Yes, that's correct.

13 Q why did it take six months or so to
14 talk about that? why wasn't -- why couldn't that
15 conversation and your offer and his ultimate
16 decision have been completed within a few weeks?

17 Do you understand what I'm asking?

18 A No.

19 Q Why did it drag out for six months?

20 MR. SMITH: Object to the form. Answer
21 it if you can.

22 THE WITNESS: Neither one of us was in
23 a hurry. The time allowed for that amount of
24 deliberation on his part.

25 Q (BY MR. BANDKLAYDER) Were there any --

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1 A We didn't own any land. There really
2 was no Odyssey in 1998.

3 Q When did Odyssey purchase the land or
4 maybe I should ask when was the land purchased that
5 Odyssey ultimately located its facility on?

6 A The closing was in September of 1998.

7 Q Had he already turned the job down
8 prior to that time, prior to the time you closed on
9 the land?

10 A No. He was still considering.

11 Q When was it that he gave you his
12 decision?

13 A Around Thanksgiving of 1998.

14 Q Did he have any operations experience
15 in terms of operating a manufacturing facility?

16 A Not to my knowledge.

17 Q When you had these conversations with
18 him, were they by telephone or in person or some
19 combination?

20 A They were in person.
21 Q Where did these conversations take
22 place?
23 A In my office in Sentry Industries.
24 Q Was he there because he was making
25 sales calls or servicing the Sentry account?

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1 A Yes.
2 Q So there were no telephone -- were
3 there any telephone conversations between the two
4 of you about your offering him a position?
5 A There may have been.
6 Q Would they have been to his home or to
7 his office?
8 A He would have called me.
9 Q Would he have called you at home or at
10 your office?
11 A He would have called me at my office.
12 Q If you had hired Mr. Thein, who would
13 have actually run the plant? In other words, who
14 would be in charge of operations?
15 A How was I intending to structure the
16 company below Mr. Thein is your question?
17 Q Yes, in terms of operations especially.
18 A Is that a legitimate question?
19 MR. SMITH: If you know the answer.
20 THE WITNESS: I don't have a definite
21 answer because we didn't come to that, but I
22 suppose I would have hired somebody with

23 experience in operations who would report to
24 Mr. Thein.
25 Q (BY MR. BANDKLAYDER) When you were

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1 negotiating with Mr. Thein, was there any
2 discussion about compensation?

3 A Yes.

4 Q Did you make him an offer?

5 A I told him what his salary would be if
6 he accepted the job. Would you consider that an
7 offer?

8 Q Yes.

9 A Okay. Then I made him an offer.

10 Q How much was the offer?

11 A \$100,000 a year as a starting salary.

12 Q As part of that offer, was there any --
13 were there any increases, periodic increases?

14 A I don't recall that we talked about
15 that.

16 Q Was there any back and forth
17 negotiation over the compensation issue?

18 A No.

19 Q Did Mr. Thein ever tell you something
20 to the effect that he felt that until you obtained
21 an electric rate commitment, the plans for Odyssey
22 were too indefinite or words to that effect?

23 A No.

24 Q Did Mr. Thein -- did you and Mr. Thein
25 have any discussions about Patrick Allman?

1 A No.

2 Q Did anyone witness any of the

3 conversations between you and Mr. Thein regarding

4 your employment offer?

5 A I don't know of any.

6 Q Was anyone else involved in the

7 decision-making process regarding Corky Thein?

8 A No. Can I ask another question?

9 Q Yes.

10 (Thereupon, there was a discussion off

11 the record.)

12 Q (BY MR. BANDKLAYDER) Is there anything

13 you want to add to the previous answer?

14 MR. SMITH: No. Not pertinent.

15 Q (BY MR. BANDKLAYDER) Did you have any

16 conversations with Mr. Thein about procuring any

17 electric rate commitment from TECO?

18 A I may have mentioned that that was one

19 of the issues that had to be resolved for the

20 overall feasibility.

21 Q What, if anything, did he say about

22 that?

23 A Nothing that I recall.

24 Q When is the last time that you had any

25 contact with Mr. Thein?

1 A Few months ago, three, four, five, six
2 months ago.
3 Q What was the occasion for that?
4 A Telephone call about one of his
5 customers in Fort Pierce.
6 Q Did you call him or did he call you?
7 A He called me.
8 Q What was the phone call about?
9 A The terms for a sale to his customer in
10 Fort Pierce.
11 Q So he was I guess ordering some product
12 to be shipped to a customer of his or something
13 like that?
14 A He was negotiating the terms of the
15 shipment to his customer.
16 Q This is something he was purchasing
17 from Sentry?
18 A At that time it was something he was
19 purchasing from Sentry.
20 Q Have you ever discussed any aspect of
21 this case with him?
22 A By this case you mean the antitrust
23 case?
24 Q Well, yes, although I'm not just
25 limiting it to antitrust. This entire lawsuit,

1 this litigation?

2 A But excluding the PSC.

3 Q Why don't we take it one step at a

4 time. The PSC case ended in early 2000, and I
5 believe this case was filed in November of 2000, so
6 starting with this case, which was filed here in
7 state court in around November of 2000, have you
8 had any conversations with him --

9 A I don't think so. I don't believe so.

10 Q What conversations, if any, have you
11 had with him about the PSC case?

12 A I told him that one of Allied's claims
13 was that during the time that I had offered him a
14 job and he was deliberating that Allied alleged
15 that Allman knew he was going to be the general
16 manager and whatever your claim was, did some
17 crooked dealings to get us an illegal electric
18 rate.

19 Q And what, if anything, did he say about
20 that?

21 A I don't recall.

22 Q What was the purpose of your telling
23 him what you told him about that?

24 A My purpose was that we may have needed
25 him to testify.

1 Q In the PSC case?

2 A Yes.

3 Q Have you spoken to him about possibly
4 testifying in this case?

5 A No.

6 Q Has anybody?

7 A Not that I know of.
8 Q Have you had any other conversations
9 with Mr. Thein about either this case or the PSC
10 case?
11 A Not that I recall.
12 Q Have you had any conversations with him
13 about Allied or CFI?
14 A He's mentioned Allied. He's mentioned
15 Allied in our conversations.
16 Q And in what context did that come up?
17 A The purpose of contacting Sentry and
18 Odyssey was to find an alternate supplier, that
19 sometimes he had difficulty having Allied make the
20 correct deliveries.
21 Q Where is he presently located?
22 A In Orlando.
23 Q And to your knowledge, is he buying
24 bleach from either Allied or CFI?
25 A I understood that he was.

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1 Q Do you know who's actually -- well, do
2 you know where the bleach that he's getting from
3 Allied or CFI is produced?
4 A I don't have the faintest idea.
5 Q Are you presently -- when I say you, I
6 mean either Sentry or Odyssey, a back-up supplier
7 of bleach for Mr. Thein's business?
8 A I believe that I'm his supplier for a
9 few of his accounts from Sentry, and I also believe

10 that he does some business with Odyssey, but he
11 arranged those details himself with Marvin and Pat,
12 so I don't know where, if anywhere, they go for
13 him, and I would suppose that he still does
14 business with Allied at other locations.

15 Q All right. Shifting gears here to
16 another subject. Have you had any contact with any
17 regulatory agencies or personnel regarding either
18 Allied or CFI?

19 MR. SMITH: Does that include PSC?

20 MR. BANDKLAYDER: Oh, yes, we can
21 include PSC.

22 THE WITNESS: I appeared before the PSC
23 in the TECO lawsuit. I have a question for
24 Glenn.

25 (Thereupon, there was a discussion off

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1 the record.)

2 MR. SMITH: Going to take a break.

3 (Thereupon, a recess was taken.)

4 (Thereupon, the record was read back by
5 the reporter.)

6 THE WITNESS: The Justice Department
7 contacted me regarding Allied, and we don't
8 know whether that's a regulatory agency or
9 not, so I'm --

10 Q (BY MR. BANDKLAYDER) Didn't matter. I
11 was going to ask you about them anyway.

12 A That's the only regulatory agency with
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13 whom I have had contact about Allied and none for
14 CFI.

15 Q To your knowledge, has anyone either
16 affiliated with Sentry or Odyssey or acting on
17 their behalf had any contact with any regulatory
18 agencies or personnel about Allied or CFI?

19 A Not to my knowledge.

20 Q And I'm specifically including in that
21 question like, for example, Hillsboro Environmental
22 Protection Commission. Has anyone had any contact
23 with them?

24 A Not to my knowledge.

25 Q Or Department of Environmental

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1 Regulations?

2 A Same answer.

3 Q And United States Environmental
4 Protection Agency?

5 A Same answer.

6 Q Has anyone affiliated with Sentry or
7 Odyssey had any contact with either the Port of
8 Tampa or any of the dockage facility operators at
9 the Port of Tampa about Allied or CFI?

10 A Same answer.

11 Q Answer being no?

12 A Answer being not to my knowledge.

13 Q You haven't had any such contact,
14 right?

15 A Neither do I know of any such contact.
Page 15

16 Q Fair enough.
17 When did you first have contact with
18 the Department of Justice?
19 A Approximately the summer of 2000.
20 Q And who called who?
21 A I was called before a grand jury.
22 Q Does that mean you got a subpoena?
23 A I believe so.
24 Q And prior to the time you received a
25 subpoena, had you had any contact with anyone from

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1 the Department of Justice?
2 A No.
3 Q So when you got the subpoena, was it a
4 surprise to you?
5 A Yes.
6 Q And did the subpoena require you to
7 bring anything with you to the grand jury?
8 A Not that I recall.
9 Q Did you bring anything with you?
10 A Not that I recall.
11 Q Did you have an attorney represent you
12 in connection with that appearance before the grand
13 jury?
14 A I don't believe so.
15 Q When you received the subpoena, how did
16 you know that it had anything to do with Allied or
17 CFI?
18 A The subject of the investigation was

19 chlorine and bleach business in Florida.

20 Q Did that include Sentry or Odyssey?

21 A The subject of the case was chlorine
22 and bleach business in Florida.

23 Q Well, what was it about the subpoena
24 that indicated to you that it somehow related to
25 Allied or CFI as opposed to any one of a number of

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1 other companies that are involved in the chlorine
2 and bleach businesses in Florida?

3 A It didn't.

4 Q Well, before you appeared before the
5 grand jury, did you have any conversations with
6 anyone at the Department of Justice?

7 A No.

8 Q So you just went in there cold and took
9 it from there?

10 A Yes.

11 Q Did you know in advance what they would
12 be asking you about?

13 A No.

14 Q What did they ask you about?

15 A I left with instructions not to
16 disclose it.

17 Q Who gave you those instructions?

18 A An official of the grand jury.

19 Q What did he or she tell you?

20 A That my testimony was to be kept
21 secret.

22 Q Who was that person?
23 A I don't know.
24 Q Male or female?
25 A Female.

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1 Q Where was the grand jury proceeding
2 that you attended?
3 A Miami.
4 Q For how long did you appear before the
5 grand jury?
6 A 45 minutes.
7 Q Did you have any further contact with
8 anyone from the Department of Justice after that 45
9 minute appearance?
10 A Yes.
11 Q What was that?
12 A About a year later, I was required to
13 appear in Atlanta at the United States Justice
14 Department office concerning my testimony the prior
15 year in Miami.
16 Q When you say you were required to
17 appear, do you mean you were subpoenaed again?
18 A I don't think it was a subpoena.
19 Q What was it that required --
20 A I think it was a letter.
21 Q Was it from that same person that
22 questioned you in front of the grand jury?
23 A I don't know.
24 Q Did the letter say that you were

25 required to come to Atlanta?

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1 A That's how I understood it.

2 Q Did you consult with an attorney about
3 it?

4 A Yes.

5 Q who?

6 MR. SMITH: Yes.

7 THE WITNESS: The partner in Ruden
8 McClosky who handles those types of issues.
9 His name is Mark Nuryk, N-u-r-y-k.

10 Q (BY MR. BANDKLAYDER) Did he go with
11 you to Atlanta?

12 A Yes.

13 Q Did anyone else go with you?

14 A No.

15 Q Did you bring anything with you?

16 A Not that I recall.

17 Q Have you, to this day, ever provided
18 any documents of any sort to the Department of
19 Justice?

20 A Not that I recall.

21 Q When I say you, I mean you meaning
22 Sentry, Odyssey or you or anyone acting on behalf
23 of the companies.

24 A Same answer.

25 Q When you went up to Atlanta, who did

1 you meet with?

2 A Attorneys for the Justice Department.

3 Q Was the same female attorney there?

4 A I don't know.

5 Q How many attorneys from the Department
6 of Justice were there?

7 A Few.

8 Q And what did you all talk about?

9 A They told me not to disclose it.

10 Q Did they tell you that it was a secret
11 and was protected by law from disclosure?

12 A I don't remember.

13 MR. BANDKLAYDER: I don't know of any
14 privilege there. If you do, Glenn, please
15 tell me because otherwise I would like to get
16 answers.

17 MR. SMITH: He's been instructed not to
18 disclose information. I don't practice in
19 those areas, so I can't comment other than
20 he's under those instructions, and we are
21 going to honor them until somebody rules
22 differently or you contact the Department of
23 Justice and they say it's okay.

24 MR. BANDKLAYDER: Well, I mean I know
25 that whatever they were doing over there at

1 the Department of Justice, it's over and

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they've dropped it.

MR. SMITH: I don't know that.

Q (BY MR. BANDKLAYDER) So how long were you up there talking with the Department of Justice people?

A The better part of a morning.

Q Without getting into the specifics of your conversations, generally speaking, was Sentry or Odyssey one of the subjects that you all discussed or was it just limited to Allied or Allied and CFI?

A I think that would fall under the requirement that I don't discuss it.

Q Did you have any further contact with the Department of Justice?

A Not that I recall.

Q Putting aside the Department of Justice now, do you have any knowledge of any improper or illegal activities on the part of Allied or any of its affiliates or personnel?

MR. SMITH: Object to the form. You mean like did he see them speeding one day?

MR. BANDKLAYDER: Whatever.

MR. SMITH: Any type?

MR. BANDKLAYDER: Any type. If the answer is yes, then we'll start narrowing things down and proceed from there, but the question, at least out of the box here, is do

5 you have any knowledge of any improper or
6 illegal activities on the part of Allied or
7 its affiliates or any of its personnel?

8 MR. SMITH: Object to the form.

9 THE WITNESS: According to the
10 newspaper, occasionally Allied gets empty ton
11 cylinders back from the islands with marijuana
12 inside. Beyond that, I have no specific
13 knowledge that Allied has done something
14 illegal and they have definitely done it and
15 it's definitely illegal. I have no specific
16 knowledge. I don't know what they do, and I
17 don't know the legality of it.

18 Q (BY MR. BANDKLAYDER) And the marijuana
19 issue, that's something you picked up from the
20 newspaper?

21 A Yes. It was in the Miami Herald.

22 Q Was that recently?

23 A No.

24 Q When was that?

25 A Possibly ten years ago.

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1 Q Was there some suggestion that Allied
2 was involved in importing marijuana?

3 A No.

4 MR. BANDKLAYDER: We'll take a break.

5 (Thereupon, a brief recess was taken.)

6 Q (BY MR. BANDKLAYDER) Well, following
7 up your last answer, are you aware of any

8 activities by Allied or its affiliates or personnel
9 that you think may be illegal in some respect?
10 A I have no specific knowledge.
11 Q Do you have any general knowledge?
12 A No.
13 Q Have you read Mr. Allman's testimony?
14 A Mr. Allman's testimony regarding what?
15 Q Well, have you read it first of all?
16 Have you read it?
17 A What? Which testimony?
18 Q His deposition in this case that we
19 took two or three weeks ago.
20 A I have not.
21 Q He testified at his deposition that you
22 told him about all sorts of illegal predatory
23 pricing and price fixing activities on the part of
24 Allied. Did you tell him about those things?
25 A Not that I recall.

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1 Q Did you ever tell him that Allied or
2 its affiliates or its personnel had engaged in
3 price fixing?
4 A I could conceivably have told him that
5 was the subject of an investigation. I certainly
6 did not tell him that Allied was guilty of that.
7 Q What investigation were you referring
8 to?
9 A The Justice Department, the grand jury
10 probe into chlorine and bleach business in Florida.

11 Q Well, how come you didn't keep it a
12 secret?

13 A Because that was the subject.

14 Q So you discussed with Mr. Allman the
15 things about the Department of Justice probe that
16 you now contend you're prohibited from disclosing
17 to me, is that right?

18 A No. I told you the subject.

19 Q You told me the subject was the
20 chlorine and bleach businesses in Florida. Did you
21 tell Mr. Allman that the subject was some
22 accusation of price fixing by Allied or its
23 affiliates?

24 A The subject of the case was an
25 accusation that price fixing was taking place in

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1 the market.

2 Q Did you ever tell Mr. Allman that
3 Allied was involved in price fixing?

4 A No.

5 Q Did you ever tell Mr. Allman that
6 Allied was involved in predatory pricing practices?

7 (Thereupon, there was a discussion off
8 the record.)

9 THE WITNESS: I explained to Mr. Allman
10 what happened when US Chlorine, the ancestor
11 of Sentry Industries started in 1984, that I
12 thought that Allied engaged in predatory
13 pricing for a period of about three years and

14 priced their product below -- at or below my
15 cost.

16 I never gave any indication of whether
17 or not that might be legal or illegal, but I
18 did tell him that Allied tried to run US
19 Chlorine out of business when it opened and
20 when it was small. I don't know whether
21 that's illegal or not, and I did not pursue
22 that aspect of it.

23 Q (BY MR. BANDKLAYDER) Are there any
24 other potentially illegal things that you might
25 have told Mr. Allman that you feel Allied or its

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1 affiliates did?

2 A They might have an unsafe work place,
3 but I have no personal knowledge.

4 Q Since you don't have any personal
5 knowledge, what's your basis for saying they might
6 have an unsafe workplace?

7 A They report more accidents than anybody
8 else in the chlorine business that I'm aware of.

9 Q How many accidents do they report?

10 A A few every year.

11 Q What types of accidents are you
12 referring to?

13 A The subject of the damaging news
14 articles, chlorine leaks, auto accidents and
15 accidents at customers's locations.

16 Q What leads you to believe that Allied

17 has more such accidents than any other bleach
18 producers or gas distributors?

19 A No. I just heard them more. I have
20 not researched this. I don't have a list of the
21 number of accidents. It's just a general
22 perception that I hear of more accidents by Allied.

23 Q Now, you referred to damaging newspaper
24 articles. Which articles are those?

25 A The Tampa Tribune articles that TECO

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1 produced to Allied during the PSC lawsuit.

2 Q And you understand that TECO's position
3 is that it received those articles from Odyssey,
4 correct?

5 A I understand that that's TECO's
6 position.

7 Q What knowledge do you have about that?

8 A None.

9 Q Have you ever asked Mr. Allman why he
10 sent those articles to TECO?

11 A Yes.

12 Q What did he tell you?

13 A He said he didn't think that he did.

14 Q Did he say anything else about it?

15 A He says he thinks that Larry Rodriguez
16 probably got them from the TECO customer research
17 library off the internet.

18 Q Have you or Mr. Allman ever asked Mr.
19 Rodriguez about that?

20 A I have not.
21 Q Has Mr. Allman?
22 A I don't know.
23 Q Now, Odyssey has a fax machine I
24 presume, doesn't it?
25 A I know that at the present time they

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1 have a fax machine.
2 Q Did they have one back in the 1999 time
3 frame?
4 A They would have purchased a fax machine
5 at some point during 1999.
6 Q Is Odyssey's fax number the same now as
7 it was then?
8 A I don't know.
9 Q Have you seen the articles?
10 A I have seen photocopies of the TECO
11 production to Allied that was later produced to us
12 in the six boxes of documents, yes. I have seen
13 photocopies of the production.
14 Q The articles?
15 A The articles.
16 Q Now, you're claiming in this case that
17 the information in the articles is true. Do you
18 have personal knowledge of that?
19 A I do not.
20 Q Can you tell me who does?
21 A well, everybody that works at Allied.
22 Q Anybody else?

23 A The people who respond to the leaks,
24 the fire department, the police department,
25 whatever they call the Hillsboro County EPC, the

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1 Department of Environmental Regulations, State of
2 Florida if they responded, whoever responded to the
3 alleged accidents.

4 Q Anybody else?

5 A Eyewitnesses.

6 Q Do you know any of them?

7 A I do not. Also the injured -- the
8 parties who were injured and the doctors who
9 treated them.

10 Q Have you or anyone on Odyssey or
11 Sentry's behalf contacted any of these people to
12 find out what they might know and perhaps what they
13 might be able to testify to?

14 A I have not.

15 Q Has anyone on behalf of Odyssey or
16 Sentry done that?

17 A Not to my knowledge.

18 Q All right. So just to kind of wrap
19 this up, I mean are you able to identify by name
20 any specific witnesses who can testify as to
21 whether the information in these various newspaper
22 articles is true?

23 A Well, for some of them, Allied has
24 filed a report to Washington that -- we assume
25 Allied wouldn't make up things like that. Allied

1 has reported certain accidents to the authorities,
2 so assuming that Allied has not invented that
3 information, we took that as proof that they were
4 true.

5 Q But my question is are you able to
6 identify by name any witnesses who might be able to
7 testify to the truthfulness of the information?

8 A I am not personally, no.

9 Q Has Sentry ever had any accidents?

10 A Sentry has had a few accidents.

11 Q What type of accidents?

12 A Hydrochloric acid spill, chlorine
13 discharge and tank truck overturning.

14 Q What was the tank truck filled with?

15 A Bleach.

16 Q And when you say chlorine release, you
17 mean the chlorine gas release?

18 A Yes.

19 Q Where did that occur?

20 A At Sentry.

21 Q Here in Miami?

22 A Yes.

23 Q When was that?

24 A Ten or fifteen years ago.

25 Q Anybody injured?

1 A No.

2 Q Was the incident reported?

3 A I think it was before the current

4 reporting system was in place. I don't believe it

5 would have been required.

6 Q What quantity of chlorine was released

7 in that incident?

8 A I don't recall.

9 Q Approximately? Was it more than ten

10 pounds?

11 A I doubt it.

12 Q Did anyone seek medical treatment as a

13 result of that incident?

14 A No.

15 Q Is that the only time that any chlorine

16 was ever released at a Sentry facility?

17 A That I recall.

18 Q You don't recall any other incidents?

19 A No.

20 Q When was the incident with the Sentry

21 -- was it a Sentry tanker truck that overturned?

22 A Yes.

23 Q And when did that happen?

24 A About ten years ago.

25 Q Where did that happen?

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1 A Seven years ago.

2 On the corner of 54th Street and Le

3 Jeune Road.

4 Q And did any bleach escape from the
5 truck?

6 A Yes, about half of the load.

7 Q what would that be, about 2,500
8 gallons?

9 A Approximately.

10 Q who was involved in the cleanup?

11 A There was no cleanup.

12 Q So what happened to the 2,500 gallons
13 of bleach that went into the street?

14 A It went into the storm sewer.

15 Q was there any response by either fire
16 rescue or any haz mat teams?

17 A Oh, yeah.

18 Q Both?

19 A And DERM.

20 Q Department of Environmental Regulations
21 as well?

22 A Dade County.

23 Q was there any action taken by DERM or
24 any other regulatory agencies as a result of that
25 incident?

1 A No.

2 Q You mentioned there was also was it a
3 hydrochloric acid or sulfuric acid?

4 A Hydrochloric.

5 Q where did that happen?

6 A At the Sentry Industries.

7 Q When was that?

8 A While it was still US Chlorine, late
9 80's.

10 Q About how much of the hydrochloric acid
11 was leaked?

12 A I don't recall, 100 gallons.

13 Q Where did it go?

14 A On the ground next to the railroad
15 sign.

16 Q Who was involved in that cleanup?

17 A We cleaned it ourselves by putting
18 sodium bicarbonate on it under the supervision of
19 the Hialeah Fire Department.

20 Q How did that spill happen?

21 A The railroad moved a car that was
22 hooked up, and the wheel of the rail car cut the
23 hose.

24 Q Was there any claim made by Sentry
25 against the railroad as a result of that incident?

1 A No.

2 Q Was there any claim made by the
3 railroad against Sentry?

4 A No.

5 Q The chlorine release incident that
6 Sentry experienced in Miami, how did that happen?

7 A I don't recall.

8 Q What about the tanker truck, the
9 overturned tanker truck incident that Sentry

10 experienced here in Miami near Le Jeune Road, how
11 did that happen?

12 A I don't know for sure. We think the
13 driver took the corner too fast.

14 Q What about Odyssey, has Odyssey had any
15 accidents or releases of any sort?

16 A Not to my knowledge.

17 Q Has it had any injuries to any of its
18 employees?

19 A Not to my knowledge.

20 Q Has Sentry had any injuries to its
21 employees?

22 A Yes. We've had sprained ankles and
23 sprained knees climbing on stairs or ladders to
24 check the level of the tanks. When the drivers go
25 to the customers's locations to fill the storage

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1 tank for bleach, we've had a few twisted ankles and
2 sprained knees from slipping either on the stair to
3 the tank or the stair to the truck, and we've had a
4 few people splashed in the eye with either
5 hydrochloric acid from the one gallon filling
6 operation or the hose that's connected for loading
7 the bleach tankers, but there are no serious -- to
8 my knowledge, we haven't had a lost-time accident
9 in terms of the splashing in the eye. The only
10 lost time accidents are the sprained ankles or
11 sprained knees from the slipping on the stair to
12 the tank or the stair to the truck.

13 Q Have Odyssey or Sentry had any motor
14 vehicle accidents other than the one tanker truck
15 that you said rolled over near Le Jeune Road?

16 A Yes.

17 Q About how many?

18 A A few every year at Sentry. I have no
19 idea about Odyssey.

20 Q Have any of those accidents that Sentry
21 has had involving motor vehicles also involved
22 tanker trucks?

23 A Some.

24 Q What types of accidents?

25 A Fender benders.

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1 Q Does Sentry repackage chlorine for
2 resale?

3 A Do you mean chlorine gas?

4 Q Yes.

5 A The elemental chlorine?

6 Q Yes.

7 A No.

8 Q So I take it Sentry doesn't sell
9 elemental chlorine in either one ton cylinders or
10 150 pound cylinders or any other size container
11 then, does it?

12 A That is correct.

13 Q Does Odyssey?

14 A No.

15 Q Mr. Allman testified that he wrote a
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16 letter to Harry Long complaining about the fact
17 that Allied apparently had obtained information
18 about Odyssey's electric rate. Were you aware that
19 he had written such a letter?

20 A I have a vague recollection.

21 Q Did you ever see the letter?

22 A No.

23 Q Do you know where we might find a copy
24 of it?

25 A No.

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1 Q Do you or Odyssey or Sentry have a copy
2 of it?

3 A I have never had a copy and Sentry has
4 never had a copy.

5 Q Do you know if Odyssey has a copy
6 somewhere?

7 A No.

8 Q Did Mr. Allman ever read the letter to
9 you?

10 A No.

11 Q Did he talk to you about it before he
12 sent it?

13 A I don't specifically recall. He may
14 have. He may have said he was going to do it or he
15 may have told me that he did. It didn't make any
16 difference to me either way.

17 Q Why is that?

18 A I thought it would -- if he had a
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19 legitimate concern that TECO was passing our
20 information to Allied, then a letter of that nature
21 would stop the flow of information to Allied. It's
22 our information. I didn't see the harm of either
23 sending the letter or that it already had been
24 sent.

25 Q Did Mr. Allman tell you about the

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1 telephone conversation he had with Mr. Rodriguez in
2 which Mr. Rodriguez supposedly told Mr. Allman that
3 Allied had discussed with Mr. Rodriguez Odyssey's
4 electric rate?

5 A I remember reading that in his
6 deposition for the PSC.

7 Q But did you and Mr. Allman ever have
8 any conversations about that at the time or around
9 the time that it happened?

10 A I don't remember talking about it at
11 the time that it happened.

12 Q When did you first find out that Allied
13 had approached TECO for the purpose of obtaining an
14 electric rate comparable to Odyssey's?

15 A I have no idea.

16 Q Can you tell me approximately?

17 A Sometime during 1999.

18 Q Was it early, mid or late 1999?

19 A I don't have the faintest idea.

20 Q When you first approached TECO for the
21 purpose of obtaining any electric rate for the

22 proposed odyssey plant, isn't it true that you told
23 TECO that you needed a rate in the [REDACTED] per megawatt
24 hour range?

25 A No, that is not true.

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1 Q Did there come a point in time when you
2 did tell that to TECO?

3 A Not that I recall.

4 Q You never told Pat Allman that you
5 needed a rate in the [REDACTED] per megawatt hour range in
6 order for the plant to be feasible?

7 A No.

8 Q What rate did you tell him you needed
9 in order for the plant to be feasible?

10 A I never gave him a rate.

11 Q Why not?

12 A We applied for an interruptible tariff,
13 standard interruptible commercial service like most
14 chlorine plants in the United States have. The
15 rate would have been -- under the normal structured
16 tariff at TECO would have been \$36 per megawatt
17 hour. That's why Pete DeAngelis and I went to TECO
18 because that was their rate sheet for interruptible
19 power.

20 Q Shortly after you contacted TECO about
21 that interruptible rate of \$36, you learned that it
22 was no longer available, didn't you?

23 A I'd say within two weeks I learned that
24 there was a waiting list.

25 Q well, did there ever come a point in

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1 time when you told Pat Allman you needed to have a
2 rate of about [REDACTED] per megawatt hour in order for
3 the plant to be feasible?

4 A No.

5 Q That never happened?

6 A No.

7 Q what about [REDACTED] cents per kilowatt hour or
8 [REDACTED] cents? Am I mixing up decimal points here?

9 A No. The answer is still no.

10 Q [REDACTED] per megawatt hour translates to
11 what, [REDACTED] cents per kilowatt hour?

12 A [REDACTED] per megawatt hour is [REDACTED] cents a
13 kilowatt hour, that is correct.

14 Q The initial rate, base rate that
15 Odyssey got under its contract with TECO was just
16 that, wasn't it?

17 A Yes.

18 Q [REDACTED] cents per kilowatt hour, [REDACTED] per
19 megawatt hour?

20 A That is correct.

21 Q would this plant have been feasible if
22 TECO had provided Odyssey an initial base rate of
23 [REDACTED] cents per -- I should say [REDACTED] per megawatt
24 hour, plus taxes?

25 A I don't know.

1 Q Isn't it true that Odyssey's bank
2 required a rate in the range of [REDACTED] per megawatt
3 hour as a prerequisite to approving Odyssey's loan?

4 A The bank took all of the assumptions
5 that we made at our projections and repeated them
6 back to us in their commitment letter and said
7 provided you get all of your approvals and costs in
8 the way you have described them to us, we will fund
9 the loan, so the only place that would have
10 appeared would be the commitment letter, and they
11 gave us back our numbers from our own projections.
12 That was our predicted cost.

13 We also had a predicted cost for salt
14 and for a few other things. We also had at the
15 time -- I don't know even whether or not we had
16 closed on the lot, so that might have been
17 included, but all of the whatever was still up in
18 the air was provisional from their commitment,
19 which you would expect from a bank. If the
20 situation changed, they would want the opportunity
21 legally to re-evaluate.

22 Q So according to the commitment letter,
23 one of the things that the bank required was that
24 you obtain the rate that you had planned on
25 obtaining, which was the [REDACTED] per megawatt hour, and

1 that's an initial base rate, right?

2 A The rate that we expected to receive,
3 yes.

4 Q Have you ever read Pam Winters'
5 deposition testimony?

6 A No.

7 Q Did you know that she testified that
8 the ● electric rate was in fact a condition of
9 the loan approval?

10 A I know it was a condition of the loan
11 approval.

12 Q Did you ever go back to TECO and tell
13 them that you needed the ● rate?

14 (Thereupon, there was a discussion off
15 the record.)

16 THE WITNESS: No.

17 Q (BY MR. BANDKLAYDER) So how did it
18 come about that you, Odyssey, ended up with an
19 initial base rate of ●?

20 A That's what TECO offered me.

21 MR. BANDKLAYDER: Let's take just a
22 five minute break.

23 (Thereupon, a recess was taken from
24 11:15 to 11:25.)

25 (Thereupon, the document referred to

1 was marked for identification as Plaintiff's
2 Exhibit No. SS3.)

3 Q (BY MR. BANDKLAYDER) I only have one
4 copy of this, so we'll have to share, but take a

5 look at what I've marked as Exhibit 3, SS3.

6 You're taking a look at the exhibit
7 now?

8 A I have.

9 Q This is a customer contact note
10 prepared by Mr. Allman, and he says in here that
11 the customer, which was you, believed that without
12 the [REDACTED] per megawatt hour rate, his only choices
13 would be to not build the plant or locate it
14 elsewhere. Did you tell him that at the time that
15 he had that conversation with you?

16 MR. SMITH: Let him finish his question
17 before you answer.

18 Q (BY MR. BANDKLAYDER) Did you tell him
19 that at or about the time that he had that
20 conversation with you on March 12 of 1998?

21 (Thereupon, there was a discussion off
22 the record.)

23 THE WITNESS: I do not remember telling
24 these individuals or Patrick Allman that I
25 needed a rate or [REDACTED] or I would locate the

1 plant elsewhere. I remember that when we went
2 there, we expected to get a rate of \$36, which
3 was their rate sheet interruptible rate.

4 Now, we may have said if we don't get
5 the rate that we want, we won't build the
6 plant, but I don't recall that [REDACTED] was any
7 sort of a cutoff in the whole scope of our

8 feasibility study.

9 Now, something that may be confusing
10 here, at the time that we applied, the 10
11 percent utility tax would have applied to our
12 site or they assumed that the 10 percent
13 utility tax would apply to our site because we
14 didn't really have a site. \$36 plus 10
15 percent is \$39.60, and I have seen from our
16 early calculations a few cost estimates that
17 DeAngelis did for us that used a rate of
18 \$39.6, which was the \$36 interruptible rate
19 that we expected to get with a 10 percent City
20 of Tampa utility or Hillsboro County, whatever
21 tax it was at the time, it was some tax for
22 which we were going to be obligated. Later
23 Allman told us that we didn't have the tax.

24 Q (BY MR. BANDKLAYDER) The 10 percent
25 utility tax?

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1 A That the particular lot where we were
2 for the particular year when we were going to start
3 up, and I don't know whether it was because of the
4 tax had expired or because of where the property
5 was, but that Odyssey would not have to pay the 10
6 percent.

7 Q And is that ultimately what happened,
8 that Odyssey did not have to pay the 10 percent?

9 A That's exactly what happened, and the
10 rate -- I recall that Allman offered me . I

11 don't recall going to him and saying if I don't get
12 ● I'm going to quit, but I'm not saying it didn't
13 happen. I'm saying that's my recollection of
14 something that took place five or six years ago
15 now.

16 Q Is it your recollection then that the
17 ● number came from him rather than from you?

18 A That's my recollection.

19 Q Well, what number did you feel you
20 needed in terms of an electric rate prospectively
21 in order to make the plant economically feasible?

22 A I don't think we had a specific number
23 in mind.

24 Q Why then did you include the ● number
25 in your business plan back at that time?

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1 A Because that was the rate we had
2 expected to get. If the CISR -- TECO had offered
3 us ● under a CISR tariff, which was a program
4 that was not in existence at the time they made the
5 offer. It was a provisional offer if they could
6 get the public service commission to approve that
7 type of tariff in their market.

8 So I knew the rate. I just didn't know
9 whether or not it would ever be extended
10 officially, but we didn't negotiate back and forth
11 on the ●. It was always ● from the beginning
12 of the summer, fourth of July at least, but the
13 program didn't exist, and it took until September

14 to have the Public Service Commission approve to
15 TECO and TECO approve internally the offer to
16 Odyssey.

17 Q Well, why are you using the 4th of July
18 as a reference point? Was there some sort of
19 meeting or something on that date?

20 A No.

21 Q I thought --

22 A Middle of the summer.

23 Q So you're saying -- are you saying that
24 by July let's say you knew that the rate that would
25 be offered was [REDACTED]?

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1 A I contacted them in March. Within a
2 month either way I would say, yeah, somewhere in
3 the middle of the summer I learned that if an offer
4 were extended under this particular tariff, CISR
5 tariff, that it would be [REDACTED].

6 Q And well, where did you get that
7 information from?

8 A I must have gotten it from Allman.

9 Q Well, you knew, didn't you, that no one
10 had ever gotten a rate under the CISR tariff prior
11 to Odyssey?

12 A I didn't know that. I knew that TECO
13 had never offered it to anybody.

14 Q All right. What basis then did you
15 have for thinking that TECO was going to propose a
16 rate of [REDACTED] to Odyssey under the CISR tariff?

17 A Because that's what he told me, and if
18 my name came up to the top of the waiting list for
19 interruptible power, my rate would have gone down
20 to \$36, and that also would have been satisfactory.

21 Q Did you ever tell Mr. Allman that it
22 was -- that the option of putting Odyssey's name on
23 a waiting list was unacceptable?

24 A No. At the time that I did it, it was
25 the only alternative I had.

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1 Q Is it your testimony then that you did
2 put your name or Odyssey's name or Sentry's name on
3 a waiting list for the interruptible tariff?

4 A I did put Odyssey's name on a waiting
5 list for interruptible power.

6 Q And did you sign whatever documentation
7 TECO required in order to put Odyssey on that
8 waiting list for interruptible power?

9 A I don't recall exactly what I did. I
10 think I either sent them a letter or filled out a
11 form.

12 Q And did Odyssey's name ever come to the
13 top of that list, waiting list for interruptible
14 power?

15 A It did not.

16 Q When did you submit your business plan
17 to Citizens Bank in connection with the loan
18 application?

19 A Sometime in 1998.

20 Q Was it before you had the signed deal
21 for the CISR rate?

22 A Yes.

23 Q And obviously -- well, was it sometime
24 after March 12 when you first met with Mr. Allman
25 or was it before that?

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1 A No, it would have been after. It would
2 have been after I met with TECO.

3 Q Well, as I understood it, your first
4 contact with Mr. Allman was around March 12 of
5 1998, and that contact is reflected in this memo,
6 Exhibit No. 3. Is that in fact the first contact
7 you had with Mr. Allman?

8 A Yes.

9 Q And is it your testimony that you
10 submitted the proposed business plan to Citizens
11 Bank sometime after March 12 of 1998?

12 A Yes. It contained information that
13 would have not been available until the summer of
14 1998.

15 Q Like what?

16 A The location of the property, price of
17 the salt expected, expected price of electricity.

18 Q And is it your testimony that the
19 expected price of electricity is something you did
20 not know until the summer of 1998?

21 A That's when the probability increased
22 to a point where we felt it was worth pursuing.

23 Q when did you first reasonably believe
24 that Odyssey would get a rate of [REDACTED] per megawatt
25 hour?

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1 MR. SMITH: Object to the form.

2 Q (BY MR. BANDKLAYDER) I'll ask it a
3 little differently. When did you first believe it
4 was likely that Odyssey would get a [REDACTED] per
5 megawatt hour electric rate?

6 A I didn't consider it likely until it
7 happened, which was on September 4 of 1998. Before
8 September 4, it was just a possibility.

9 Q In Mr. Allman's March 12 memo, it says
10 that you and Mr. DeAngelis told him that Odyssey's
11 entire business plan was based on a [REDACTED] electric
12 rate. Is that true or not?

13 MR. SMITH: Object to the form.

14 Misstates what the document says.

15 Q (BY MR. BANDKLAYDER) Let me read
16 verbatim. Quote, they indicated that their entire
17 business plan had been based on [REDACTED] per megawatt
18 hour electricity. Close quote. Is that true?

19 MR. SMITH: Same objection. Misstates
20 the document.

21 THE WITNESS: Well, this is what the
22 individuals in TECO told Pat based on what
23 they heard either Pete DeAngelis or I say, and
24 I'm allowing that we might have said,
25 expecting \$36 power, and we didn't know about

1 the 10 percent utility tax, but given that,
2 that's 39.6. That's what we came today
3 expecting. So that would be my recollection
4 of what might have been said at that meeting.

5 Q (BY MR. BANDKLAYDER) Well, back in
6 March of 1998 when you had these conversations with
7 Mr. Allman and Mr. Paisley and Mr. Shepherd --

8 A No. Mr. Allman was not in that
9 meeting.

10 Q well --

11 A Mr. Allman heard about the meeting.

12 Q You had a meeting with Mr. Paisley and
13 Mr. Shepherd on March 12, didn't you?

14 A I can't swear to the names, but yes, we
15 had meetings with people from TECO.

16 Q And that evening you received a call
17 from Mr. Allman, didn't you?

18 A I remember it as a few days later, but
19 I remember getting a call from Mr. Allman.

20 Q well, Mr. Allman describes the
21 telephone call in his March 12, 1998 memo, which he
22 typed at 11:22 p.m., so if Mr. Allman says that
23 that telephone call took place the evening of
24 March 12, do you have anything to refute that?

25 A No.

1 Q In any event, did you tell any of those
2 three people, Anthony Paisley, Dave shepherd or Mr.
3 Allman, that Odyssey's entire business plan had
4 been based on a ● per megawatt hour electric
5 rate?

6 A I did not.

7 Q Did Mr. DeAngelis tell them that in
8 your presence?

9 A Not that I recall.

10 Q Did you or actually did Odyssey have a
11 business plan or prospective business plan at that
12 time?

13 A I would think not. I'm not absolutely
14 sure, but I would think that there would not have
15 been enough information to draft one.

16 Q Well, to your knowledge --

17 A We had been working from the end of
18 1997, so I don't know at what point you would call
19 it a business plan.

20 Q At what point was there any sort of
21 model or business plan put in writing for the
22 proposed new plant?

23 A Well, sometime in the first half of
24 1998.

25 Q But, well, getting back to my question,

1 was it before or after your conversations with Mr.
2 Allman and Mr. Paisley and Mr. Shepherd on March 12
3 of 1998?

4 A There may have been some sort of draft
5 business plan at the time we had the meeting, but
6 it couldn't have been very complete.

7 Q Did that business plan have an electric
8 rate in it of ● per megawatt hour?

9 A No. If there was a business plan,
10 prior to the meeting it would have been \$36. After
11 the meeting it would have been 39.6 because as I
12 recall, that's where we learned about the 10
13 percent tax.

14 Q Well, did you tell Mr. Allman on
15 March 12 that you needed a rate of either \$36 plus
16 tax or \$39.6 in order for your business plan to
17 work?

18 A I don't recall that.

19 Q What do you recall telling him about
20 that?

21 A That I wanted the \$36 rate that was
22 published in his rate sheets.

23 Q Did you tell him that your business
24 plan required a \$36 rate?

25 A I don't recall telling him that, no.

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1 Q Well, what rate do you recall telling
2 him that you needed when you talked with him on the
3 12th?

4 A That I expected \$36. It wasn't a
5 question of what I needed. I expected \$36.

6 Q Well, just to be clear, Mr. Allman in
Page 50

7 this memo says that you believed that without the
8 ● per megawatt hour rate your only choices would
9 be to not build the plant or locate it elsewhere.
10 Is he wrong about that?

11 A You'd have to ask Mr. Allman.

12 Q Well, I have but I'm asking you now.

13 A I don't believe that's what was said in
14 the meeting, but as it was relayed to Mr. Allman
15 and the way he understood it, he very well could be
16 telling the truth as he knew it in that memo, not
17 being present at the meeting.

18 Q Well, the part of his memo where I'm
19 reading that from relates to his telephone
20 conversation with you, but you're saying that you
21 never told him that without the ● per megawatt
22 hour rate your only choice would be to not build
23 the plant or locate it elsewhere, right?

24 A I don't recall telling him that
25 specifically ● was any different than any other

202

1 number for electricity.

2 Q It says here that he asked you on
3 March 12 to give him a copy of your business plan.
4 Did he do that?

5 A If he asked me, I'm sure I did it.

6 Q Doesn't that indicate to you that there
7 was a business plan in existence at that time?

8 A That would indicate, yes.

9 Q Could he be right about that?

10 A He could be right, that the business
11 plan existed in some form. It's a document that
12 changed over time. It became a better business
13 plan as more information was collected.

14 Q Did that business plan ever have an
15 electric rate higher than ● per megawatt hour?

16 A I recall seeing one that had \$41, but I
17 don't know why.

18 Q You don't know why?

19 A No. At the time I guess we thought we
20 might pay \$41, tax or something.

21 Q Mr. Allman says here that he was going
22 to send you a nondisclosure agreement. Did he do
23 that?

24 A I recollect that he did, yes.

25 Q Well, you told us that your business

203

1 plan always had rates of \$41 or less in it. Why is
2 that?

3 A That was based on information that we
4 got from TECO.

5 Q Well, if you had not been able to get a
6 rate of ● per megawatt hour from TECO, would you
7 still have built the plant in Tampa?

8 A Well, there was some leeway. I don't
9 know what our threshold was, but we went from 36 to
10 39.6 in an hour and didn't cancel the project. We
11 had some tolerance about ●, but I don't remember
12 what our limit was, and we never had to tell them.

13 Q Well, was there any limit to how high
14 an electric rate Odyssey could agree to pay and
15 still go forward with the plant?

16 A I'm sure there was.

17 Q How would that have been determined?

18 A By calculating the cost to make a
19 gallon of bleach at each rate at which electricity
20 was offered.

21 Q Were those calculations done during
22 this planning process leading up to the
23 construction of the plant?

24 A Not to my knowledge.

25 Q No one ever put a pen to paper to

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1 figure out what the cost of production would be at
2 different electric rates?

3 A Not to my knowledge.

4 Q Did you ever testify either by
5 affidavit or written testimony or live testimony
6 that without a rate of approximately [REDACTED] per
7 megawatt hour you would not have gone forward with
8 the Odyssey plant?

9 A Yes. I signed -- in order to qualify
10 for the CISR tariff, I signed an affidavit to TECO
11 that said if I didn't get the CISR rate, that I
12 would not build the plant or build it elsewhere.

13 Q The CISR rate of [REDACTED]?

14 A The CISR rate for which they had
15 offered me [REDACTED].

16 Q So you signed an affidavit saying that
17 without that [REDACTED] CISR rate you would not build the
18 plant in Tampa, right?

19 A Could you repeat that?

20 Q Yes. You signed an affidavit that
21 without the [REDACTED] rate you would not build the plant
22 in Tampa, right?

23 A I was signing an affidavit that said
24 that if TECO did not offer me a rate under the CISR
25 tariff, I would build the plant elsewhere or not

205

1 build it.

2 Q Well, I mean --

3 A I don't know that [REDACTED] was in that
4 document. I don't believe that it was. If you
5 have a copy, I'd be happy to look at it.

6 Q We'll probably do that before the end
7 of the day.

8 You don't recall what number was in the
9 affidavit, if any?

10 A The number was not important to me. I
11 was signing that I need -- conceptually that I
12 needed the CISR tariff offer and not the rate that
13 people pay in their houses and not the
14 interruptible rate because there was a waiting
15 list.

16 Q Well, how did you know when you signed
17 the affidavit what rate you needed?

18 A I don't understand the question.

19 Q You say that you signed an affidavit
20 saying that you needed the CISR rate to build the
21 plant. What rate were you referring to in terms of
22 numbers?

23 A I had in my mind [REDACTED]. That was the
24 number that Allman had come up with from the first
25 time he discussed the CISR rate with me. He said

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1 the CISR rate will be higher than the interruptible
2 rate. Approximately [REDACTED]. It was his number.

3 Q When you signed the affidavit, the
4 number that you had in mind in signing that
5 affidavit was [REDACTED], right?

6 A That's what I had been told.

7 Q How did you know that [REDACTED] would make
8 the plant feasible if you had never done any
9 calculations?

10 A You asked if I -- we had done
11 calculations at [REDACTED].

12 Q I thought earlier, ten minutes ago, you
13 told me that you had not done any calculations.

14 A I saw calculations at \$36, \$39.6, [REDACTED]
15 and \$41. I believe that you asked me for other
16 numbers higher than \$41.

17 Q Who did those calculations?

18 A DeAngelis.

19 Q And they were at \$36, \$39.6 and \$41?

20 A [REDACTED].

21 Q And [REDACTED]. Let me make sure I have that
Page 55

22 right on record. The calculations were done at
23 \$36, \$39.6, [REDACTED] and \$41, is that right?

24 A Those are calculations that I recall
25 seeing.

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1 Q What was your basis for saying then in
2 the affidavit that without a rate in that range you
3 would not build the plant in Tampa?

4 A As I understood it, my choices to buy
5 power from TECO were interruptible. The tariff was
6 oversold and on a waiting list. The CISR rate,
7 which they had told me verbally would be in the
8 order of [REDACTED] or the rate that people pay in their
9 houses, which I don't know what it is but I assume
10 it's unattractive. So given those three choices, I
11 said that I needed the CISR rate or I wouldn't
12 build the plant.

13 Q What would have made the rate that
14 people pay for their houses unattractive?

15 A It makes the bleach cost more per
16 gallon for electricity.

17 Q Why is the electric cost important or
18 why was it important to you in determining whether
19 or not the plant would be feasible?

20 A Well, paying the rate that people pay
21 in their houses would have been a waste of money.
22 It's cheaper service to provide. There's a heavy
23 load at night when everybody is sleeping, and it
24 should be a cheaper rate, and paying TECO the rate

25 that people pay in their houses would have been a

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1 waste of money. Some electric utility somewhere
2 would have given us a discounted industrial rate,
3 so there was no particular reason to pay TECO the
4 full residential tariff.

5 MR. BANDKLAYDER: All right. If you
6 all want to take a short break for lunch, we
7 can do that now. If you're not hungry, we
8 don't have to. Why don't we take a break.
9 we'll pick back up at -- be ready to go by 1.

10 (Thereupon, a luncheon recess was taken
11 from 12:00 to 1:07.)

12 (Thereupon, the documents referred to
13 were marked for identification as Plaintiff's
14 Exhibit Nos. 4 and 5.)

15 Q (BY MR. BANDKLAYDER) Next exhibit is
16 No. 4. Here's an extra.

17 I'm also going to hand what you I have
18 now marked Exhibit 5. That is SS5.

19 Have you had a chance to look at
20 Exhibit 4?

21 A Yes.

22 Q And does that appear to be a true and
23 correct copy of the affidavit that you submitted to
24 Tampa Electric Company?

25 A Yes.

1 Q And in that affidavit, paragraph 4, you
2 state if Odyssey is unable to obtain a rate of
3 blank -- it's left blank -- cents per kilowatt hour
4 or less, Odyssey will have no alternative but to
5 locate its manufacturing facility in a different
6 electric service area where it can obtain such a
7 rate.

8 That is what you stated?

9 A I read that, yes.

10 Q You signed that?

11 A Yes, I did.

12 Q And you submitted that to Tampa
13 Electric Company, did you not?

14 A Yes, I did.

15 Q And the rate that is in that paragraph,
16 although it's blanked out on my copy, is [REDACTED]
17 cents, isn't it?

18 A I would believe so, yes.

19 Q If you look at Exhibit No. 5, which is
20 a memo from Pat Allman, he explains that the rate
21 referred to in the affidavit is [REDACTED] per megawatt
22 hour, which of course would be [REDACTED] cents, right?

23 A That is correct.

24 Q So even though our copy of the
25 affidavit is redacted out, what it says underneath

1 the blacked out part is [REDACTED] cents per kilowatt

2 hour?

3 A I would think so.

4 Q Is there any doubt in your mind about
5 that?

6 A No. I don't know what else it could
7 have been.

8 Q What is Odyssey's present capacity in
9 terms of bleach production?

10 A [REDACTED] gallons a year.

11 Q And are you planning an expansion in
12 the near future?

13 A Yes.

14 Q When?

15 A Within the next six weeks.

16 Q So that's the Christmas expansion that
17 Mr. Allman referred to?

18 A I would assume so.

19 Q He said you were going to be doing
20 expansion around Christmastime, so that's Christmas
21 of this year, even though it's really going to be
22 four or five weeks after Christmas?

23 A Yeah. I don't know exactly when it is,
24 but we are talking about the same thing.

25 Q What is the nature of that expansion?

1 A [REDACTED].

2 Q What will the capacity be after that
3 expansion is completed and operational?

4 A [REDACTED] gallons.

5 Q what type of cells are you adding in
6 this expansion?

7 A [REDACTED] manufactured
8 by Ineos.

9 Q The same cells that you have had for
10 the other preexisting plant?

11 A Yes, for all practical purposes,
12 identical to the existing.

13 Q The type that Joan Minty described at
14 her deposition?

15 A I don't recall.

16 Q You were there with me, although you
17 left early. [REDACTED]

18 A [REDACTED]

19 Q And who's doing the expansion?

20 A Odyssey's crew.

21 Q Are there any further expansions
22 planned after that?

23 A Yes.

24 Q when and what?

25 A The plant is designed to receive [REDACTED]

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1 [REDACTED]
2 cell.

3 Q Now, are the ones that you're going to
4 be adding in the next six weeks or so, are those
5 going to be numbers [REDACTED]

6 A Yes.

7 Q And then after that you plan at some

8 point to add numbers [REDACTED]
9 A Yes.
10 Q Now, you say that that's what the plant
11 was designed for. What do you mean?
12 A The plant was [REDACTED] a day expandable
13 to [REDACTED]
14 Q And once --
15 A The [REDACTED] is the production with [REDACTED] cells.
16 Q When you say [REDACTED], is that [REDACTED]?
17 A [REDACTED] per day of chlorine.
18 Q Is that [REDACTED]
19 A [REDACTED]
20 Q How much does -- what does that
21 translate to -- I'm sorry. Did you say [REDACTED] is the
22 maximum?
23 A Yes.
24 Q What does that translate to in terms of
25 gallons of bleach?

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1 A About [REDACTED]
2 Q Annually?
3 A Per year, annually.
4 Q Does that assume the plant is running
5 24 hours a day seven days a week?
6 A It assumes that it will be down for a
7 number of days per year.
8 Q So what percentage efficiency level or
9 running time are you assuming when you use a figure
10 of let's say [REDACTED] as the maximum plant

11 capacity?

12 A I said [REDACTED]

13 Q I'm sorry. After you get up to the [REDACTED]
14 [REDACTED], does that come to [REDACTED]

15 A Yes.

16 Q I thought you said [REDACTED]. My mistake.

17 After you add cells No. [REDACTED] and [REDACTED], that

18 will give you a maximum capacity of somewhere in
19 the [REDACTED] to [REDACTED] gallon range?

20 A With [REDACTED] cells, we expect [REDACTED] or [REDACTED]
21 [REDACTED] gallons.

22 Q At [REDACTED] cells, you will have [REDACTED], [REDACTED]
23 [REDACTED] gallons, and then when you do the next
24 expansion up to [REDACTED] cells, that will give you [REDACTED]
25 [REDACTED], which is the equivalent of [REDACTED]

214

1 gallons, is that right?

2 A Right. You asked about the efficiency.
3 The efficiency would be somewhere between [REDACTED] and [REDACTED]
4 percent. I don't know exactly.

5 Q Is the plant capable of being expanded
6 beyond [REDACTED] cells or [REDACTED] or [REDACTED] gallons?

7 A It would be difficult.

8 Q Why?

9 A Because the individual processes are
10 sized for [REDACTED].

11 Q I'm not sure I understand what that
12 means. Probably because I'm not an engineer. When
13 you say the individual processes, what are you

14 referring to?

15 A The T. R. set that receives and
16 conditions the electricity, the lixator that
17 dissolves the salt and purifies the brine to feed
18 the cells, the circulation of the brine in the cell
19 loop and the processing chlorine and caustic into
20 bleach, it's all sized for the maximum capacity of
21 that plant. To make it go higher, you would have
22 to look at the potential bottle necks, which you
23 would expect to be frequent since everything was
24 sized for [REDACTED] a day.

25 Q Is the amount of electricity that

215

1 you're entitled to receive under the existing TECO
2 contract sufficient to provide power for [REDACTED] or
3 [REDACTED] gallons?

4 A Yes.

5 Q Is it sufficient to provide enough
6 power for any amounts over that?

7 A I recall there was some leeway above [REDACTED]
8 [REDACTED] a day.

9 Q Approximately how much?

10 MR. SMITH: If you know.

11 THE WITNESS: I don't know. I could
12 guess.

13 Q (BY MR. BANDKLAYDER) What's your best
14 approximation recognizing it may not be exactly
15 precise?

16 MR. SMITH: Just the best of your

17 memory.

18 THE WITNESS: [REDACTED] or [REDACTED] a day.

19 Q (BY MR. BANDKLAYDER) Can you tell me
20 approximately how much electricity it would require
21 to produce up to [REDACTED] or [REDACTED] per day?

22 A Twice as much as [REDACTED] or [REDACTED] per day.

23 Q How much electricity is required for
24 let's say [REDACTED] per day? Is there a formula?

25 A Yeah, I believe for those cells it's

216

1 about [REDACTED] or [REDACTED] kilowatts per [REDACTED] at full
2 speed, at a current density of [REDACTED] with our
3 [REDACTED] cell of the size that we have with the
4 number of membranes that we have.

5 Q So that's roughly how much or the
6 quantity of ECU that those particular cells can
7 generate with [REDACTED] is it megawatts or watts?

8 A No. Those are kilowatts.

9 Q [REDACTED] kilowatts?

10 A [REDACTED]. Might be [REDACTED] at full
11 current density.

12 Q So if we look at the maximum number of
13 kilowatts that Odyssey is entitled to receive under
14 the TECO contract and divide it by [REDACTED] or [REDACTED]
15 that will tell us the maximum number of ECU that
16 the plant can generate under the existing contract,
17 is that right?

18 A If the units -- if everything is in the
19 same units, that calculation should work, yes.

20 Q The electric rate that Odyssey has is
21 essentially guaranteed under its contract through
22 sometime in 2010, right?

23 A I recall that it was a ten year
24 contract.

25 Q Maybe it's 2009, but my recollection --

217

1 the point is it's a ten year contract, and it says
2 what your rates will be during the term of the
3 contract, right?

4 A Yes.

5 Q Have you done any planning to determine
6 what will happen once that contract expires?

7 A No.

8 Q Has that subject come up at all among
9 the investors or the company people?

10 A No.

11 Q Well, as we sit here today, do you have
12 any ideas as to what's going to happen with regard
13 to Odyssey's electric rate after the TECO contract
14 expires?

15 A We don't know what TECO will offer us.
16 We know that there are improvements in the cell
17 technology, which would effectively cut our
18 electric rate. We could replace our existing cells
19 with the new generation of cells that are much more
20 efficient and purchase a lot less electricity per
21 ECU ton, as low as [REDACTED] kilowatt hours per [REDACTED]
22 at [REDACTED] current density loading on the membranes.

23 Q What type of cells are available that
24 would give you [REDACTED] kilowatts [REDACTED]?

25 A Right now there would be a [REDACTED]

218

1 [REDACTED]

2 Q Are there disadvantages associated with
3 that as compared to the [REDACTED] that you're
4 using?

5 A None.

6 Q Is it possible for you to use those in
7 your expansions?

8 A It would be more expensive than -- our
9 expansion is very cheap because spaces were left
10 there to drop in these particular cells. Dropping
11 in other cells would require different wiring,
12 different -- the transformer rectifier would have
13 to condition electricity to a new standard. It
14 wouldn't be cheap and simple, but technically, yes,
15 we could change today to those cells.

16 Q Does the transformer rectifier that
17 you're now using have a maximum capability in terms
18 of the amount of electricity it's able to handle?

19 A [REDACTED] per day.

20 Q Would it handle anything over and above
21 that?

22 A Not as it sits today, no.

23 Q Could it be modified or would it just
24 have to be replaced?

25 A I don't know.

1 Q You mentioned that the expansions
2 you're planning are relatively cheap. What is the
3 cost of them?

4 A About [REDACTED]

5 Q For what, the complete --

6 A For [REDACTED] cells, for a [REDACTED]
7 expansion.

8 Q Does that include all the costs
9 associated with the expansion?

10 A Yes.

11 Q Not just acquiring the cells, but I
12 guess the labor, installation, wiring, whatever
13 else has to be done in connection with that?

14 A Yes, approximately.

15 Q I mean that's fine.

16 A Within \$100,000 or \$200,000 each way.

17 Q From whom are you acquiring the cells?

18 A [REDACTED].

19 Q Are they new cells?

20 A Yes.

21 Q Is Joan Minty involved in that process?

22 A I assume so.

23 Q To what extent is she involved in
24 dealing with Odyssey?

25 A I don't know.

1 Q Do you have contact with her from time
2 to time?

3 A The only time I've ever seen her or
4 talked to her was at her deposition. I'm sorry. I
5 saw her at the startup but did not speak to her.

6 Q I have some questions regarding costs.
7 Hopefully this won't get into a sensitive area.
8 Well, let me start out with the basics. What does
9 it cost Odyssey to generate one ECU?

10 MR. SMITH: Objection. Continue our
11 objection. This is confidential information
12 and is irrelevant to the issues in this case.
13 Instruct him not to answer.

14 MR. BANDKLAYDER: I thought we were
15 beyond -- we were in agreement and the judge
16 was in agreement and everybody was in
17 agreement that costs are discoverable in this
18 case.

19 MR. SMITH: Dan, we had a long
20 discussion about this yesterday. You never
21 got back to me, so as far as I'm concerned,
22 the same rules apply.

23 MR. BANDKLAYDER: We haven't reached an
24 agreement regarding profits, but I don't think
25 that there's anything to discuss with regards

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1 to costs. I mean the judge has ruled that
2 both sides have to disclose their costs. We
3 have already disclosed ours, and I know you

4 want more information and you'll get it, but
5 you now have to disclose yours.

6 MR. SMITH: You have not sent them yet.
7 That still was up in the air yesterday. You
8 didn't agree to that. You haven't told me
9 what documents you're going to produce to
10 support your costs. I haven't got anything.

11 MR. BANDKLAYDER: well, you know, you
12 gave us an interrogatory. You asked us for
13 our costs and you asked us to break it down by
14 six or so categories of different types of
15 costs, and we answered the interrogatory
16 completely, and you're free to question our
17 witnesses about it, request more documents.

18 MR. SMITH: I asked for documents. You
19 still haven't given them to me. I don't know
20 how many times I have to ask you for them.

21 MR. BANDKLAYDER: I'm not sure which
22 documents you're referring to. I'm not asking
23 for documents now. I'm just asking for the
24 same information that you've already gotten
25 from us. Obviously you know we are late in

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1 the game. It's time that we move forward with
2 that. I'm not trying to engage in
3 gamesmanship here. We have given you our
4 costs. I know you say you want more
5 supporting documentation, and that's fine.
6 You'll get it, but so far we don't even have

7 your costs, let alone any supporting
8 documentation.

9 MR. SMITH: Our costs are not relevant
10 to this case. Since you have changed your --
11 the original discussion with the judge was
12 based upon your version or your theory of your
13 damages at the time. That's totally changed,
14 so it's no longer relevant to this case.

15 MR. BANDKLAYDER: Our theory is we
16 should have a cell plant but we don't because
17 of what the defendants did. If we had a cell
18 plant, we could generate or produce bleach at
19 the same cost that the defendants are
20 producing it at, and we are entitled to show
21 what those costs are.

22 MR. SMITH: That's not what you say in
23 your answers to interrogatories.

24 MR. BANDKLAYDER: I think it is. It's
25 exactly what we say in our interrogatory

223

1 answers.

2 MR. SMITH: You've got to show me that
3 because I don't see it, and so far you have
4 produced no documentation to support your
5 claim for your damages, for your costs, for
6 nothing and so to say that it's been agreed
7 upon, and it's been done is just incorrect.
8 You haven't done it.

9 MR. BANDKLAYDER: Judge Farrell ruled
Page 70

10 on it. You were there. I was there. I said
11 Judge, we have answered the interrogatories.
12 Here are our costs, and he said, yes, you
13 have. Okay. Odyssey, you have got to provide
14 the same information.

15 MR. SMITH: I argued with Judge Farrell
16 over this issue about your claim was -- your
17 claim was based upon the profits experienced
18 by Odyssey. I argued with him about that. He
19 said, Smith, you may be right. It's not
20 relevant and not admissible but it's their
21 theory. You've got to produce them. You now
22 changed it.

23 MR. BANDKLAYDER: That's not how it
24 came down. You may be right that he hasn't
25 ruled on profits yet, but he has ruled on

224

1 costs. There's no doubt. It's indisputable
2 Judge Farrell ruled that both sides are
3 entitled to get into costs.

4 MR. SMITH: You haven't given me any of
5 your stuff.

6 MR. BANDKLAYDER: Do you want to see
7 our interrogatory answer again?

8 MR. SMITH: I'm familiar with it.

9 MR. BANDKLAYDER: We flat out told you
10 what our costs are. You want to probe it, and
11 that's fine. You can do that, but we've still
12 given you the costs. I'm entitled at the very

13 least to get the same from you.

14 MR. SMITH: Listen, I have already
15 given my instruction. You know what to do.

16 MR. BANDKLAYDER: I really don't.

17 THE WITNESS: I refuse to answer the
18 question.

19 MR. SMITH: You stay out of it.

20 Q (BY MR. BANDKLAYDER) I'd like to know
21 what it cost you to manufacture a gallon of bleach
22 at Odyssey.

23 MR. SMITH: Same instruction.

24 Q (BY MR. BANDKLAYDER) I'd like to know
25 each element that's included in the determination

225

1 of what your costs are for a gallon of bleach and
2 for an ECU.

3 MR. SMITH: Same instruction.

4 Q (BY MR. BANDKLAYDER) Well, that will
5 shorten this deposition up quite a bit because I
6 have got about 100 follow-up questions.

7 Who's working at Odyssey other than
8 Marvin Rakes, Pat Allman, Marjorie and Tiffany?

9 A Craig.

10 Q Craig. He's the plant manager or the
11 operations manager or something like that?

12 A Something like that.

13 Q What's his last name?

14 A I believe it's Bates.

15 Q And generally what does he do?

16 A Supervises the operators and the
17 maintenance people, keeps the cell plant running.

18 Q Who are the operators and the
19 maintenance people?

20 A People that Pat hired.

21 Q Do you know any of their names?

22 A I do not.

23 Q How many of them are there
24 approximately?

25 A Approximately 14.

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1 Q And are there drivers as well?

2 A Yes.

3 Q I think you told us there were about
4 twelve to fourteen drivers. Does that sound about
5 right?

6 A I didn't tell you that.

7 Q I think you did at your last
8 deposition. How many drivers?

9 A It's a believable number. More than
10 eight or nine, less than fifteen.

11 Q Does it vary from month to month?

12 A It could vary.

13 Q Or is it pretty much steady with the
14 exception of some leaving and some new ones coming
15 on board?

16 A I assume that when the capacity goes
17 up, that some additional drivers are hired. I
18 don't know that for a fact.

19 Q But your understanding is that
20 somewhere between eight or nine and less than
21 fifteen?

22 A Yes.

23 Q Are you able to be any more specific
24 than that?

25 A No.

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1 Q How many trucks does Odyssey have?

2 A Approximately ten.

3 Q Are they all tanker trucks?

4 A They might have a truck for repairs. I
5 don't know if it's theirs or if it's leased or
6 rented, but, yeah, primarily the tractor-trailer
7 tanker truck.

8 Q Other than the drivers and the plant
9 operation people, you said there are roughly 14 of
10 them, and Patrick Allman and Marvin Rakes and
11 Marjorie and Tiffany. Does anyone else work there
12 for Odyssey?

13 A I don't believe so.

14 Q Typically how much does Odyssey pay its
15 truck drivers?

16 A It used to be \$12 to \$14, maybe \$15
17 when Pat hired them the first time. I have no idea
18 anymore.

19 Q Do they still get paid by the hour?

20 A As far as I know.

21 Q Are maintenance people included in the

22 people that you've already described, those 14
23 people that are involved in the operation?

24 A Some of those 14 people do maintenance,
25 and there might be one or two additional people

228

1 that also do maintenance.

2 Q Typically how much do the maintenance
3 people make?

4 A I don't know. When we started, we
5 didn't have any maintenance people. We just had
6 operators.

7 Q Typically how much do the operators
8 make?

9 A When we started in 2000, I think most
10 of them were between \$14 and \$18 an hour.

11 Q And Marjorie and Tiffany, approximately
12 how much do they make?

13 A I don't know.

14 Q Are there any other employees besides
15 those that we've already covered?

16 A Not that I can think of.

17 Q Are the trucks leased or purchased?

18 A The tractors are leased and the
19 trailers are purchased.

20 Q Is there a loan on the trailers?

21 A I don't believe so. You mean
22 specifically?

23 Q Actually, no, I don't mean
24 specifically. I guess they are subject to a

25 security interest with Citizens Bank?

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1 A That's what I would assume also.

2 Q Is there any separate loan other than
3 the Citizens Bank loan that pertains to the
4 trailers?

5 A Not that I'm aware of.

6 Q And the tractors you say are leased?

7 A That's my understanding, yes.

8 Q From who?

9 A I believe mostly from Ryder, Ryder
10 Systems.

11 Q Are they all the same types of
12 tractors?

13 A They were when we started. I suppose
14 by now that they must have changed some.

15 Q How often do you replace tractors?

16 A They could be leased for four, five or
17 seven. I'm only familiar with the first lease,
18 which was as I recall a five year term on the first
19 batch of tractors.

20 Q Was this a batch of -- well, how many
21 were in that batch?

22 A I believe six. Might have only been
23 five.

24 Q What type of tractors were they or are
25 they?

1 A Diesel.

2 Q I figured that, but I mean --

3 A Twin screw International.

4 Q Are they International?

5 A I think so.

6 Q Do you know the model number?

7 A No. I'm not even sure they're

8 International.

9 Q From whom does Odyssey obtain its

10 caustic?

11 A I don't know who they're presently

12 buying from.

13 Q How much does Odyssey presently pay for

14 its caustic?

15 A I don't know.

16 Q Has it changed since Odyssey started

17 doing business?

18 A I'm sure it has.

19 Q Has the supplier changed?

20 A Yes.

21 Q Who were some of the suppliers that

22 Odyssey got its caustic from?

23 A Olin, Occidental, Falcon, and I believe

24 at one point Dow. I'm not sure about Dow.

25 Q How was it delivered?

1 A By tank truck.

2 Q Is that still the case?
3 A Yes.
4 Q How was it stored?
5 A In a storage tank.
6 Q At the Odyssey facility?
7 A Yes.
8 Q Are the deliveries -- is each delivery
9 the same size or amount?
10 A Each delivery is a truckload.
11 Q You get a full truckload in each
12 delivery?
13 A Yes.
14 Q What is that, 5,000 gallons?
15 A No. It has to be less.
16 Q How much?
17 A Roughly 4,000 gallons.
18 Q Is Pam Winters' still at Citizens Bank?
19 A I have heard that she's not.
20 Q Where did you hear that from?
21 A I don't remember.
22 Q Who does Odyssey now deal with at
23 Citizens Bank?
24 A Jim Bickel.
25 Q How do you spell Bickel?

1 A How do I spell it?
2 Q I take it you don't really know how
3 it's spelled, but maybe you have seen the name
4 written somewhere?

5 A I think it has one L.
6 Q Is it spelled like pickle but with a B?
7 A No. E-l. I believe that it's
8 B-i-c-k-e-l.
9 Q Do you know what his position is at the
10 bank?
11 A Not exactly.
12 Q Is he the person that -- well, what
13 sort of dealings does Odyssey have with Mr. Bickel?
14 A Mr. Bickel is our account manager, so
15 he oversees all of our banking activity.
16 Q Now, other than the loan that Odyssey
17 has with Citizens Bank, does Odyssey actually do
18 its banking with Citizens Bank in terms of
19 maintaining accounts there?
20 A Odyssey has a credit line facility with
21 Citizens Bank.
22 Q Is that separate from the 1999 loan,
23 the five year loan?
24 A Yes.
25 Q When did Odyssey obtain the credit

1 line?
2 A At about the same time.
3 Q Is that secured by the same mortgage
4 and secured agreement as the main loan?
5 A No.
6 Q what is it secured by?
7 A Receivables and inventory.

8 Q Was Peoples Bank involved somehow in
9 the financing of Odyssey as well?
10 A Not that I know of.
11 Q I know Citizens Bank was, but I recall
12 there was another bank as well, and I've forgotten
13 the name. What was it? Was it Union Planters?
14 A Citizens Bank apparently sold shares of
15 the term loan, the equipment loan.
16 Q To whom? Who did they sell it to?
17 MR. SMITH: If you know.
18 THE WITNESS: Well, I know who they
19 turned out to sell it to. Union Planters was
20 one, and Bank of Alma was another.
21 Q (BY MR. BANDKLAYDER) What's that?
22 A Bank of Alma.
23 Q E-l-m-a?
24 A A-l-m-a.
25 Q Who has it now? Who owns the loan or

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1 the paper or the receivable now?
2 A The same.
3 Q Bank of Alma.
4 A Well, we owe the money to Citizens
5 Bank.
6 Q And then but I thought you said
7 Citizens Bank sold off part of the loan to --
8 A That's what I understood. I have never
9 seen any documents to that effect.
10 Q You make all your -- when I say you,

11 Odyssey makes its payments to Citizens Bank?

12 A Yes. As far as Odyssey is concerned,
13 they owe all of the equipment loan to Citizens
14 Bank.

15 Q And does Citizens Bank have the credit
16 line too?

17 A Yes.

18 Q When you say the equipment is security
19 for the term loan, which equipment are you talking
20 about?

21 A All of the equipment, buildings.

22 Q The building, the cells, the machinery
23 inside the building, is that what you mean?

24 A Yes, everything that Odyssey owns.

25 Q But you say the credit line is

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1 separately secured by receivables?

2 A Yes.

3 Q How much is the credit line?

4 A [REDACTED]

5 Q Is that what Citizens Bank sold off to
6 Union Planters?

7 A I don't know.

8 Q Now, the term loan, that's the -- that
9 was the one that was I think the principal amount
10 was something like [REDACTED] or so, in
11 that range?

12 MR. SMITH: Reread the question,
13 please.

14 Q (BY MR. BANDKLAYDER) Let me clean it
15 up. what is the principal amount of the term loan?
16 MR. SMITH: Let's take a break, please.
17 MR. BANDKLAYDER: Off the record.
18 (Thereupon, there was an off the record
19 discussion.)

20 Q (BY MR. BANDKLAYDER) what was the
21 principal amount of the term loan?
22 MR. SMITH: Object and instruct him not
23 to answer on the same basis that I instructed
24 him not to answer other questions about cost
25 information.

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1 Q (BY MR. BANDKLAYDER) I've got a lot of
2 questions about this. I'm not going to ask them
3 all, but I least want to get out a few to make a
4 record.

5 what is the interest rate on the loan?

6 MR. SMITH: Same Objection. Same
7 instruction.

8 Q (BY MR. BANDKLAYDER) what's the
9 amortization schedule?

10 MR. SMITH: Same objection. Same
11 instruction.

12 Q (BY MR. BANDKLAYDER) what's the
13 frequency and amount of payments on the term loan?

14 MR. SMITH: Same objection. Same
15 instruction.

16 Q (BY MR. BANDKLAYDER) what's the

17 balance on the credit line?

18 MR. SMITH: Same objection. Same
19 instruction.

20 Q (BY MR. BANDKLAYDER) What are the
21 payment terms on the credit line?

22 MR. SMITH: Same objection. Same
23 instruction

24 MR. BANDKLAYDER: Well, I've asked
25 several of the questions, but I had a lot

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1 more, but since you have instructed him not to
2 answer any cost questions, I'm not going to
3 take everybody's time up by asking all of them
4 now until after the judge rules on it again.

5 Q (BY MR. BANDKLAYDER) Has Odyssey begun
6 the process of negotiating the terms of the renewal
7 of the term loan?

8 A Yes.

9 Q And who is handling those negotiations
10 at Citizens Bank?

11 A Jim Bickel.

12 Q Who is handling those negotiations for
13 Odyssey?

14 A Marvin Rakes.

15 Q And have the terms been agreed upon
16 yet?

17 A No.

18 Q Is there a time by which they're
19 expected -- there's expected to be an agreement on

20 the terms?

21 A Yes.

22 Q When is that?

23 A Shortly.

24 Q December 31 or when is the date that
25 you expect there to be an agreement on the terms?

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1 A We hope that by December 31.

2 Q Is anyone else at Citizens Bank
3 involved in negotiating that renewal?

4 A I would have no way of knowing.

5 Q Is it a renewal or is it a new loan or
6 just what exactly is it?

7 A I would call it a renewal.

8 Q Is Odyssey negotiating with any other
9 banks?

10 A No.

11 Q Does Odyssey have sales personnel other
12 than Marvin Rakes and Pat Allman?

13 (Thereupon, there was a discussion off
14 the record.)

15 THE WITNESS: No.

16 Q (BY MR. BANDKLAYDER) Is there like any
17 doubt about that? It seemed to require a little
18 conference with your attorney to answer that
19 question.

20 A No doubt.

21 Q Does Sentry have sales personnel?

22 A Yes.

23 Q How many?
24 A One part-time.
25 Q And who is that?

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1 A A. J.
2 Q Who is A. J.? Does he have a last
3 name?
4 A I honestly can't think of his last
5 name. I'm not trying to withhold it.
6 Q Or is it J? Are those his initials?
7 A Yes.
8 Q Does he have a territory?
9 A No.
10 Q Does Odyssey use any outside people or
11 independent contractors as sales representatives?
12 A No.
13 Q Does Sentry have any outside
14 distributors?
15 A Certainly.
16 Q How many?
17 A All of our customers are distributors
18 in one way or another except the few that consume
19 the sodium hypochlorite themselves. Most of our
20 customers resell it in one form or another.
21 Q Do you have any customers who resell it
22 in bulk?
23 A How would you define bulk?
24 Q Something more than just, you know,
25 swimming pool size. In other words, I don't know

1 what you use for a swimming pool, a gallon jug, two
2 and a half gallon jug, five gallon jug, bigger than
3 that?

4 A Yes.

5 Q How many of those are there?

6 A Five or six.

7 Q Are any of them located in the Tampa
8 area?

9 A Yes.

10 Q Which ones?

11 (Thereupon, there was an off the record
12 discussion.)

13 MR. SMITH: As I recall, we are not
14 furnishing names of customers.

15 MR. BANDKLAYDER: These are
16 distributors, and they are outside the 150
17 miles.

18 MR. SMITH: The distributors for Sentry
19 outside 150 miles, but we didn't disclose
20 names of customers as you recall. We
21 furnished a spreadsheet showing locations, nor
22 did you. You didn't furnish names either.
23 Just showed locations, so that would apply
24 here. We are not furnishing the names of the
25 customers. That's been agreed upon by both

1 parties.

2 Q (BY MR. BANDKLAYDER) Are these people
3 you're referring to or companies you're referring
4 to up in Tampa, are they distributors?

5 A I'm still unclear on what you call a
6 distributor.

7 MR. BANDKLAYDER: Just a minute.

8 (Thereupon, there was an interruption
9 in the record.)

10 Q (BY MR. BANDKLAYDER) I understand
11 there's something called a tote, which is what, 300
12 gallons? Are you familiar with that?

13 A I have seen them.

14 Q These entities that you sell to -- that
15 Sentry sells to in Tampa, are they reselling
16 quantities larger than totes?

17 A I don't believe so. You said in Tampa?

18 Q In the Tampa area.

19 A The original question I thought
20 pertained to the area within 150 miles of Tampa.
21 Now you just said in Tampa.

22 Q You're saying that there are people --
23 are there people reselling tote quantities or
24 greater for Sentry that are within the 150 miles of
25 Tampa?

1 A Not to my knowledge.

2 Q Do you know how much electricity
3 Odyssey is currently using on average?

4 A Not exactly.

5 Q Well, approximately.

6 MR. SMITH: You're really once again
7 trying to get into his cost information. It's
8 the same thing I've already objected to and
9 instructed him. So same objection. Same
10 instruction.

11 THE WITNESS: They know the rate and
12 they know how many gallons we produce a year,
13 so this is less of an issue. It's just that I
14 don't -- obviously they have never had two
15 months exactly the same since they have
16 opened.

17 Q (BY MR. BANDKLAYDER) It's never been
18 exactly the same, but there must be an average?

19 A It used to be [REDACTED]. Maybe now it's
20 more.

21 Q What's that, the power bill, the
22 electric bill?

23 A The electric bill.

24 MR. SMITH: He asked for usage.

25 THE WITNESS: I have no idea about the

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1 usage.

2 Q (BY MR. BANDKLAYDER) You don't know in
3 terms of kilowatts or megawatts?

4 A I don't know.

5 Q But the average electric bill is
6 somewhere in the range of [REDACTED] per month?

7 A It was.

8 Q Has it gone up or down?

9 A It must have gone up.

10 Q Is that because of the annual

11 escalations?

12 A No. I was thinking more because we

13 produce more ECU.

14 Q Have the escalations in the TECO

15 contract gone into effect?

16 A Yes. I have only checked once. At the

17 time that I checked, it had gone into effect.

18 Q Have there been any other changes in

19 Odyssey's initial base electric rate such as fuel

20 surcharges or other surcharges or new taxes?

21 A Not to my knowledge.

22 Q Now, the initial base rate we have

23 already established was a megawatt hour, right?

24 A That is correct.

25 Q Then I understand in the second year of

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1 operation it was to go up by [REDACTED]

2 [REDACTED], is that right?

3 A That's what I understood.

4 Q So that would have been starting I

5 guess in April of '02 it would have gone up by [REDACTED]

6 [REDACTED]

7 A March 27.

8 Q That's pretty close.

9 And then did it go up another [REDACTED]

10 [REDACTED] on or about March 27 of '03?

11 A I believe so.

12 Q So the rate now is [REDACTED] plus [REDACTED]

13 [REDACTED] and then plus another [REDACTED]

14 [REDACTED] of that, right?

15 A Sounds correct.

16 Q Which probably comes to about somewhere

17 in the [REDACTED] or [REDACTED] range per

18 megawatt hours? I don't know the exact number, but

19 you probably do. Do you?

20 A I don't know the exact number.

21 Q All right. Well, if that plant had to

22 operate today with an electric rate of [REDACTED] cents,

23 could it do so profitably?

24 MR. SMITH: Let's take a break.

25 (Thereupon, a recess was taken.)

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1 THE WITNESS: Ask the question again.

2 Q (BY MR. BANDKLAYDER) Could Odyssey

3 operate profitably if today it had an electric rate

4 of [REDACTED] per megawatt hour?

5 A Yes.

6 Q How do you determine that?

7 (Thereupon, there was a discussion off

8 the record.)

9 THE WITNESS: We're presently paying

10 [REDACTED] or [REDACTED]. The increase to [REDACTED] that you

11 asked me to hypothesize over would increase

12 the cost per gallon by a little over [REDACTED]

13 We are going to make [REDACTED] million gallons this
14 year, so our profitability would be decreased
15 by, I don't know, roughly [REDACTED] or [REDACTED]
16 possibly [REDACTED]. I'd have to do the
17 calculation. We expect to make more than that
18 in this current year; and, therefore, we would
19 still be profitable.

20 Q (BY MR. BANDKLAYDER) How did you
21 determine that the electric rate differential
22 between roughly [REDACTED] -- I'm sorry. [REDACTED]
23 [REDACTED] [REDACTED]
24 translates to a cost differential per gallon of
25 about [REDACTED]

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1 A Because I previously calculated what
2 the effect of [REDACTED] power would have had on Allied
3 relative to [REDACTED] power, and that difference using
4 the Pete DeAngelis template that he gave us, using
5 [REDACTED] for cell operation
6 and [REDACTED] for incidental
7 power including pumps and circuits and a total of
8 [REDACTED] at a difference of
9 [REDACTED]
10 [REDACTED]
11 so a difference of [REDACTED] times that must be about
12 [REDACTED].

13 Q why did you use [REDACTED]
14 [REDACTED]

15 A Because the calculation for the ECU
Page 91

16 cost that DeAngelis did for Allied that Allied
17 produced in the six boxes of material claimed that
18 that was going to be the consumption in the Allied
19 proposed [REDACTED] a day cell process plant.

20 Q The question though was whether Odyssey
21 could operate profitably, and Odyssey uses [REDACTED]
22 [REDACTED] or actually somewhere between [REDACTED]
23 [REDACTED]

24 A Yes, that's why instead of saying it
25 would cost us [REDACTED], I allowed that maybe it was

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1 [REDACTED] or a little more. I stand by my claim that
2 Odyssey would still be profitable.

3 Q so it would be somewhere between
4 [REDACTED] higher cost annually at [REDACTED]
5 [REDACTED] gallons of production?

6 A [REDACTED] yes.

7 Q [REDACTED] that is?

8 A Yes. If the [REDACTED] were put in place
9 today.

10 Q If the what?

11 A If the [REDACTED] rate became effective today,
12 Allied's [REDACTED] rate as I understood it was in July of
13 [REDACTED]. At that point Odyssey would have escalated
14 to a higher number than [REDACTED]

15 Q Allied's proposal from TECO is actually
16 [REDACTED] plus taxes. It wasn't just [REDACTED], and my
17 question was at [REDACTED]. But in any event, you're
18 saying --

19 A But my point was I'm using it today in
20 December of 2003 and Allied's offer wasn't until
21 July of [REDACTED], June of [REDACTED], [REDACTED] months from today.

22 Q So if you're saying that the difference
23 in the electric rate means between [REDACTED] and
24 [REDACTED] in increased cost for [REDACTED] gallons,
25 then the increase in costs for [REDACTED] gallons

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1 would be [REDACTED] per year, right?

2 A I don't know.

3 Q It would be double?

4 A Well, I don't know. There are too many
5 assumptions to say that. Odyssey cannot produce
6 that amount, and Allied had better cells, and if
7 Allied were to buy the cells today, they would be
8 much better. So too many complications for me to
9 even answer that question.

10 Q If the cells that are now available are
11 so much better than the ones that were available
12 when Odyssey was initially built, why doesn't
13 Odyssey use those new cells in its expansion?

14 A You can't mix the kind of cell. All
15 the cells have to be the same.

16 Q Well, if Odyssey can operate profitably
17 at [REDACTED] per megawatt, then what was the basis of
18 your saying that if it couldn't obtain [REDACTED] per
19 megawatt, it would have no alternative but to
20 locate its manufacturing facility elsewhere when
21 you signed your affidavit?

22 A This document came from TECO. The
23 language was suggested to me by TECO. Since I
24 didn't know how to apply for CISR and didn't know
25 the workings of the regulated utility industry, I

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1 used the language they suggested, and what I was
2 signing in my mind is what I just told you an hour
3 ago, that if I didn't get the CISR, I would not
4 build my plant in TECO's territory. And the
5 language they suggested included their proposed
6 rate of ●.

7 Q Well, you swore in this affidavit that
8 the things you said were true, didn't you?

9 A Yes.

10 Q Was it true that without a ● cent per
11 kilowatt hour or ● per megawatt hour -- strike
12 that.

13 Is it true that absent a ● per
14 kilowatt hour or ● per megawatt hour rate you
15 would have had no alternative but to locate the
16 plant somewhere other than Tampa where it could
17 obtain a ● per kilowatt or ● per megawatt
18 hour rate?

19 A I told you what I assumed. I assumed I
20 had three choices; \$36 for interruptible power, ●
21 for a CISR rate or seven or eight cents, whatever
22 people pay in their houses, so unless I got this
23 one, I wouldn't build.

24 Q Well, but --

25 A The CISR and the [REDACTED] were tied

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1 together.

2 Q Well, what was tied together was the
3 [REDACTED] and Odyssey's new plant because you say if you
4 can't get -- in your affidavit, you say if you
5 can't get the [REDACTED] per kilowatt hour rate from
6 Tampa, you will build this somewhere else where you
7 can get that rate, so my question is why was that
8 rate of [REDACTED] so important to you if you're
9 telling us today that [REDACTED] per megawatt hour
10 would still enable you to be profitable?

11 MR. SMITH: Argumentative, asked and
12 answered. Has your testimony changed?

13 THE WITNESS: No.

14 MR. BANDKLAYDER: Has what testimony
15 changed, from the affidavit? Clearly it has.

16 MR. SMITH: Has your testimony changed
17 you previously gave him on this issue?

18 THE WITNESS: No.

19 Q (BY MR. BANDKLAYDER) Well, your sworn
20 testimony in your affidavit is clearly different
21 than what you're telling me today, isn't it?

22 A Not in my mind.

23 Q Well, I mean in the affidavit you say
24 if Odyssey can't obtain [REDACTED] cents per kilowatt
25 hour, it will have no alternative but to locate its

1 facility elsewhere where it can obtain [REDACTED] cents
2 per kilowatt hour. Does it not say that?

3 A Yes.

4 Q Why was [REDACTED] cents per kilowatt hour
5 the threshold that you referred to in your
6 affidavit?

7 MR. SMITH: Object to the form.

8 Argumentative, asked and answered.

9 THE WITNESS: TECO put it in there
10 because that was the rate they were going to
11 offer me if the CISR was approved, and being
12 an individual trying to start a company that
13 had a lot of complicated work to do, I had no
14 reason not to trust them filing, doing the
15 paper work to file for the CISR. I did
16 whatever they told me. This paper came, and I
17 signed it. I read it and I believed it and I
18 signed it, and in my mind the [REDACTED] was the
19 CISR. If I got the CISR, it would be [REDACTED]. If
20 I didn't get the CISR, I wasn't going to build
21 the plant. It's not contradictory in my mind.

22 Q (BY MR. BANDKLAYDER) If back at the
23 time that you were offered your rate by TECO, TECO
24 had offered you [REDACTED] per megawatt hour, would
25 odyssey have built the plant in Tampa?

1 A I don't know. If they had offered me

2 \$41, we would have built the plant.

3 Q But that's not my question. My
4 question is if they had offered you [REDACTED] per
5 megawatt hour, would you have built the plant in
6 Tampa?

7 A I don't know.

8 Q Well, what would you need to know in
9 order to answer that question?

10 A I wouldn't need to know anything. I
11 would have had to have been presented with that
12 situation at the time and decided to go forward or
13 to abandon Tampa and try to build the plant
14 somewhere else.

15 Q Now, is it your testimony that if TECO
16 was under the impression at the time that you would
17 only build your plant in Tampa if you had a rate of
18 [REDACTED] per megawatt hour or less, that TECO was
19 mistaken?

20 A TECO knew that if I didn't get the CISR
21 that I wasn't going to build the plant. We all
22 knew [REDACTED] was not a very good rate.

23 Q Who knew that it wasn't a very good
24 rate?

25 A DeAngelis told me that [REDACTED] is not a

1 very good rate.

2 Q Compared to what?

3 A Compared to what chloralki companies
4 paid in his experience.

5 Q If [REDACTED] per megawatt hour is not a good
6 rate, then would you agree that [REDACTED] per megawatt
7 hour is a significantly worse rate?
8 A It's not a good rate either. I would
9 agree that far.
10 Q Electricity is roughly 45 percent of
11 the variable cost, right?
12 A Allied has made that claim.
13 Q Haven't you?
14 A I never calculated it as a percent, no.
15 Q What do you believe --
16 A That's reasonably close.
17 Q So you don't disagree with that?
18 A No.
19 Q If Odyssey has lost money in the last
20 three -- three out of the last four years, then
21 what is your basis for saying that you can make
22 money even if its electric rate was bumped up to
23 [REDACTED]
24 MR. SMITH: other than what he's told
25 you?

1 Q (BY MR. BANDKLAYDER) Yes.
2 A I understood your hypothetical question
3 to be if the rate went into effect today. It has
4 nothing to do with Odyssey's performance over the
5 past four years.
6 Q All right. Well, suppose Odyssey had
7 had a rate of [REDACTED] starting September 30 of 2002.

8 A We would have lost money.
9 Q For the year 2003, right? In other
10 words, for the fiscal year ending 2003, you would
11 have lost money?
12 A I'm guessing that's true, yes.
13 Q We know from your previous deposition
14 that Odyssey actually had a profit for the fiscal
15 year that ended September 30 of 2003, right?
16 A Yes.
17 Q But that was with an electric rate of
18 roughly [REDACTED] or maybe slightly
19 higher, I should say [REDACTED] or slightly higher per
20 megawatt hour, right?
21 A Right.
22 Q So you're telling us that if Odyssey
23 had had a rate of [REDACTED] during that same fiscal
24 year, Odyssey would have lost money instead of made
25 money, right?

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1 A As best I can calculate in my head,
2 yes.
3 Q How are you calculating that?
4 MR. SMITH: Well, Counsel, I'm not
5 going to let him disclose to you what his
6 profit was for that year. Same objection.
7 same instruction.
8 Q (BY MR. BANDKLAYDER) Based on the
9 figures you've given us for the cost
10 differential --

11 A Based on the figures I've given you,
12 you can figure it out.

13 Q So then the profits for the fiscal year
14 ending September 30 would have been less than
15 [REDACTED]

16 A Less than [REDACTED] to [REDACTED] or
17 whatever I said.

18 Q And in fact is that true?

19 A Yes.

20 Q Why is it that the terms of the bank
21 loan renewal have not yet been finalized?

22 A I don't know.

23 Q Has Odyssey approached any other banks
24 to see about getting the loan from some other bank?

25 A They have done that, yes.

256

1 Q And what happened with the other banks?

2 A Nothing ever developed.

3 Q Which banks did it approach?

4 A Bank One or First Bank, their office
5 might be in Cleveland. It was a contact that
6 Powell made in Michigan.

7 Q You said that Odyssey's profits for the
8 fiscal year of 2003 were I think you said less than
9 [REDACTED] is it [REDACTED] or is it
10 [REDACTED]

11 MR. SMITH: Same objection. Same
12 instruction.

13 MR. BANDKLAYDER: If you're instructing

14 him not to answer, so be it. We'll take it up
15 with the judge, but it relates directly to the
16 feasibility of the electric rate, which he's
17 claiming on one hand is feasible, although he
18 seems to be saying that even Odyssey would
19 lose money at that rate, but you're still
20 instructing him not to answer?

21 MR. SMITH: Yes, sir.

22 Q (BY MR. BANDKLAYDER) Is Odyssey going
23 to be renewing both of its loans, that is the
24 credit line and the term loan?

25 A I believe that the credit line has an

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1 annual renewal or it did at one time. I expect
2 that it still does.

3 Q How are the next two expansions being
4 paid for?

5 A They're funded internally.

6 Q By the investors?

7 A By the investors or the company.

8 Q Have the investors put additional
9 capital in since the initial startup?

10 A Yes.

11 Q On how many occasions have the
12 investors put in additional capital?

13 A A handful.

14 Q About five?

15 A Okay.

16 Q I don't know. I'm asking you.

17 A That's as reasonable as anything. I
18 don't know exactly. Five is a reasonable
19 approximation.

20 (Thereupon, the document referred to
21 was marked for identification as Plaintiff's
22 Exhibit No. 6.)

23 Q (BY MR. BANDKLAYDER) Let me show you
24 what we've marked as Exhibit 6. That is SS6. I
25 only have one copy, so we all have to share it.

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1 Have you had a chance to look at it?

2 A Yes.

3 Q What is it? What is Exhibit 6?

4 A It's a summary of my understanding of
5 the Florida bleach market.

6 Q Is this something that you prepared?

7 A Yes.

8 Q When did you prepare it?

9 A I would say early in 2003. It refers
10 to sales in 2002.

11 Q What was the purpose of this document
12 that you prepared, this summary of Florida bleach
13 market?

14 A I would guess it was something for the
15 refinancing with the other bank.

16 Q With which bank?

17 A The Bank One or First Bank, the other
18 Michigan based bank. I don't know for sure.

19 Q It says at the top, Exhibit A. Do you

20 know what it was an exhibit to?
21 A A package that was submitted for
22 financing would be my guess.
23 Q It says in this summary that you
24 prepared that Odyssey's total sales were [REDACTED]
25 gallons for the year 2002. Is that about right?

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1 A I believe so.
2 Q Was Odyssey selling its full -- selling
3 out its full capacity in 2002?
4 A Yes.
5 Q Approximately how much of those sales
6 were to Sentry or Sentry customers?
7 A [REDACTED].
8 Q [REDACTED] percent? [REDACTED] percent?
9 A [REDACTED].
10 Q How about in the year 2003, did Odyssey
11 sell out its full capacity?
12 A Yes.
13 Q What was that, about [REDACTED]
14 gallons?
15 A Well, not quite because the expansion
16 didn't run until about April.
17 Q So somewhere --
18 A [REDACTED] or [REDACTED], something less than
19 [REDACTED]. We are still in 2003, you know.
20 Q Oh, that's true. Just barely.
21 MR. KOVEN: I think he was referring to
22 your fiscal year

23 Q (BY MR. BANDKLAYDER) Right. I was
24 referring to your fiscal year.

25 A We didn't count them in our fiscal

260

1 year. We counted them and produced them to you,
2 and it was through September.

3 Q You have total Florida sales for Allied
4 Universal at [REDACTED] gallons. Where did you get
5 that from?

6 A I estimated it.

7 Q What did you base that on?

8 A How many plants they have, what I
9 thought the capacity of each plant was, how many
10 trucks I thought they had at each place, how many
11 ECU tons I thought they bought and how many they
12 sold as chlorine gas, how many employees they had,
13 how many customers they had, how much each customer
14 bought, working at it from several different
15 directions, tried to make an estimate.

16 Q You also estimate in this summary, that
17 you prepared, the size of the Florida bleach market
18 in gallons for -- well, in the future up through
19 2007, right?

20 A Yes.

21 Q It looks like from 2002 to 2003 you
22 show an increase of 200 million to 230 million.
23 Did that prove to be correct?

24 A I believe so.

25 Q Then for the year 2004 you show a

1 projected increase to 260 million, which would be
2 somewhere in the range of I guess 12 to 15 percent
3 increase?

4 A well, it's 11 or 12.

5 Q Is that accurate?

6 A Yes, that's about right.

7 Q what are you basing that on?

8 A On prior growth, number of people
9 moving to Florida, number of swimming pools being
10 built and the likelihood that some water and waste
11 water plants will change from chlorine gas to
12 bleach.

13 Q Now, the annual figures that you have
14 here for the Florida bleach market in gallons from
15 '97 through 2007, would those percentage increases
16 be any different in Tampa that you estimated them
17 to be for the entire Florida bleach market?

18 A I would have no way to know that.

19 Q For example, you projected an increase
20 of 11 or 12 percent for the year 2004. Do you
21 believe that that's likely the size that the Tampa
22 market will increase as well?

23 A Yes.

24 Q And is that true for all of the
25 projections that you have here for the Florida

1 bleach market in gallons on an annual basis, not
2 the 11 percent but whatever percentages you have
3 here for Florida would generally hold true for
4 Tampa as well, is that a fair statement?

5 MR. SMITH: Do you understand the
6 question?

7 THE WITNESS: If I understand the
8 question, you're asking me would there be any
9 difference between the Tampa market and the
10 overall Florida market in the rate of growth?

11 Q (BY MR. BANDKLAYDER) Right.

12 A Not that we know of.

13 Q So as far as you're concerned, it would
14 be about the same?

15 A Yes.

16 Q So if the Florida market were to
17 increase by 12 percent, then the Tampa market
18 probably would also increase by about 12 percent?

19 A Yes.

20 Q Now, of the companies that are listed
21 in this summary that you prepared, which ones, if
22 any, does Odyssey sell to?

23 A Odyssey sells to [REDACTED] May
24 I see that one second? Is it [REDACTED] or
25 [REDACTED]? Odyssey sells to [REDACTED]

1 Sentry, [REDACTED] and [REDACTED].

2 Q Where is [REDACTED] located?

3 A [REDACTED] Florida.
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4 Q Where is that near?
5 A Like Lakeland, Lake Wales.
6 Q Did [REDACTED] manufacture bleach on its own?
7 A Yes.
8 Q Why then does it purchase from Odyssey?
9 A If they have manufacturing problems or
10 emergency back-up.
11 Q And what about [REDACTED]
12 manufactured bleach, didn't it?
13 A Yes.
14 Q Does it still manufacture bleach?
15 A To the best of my knowledge.
16 Q And why then does it buy from Odyssey?
17 A For when they have manufacturing
18 problems, its emergency back-up.
19 Q [REDACTED], same question, why does [REDACTED]
20 buy from Odyssey?
21 A [REDACTED] buys for two reasons. [REDACTED] buys
22 for emergency back-up to cover manufacturing
23 problems, and they've contracted Odyssey to make
24 deliveries for them to certain customers in our
25 market.

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1 Q And what area is that?
2 A That's in Sarasota and Crystal River.
3 Q And did you say that Odyssey also sells
4 to [REDACTED]?
5 A Yes.
6 Q Why does [REDACTED] buy from Odyssey?

7 A [REDACTED] wanted to stop manufacturing and
8 asked Odyssey if they could cover their small
9 requirement. [REDACTED] needed more gallons and
10 didn't want to invest in their old plant and made a
11 deal to buy a certain amount per year from Odyssey
12 in lieu of spending money on the old plants to be
13 able to produce more themselves.

14 Q It says in your summary that [REDACTED]
15 contracted to pick up one million gallons from
16 Odyssey per year, is that right?

17 A That sounds about right.

18 Q Then it says that [REDACTED] may be going
19 to purchase another one million gallons after plant
20 expansion. Did that materialize?

21 A What do you mean by did it materialize?

22 Q Did [REDACTED] increase from one million
23 gallons?

24 A Did the sale take place of the second
25 million gallons ever transpire? No.

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1 Q why not?

2 A I don't know.

3 Q Did [REDACTED] bid on some of the same
4 municipal contracts that Odyssey bid on?

5 A If they did it was with the
6 understanding that they would produce their own
7 bleach to support those contracts. If they were
8 using our bleach to bid a contract, then only one
9 of us bid, but they have a perfectly good

10 production facility that they run daily and are
11 able to transact their own business any way they
12 please beyond the amount they buy from us.

13 Q Does Odyssey sell to [REDACTED] also?

14 A Yes.

15 MR. SMITH: Can we take a short break.

16 (Thereupon, a recess was taken.)

17 Q (BY MR. BANDKLAYDER) Now, of the
18 companies on your Florida bleach market summary,
19 have any of them stopped manufacturing bleach?

20 A Not to my knowledge.

21 Q Is Odyssey still selling to [REDACTED]?

22 A Occasionally.

23 Q Why does [REDACTED] buy from Odyssey?

24 A To cover downtime in manufacturing.

25 Q You say under Selling Price, there was

266

1 a steep decline in bleach pricing when Odyssey
2 entered the market in 2000. Why was that?

3 A I have no way of knowing exactly why it
4 happened.

5 Q Well, what's your best analysis?

6 A In order to make sales, we had to offer
7 lower and lower prices.

8 Q Why was that?

9 A Because Allied was offering lower and
10 lower prices to the same customers.

11 Q Well, I thought Odyssey's customers
12 were -- I thought the plan was for Odyssey to sell

13 to municipalities that would be converting from gas
14 to bleach?

15 A That was the plan.

16 Q So I mean those entities wouldn't have
17 been buying from Allied because they hadn't been
18 buying bleach at all prior to their conversions,
19 right?

20 A Many customers fit that description.

21 Q The description I just gave?

22 A Many customers who were utilities
23 changed from chlorine gas and had not previously
24 purchased bleach.

25 Q So why would Odyssey entering the

267

1 market and selling to those customers result in a
2 steep decline in prices?

3 A Because Allied sold to them too.

4 Q You then say in the next sentence,
5 prices are rebounding now that Odyssey is oversold
6 and competitors' raw material prices are
7 increasing, is that right?

8 A That's what I believed at the time that
9 I wrote that, yes.

10 Q That was in early 2003 that you wrote
11 this, right?

12 A We believe so, yes.

13 Q Has that proven to be true, that prices
14 are now rebounding, in other words, going up?

15 A I think generally the average price in
Page 110

16 the market has come up a little bit, but I don't
17 think that the increase in the competitors's raw
18 materials cost was sustained. I think the raw
19 material market as of today has softened again.

20 Q Mr. Allman said that the price at which
21 Odyssey sold to ██████████ was three cents less than
22 the price at which Odyssey had been selling to
23 Manatee County. Is that accurate?

24 A No.

25 Q What was the differential?

268

1 A Manatee County was a public bid.

2 Q I don't recall offhand what the amount
3 was. I think it might have been 33 the first time
4 around when Odyssey was selling to Manatee.

5 MR. SMITH: The problem is giving you
6 Harcros' price.

7 Q (BY MR. BANDKLAYDER) Mr. Allman
8 already gave it to us. I'm just asking if he was
9 accurate.

10 THE WITNESS: I said no.

11 MR. SMITH: Then no. There you go.

12 Q (BY MR. BANDKLAYDER) what was it?

13 MR. SMITH: Then object. Instruct him
14 not to answer. Nice try.

15 MR. BANDKLAYDER: I tried to sneak that
16 one by.

17 MR. SMITH: When are you going to
18 respond to our discussion last night about

19 producing documents?

20 MR. BANDKLAYDER: I thought we were in
21 agreement on costs, but we were yet finalized
22 on profits.

23 MR. SMITH: No, sir. No agreement was
24 reached on anything last night because Larry
25 had to speak to Mr. Koven.

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1 MR. BANDKLAYDER: As far as I'm
2 concerned, we don't need to reach an agreement
3 on costs because Judge Farrell ruled on it, so
4 it's a moot issue. I want to work with you on
5 future discovery issues that relate to costs
6 and further documentation relating to costs,
7 but as far as getting cost information, as far
8 as we're concerned, the judge has ruled on
9 that.

10 MR. SMITH: We discussed last night you
11 producing documentation of your accounting
12 records supporting your damage claim, which
13 includes documents concerning costs and
14 profits. We had a discussion about that. We
15 reached no conclusion because Mr. Silverman
16 had to speak to Mr. Koven. My question is
17 simply when are you going to get back to me on
18 that?

19 MR. BANDKLAYDER: Well, assuming Mr.
20 Silverman is in town, we'll try to get back
21 with you on that tomorrow. He's not in town

22 today but maybe he will be back tomorrow. If
23 he were in town today he would be here.
24 MR. SMITH: He indicated that he would
25 get back to me yesterday.

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1 MR. BANDKLAYDER: I thought he did.
2 MR. SMITH: No.
3 MR. BANDKLAYDER: You know what, I
4 shouldn't even say because I wasn't privy to
5 the conversation.
6 Q (BY MR. BANDKLAYDER) But be that as it
7 may, getting back to the deposition, is Odyssey
8 still selling to Sentry?
9 A Odyssey does not sell to Sentry.
10 Q How does it work, does Odyssey sell to
11 customers that Sentry basically asks it to sell to?
12 A Odyssey makes some third-party
13 deliveries or similar to what they do for ██████████
14 Q So who's actually buying from whom in
15 that scenario?
16 A The customer buys from Sentry. Sentry
17 buys from Odyssey. Odyssey produces and makes the
18 delivery.
19 Q Now, when Odyssey does that, what you
20 just described, does it charge the same price
21 regardless of who the ultimate end customer is?
22 A Generally, yes.
23 Q At what price does Odyssey sell to
24 Sentry?

25 A I don't think we have to disclose that.

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1 MR. SMITH: Object and instruct him not
2 to answer. Same objection.

3 (Thereupon, the document referred to
4 was marked for identification as Plaintiff's
5 Exhibit No. 7.)

6 THE WITNESS: Can I correct something?

7 Q (BY MR. BANDKLAYDER) Sure.

8 A If Sentry has production problems, they
9 have purchased bleach from Odyssey.

10 Q And has that happened?

11 A Yes.

12 Q About how much bleach has Sentry
13 purchased from Odyssey?

14 A In what time frame?

15 Q well, let's start with Odyssey's fiscal
16 year of 2003.

17 A Maybe [REDACTED] truckloads.

18 Q [REDACTED] gallons?

19 A No, [REDACTED]

20 Q [REDACTED] gallons?

21 A Yeah.

22 Q And how much would you estimate Odyssey
23 delivered to Sentry customers under the third-party
24 arrangement?

25 A That's the one that I said was less

1 than [REDACTED] percent, less than [REDACTED] gallons.

2 Q Exhibit No. 7. That Exhibit No. 7 is
3 signed by you on June 25, is that right?

4 A Yes.

5 Q why did you wait until June 25 to sign
6 this letter, which released Chemetics from its
7 restrictive covenant?

8 A That was the day I received it or the
9 day after I received it.

10 Q well, the letter does purport to
11 release Chemetics from its restrictive covenant?

12 A That's what I understood.

13 Q And this lawsuit that we're involved in
14 now is filed sometime around November of 2001?

15 A That's correct.

16 Q why did Odyssey wait until May or June
17 of 2002 to get a letter out to Chemetics releasing
18 it from the restrictive covenant?

19 A I understand this letter is from
20 Chemetics. We waited until March or April to
21 contact Chemetics, and it took them until this date
22 to internally release it.

23 Q The letter is actually from Odyssey's
24 attorneys to Chemetics, isn't it?

25 A Okay. Well, that was when we got the

1 agreement then from Chemetics. The holdup was in

2 Chemetics after initial discussion in March or
3 April of the same year.

4 Q I mean Odyssey could have released
5 Chemetics from its restrictive covenant at any time
6 Odyssey wanted to, couldn't it?

7 A We could have petitioned them as we did
8 in March or April of 2002.

9 Q Well, you don't need -- when I say you,
10 Odyssey didn't need Chemetics' consent for Odyssey
11 to release Chemetics from the restrictive covenant,
12 did it?

13 A On our own we could have canceled half
14 this agreement, that's correct.

15 Q When you're saying half of this
16 agreement, you're referring to the half that said
17 Chemetics could not build a cell plant for anybody
18 else within 150 miles of Tampa, correct?

19 A That's the half we could have canceled
20 on our own.

21 Q Correct.

22 A Without consent of Chemetics.

23 Q Why didn't Odyssey do that before May
24 or June of 2002?

25 A We thought Chemetics would cancel the

1 whole agreement. We didn't know it would take so
2 long.

3 Q Well, Odyssey and you knew that
4 Allied's CISR rate would expire unless Allied got a

5 plant in commercial operation by April of --
6 actually I think it was April of 2003. You knew
7 that, right?

8 A I knew that.

9 Q And you know that it takes at least 16
10 or more months from start to finish to get one of
11 these plants --

12 A No.

13 Q -- up and running, isn't that true?

14 A I know that Allied had stated it would
15 take 18 to 24 months.

16 Q How long did it take you when you built
17 the Odyssey plant? I think you previously
18 testified --

19 A It took us 16 months.

20 Q I think you told us it was 16 months,
21 plus permitting time? In other words, it was 16
22 months from ground breaking?

23 A A lot of advanced work was done. It
24 took us 16 months from the date the contract was
25 signed with Chemetics, but I knew Allied had

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1 testified previously 18 to 24 months and that their
2 deadline had already passed. On the day the first
3 lawsuit was filed, I knew their deadline had
4 passed, and that a month here, a month there wasn't
5 going to be the cause of any further trouble. Also
6 the first lawsuit was withdrawn. We are now on an
7 amended complaint.

8 Q Well --
9 A And upon the -- basically this --
10 MR. SMITH: Is there a pending
11 question?
12 Q (BY MR. BANDKLAYDER) It's all part of
13 the same lawsuit. Amended complaint, original
14 complaint, it's all one lawsuit for your
15 edification.
16 MR. SMITH: Stick with the question.
17 Q (BY MR. BANDKLAYDER) Well, my question
18 is since Odyssey was concerned about being sued
19 over this, why didn't Odyssey just immediately
20 release Chemetics from that restrictive covenant
21 when it found out about the lawsuit?
22 A I discussed it with my attorneys and we
23 did what we did.
24 (Thereupon, the document referred to
25 was marked for identification as Plaintiff's

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1 Exhibit No. 8.)
2 Q (BY MR. BANDKLAYDER) Exhibit Number 8,
3 that is SS8. I only have one copy of it, so we'll
4 have to pass it around, but can you tell me what
5 that is?
6 A This appears to be an estimate of
7 Odyssey's ECU cost done by Pete DeAngelis in
8 November of 1997.
9 Q And was it utilized in any of the
10 business plans that were prepared for Odyssey?

11 A No.
12 Q How come?
13 A There was no business plan in November
14 of '97.
15 Q Well, I mean the later business plans.
16 A No, that wasn't used. The information
17 is not accurate. It says 2,100 kilowatt hours per
18 ton, and Odyssey's plant was [REDACTED]
19 [REDACTED]
20 [REDACTED] the plant
21 would have been 100 percent out of business.
22 Q The bipolar cells are the ones that
23 have a lower electric usage?
24 A Yes, but each cell has a higher volume.
25 Q Earlier I asked you if there were any

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1 disadvantages to the bipolar cells and you said no,
2 but apparently there is a disadvantage?
3 A Yes, they're not suitable for [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 Q Are they suitable for a 50 ton a day
7 plant?
8 A Absolutely, and the technology is
9 better now, and you probably could build a 30 ton a
10 day plant with a new bipolar cell.
11 Q How many bipolar cells would be
12 required for a 50 ton a day plant?
13 A Two.

14 Q So if one of them failed, it would be a
15 much bigger deal than in a monopolar plant where
16 you might have 15 or 16 or 17 or 18 of those cells?

17 A Sure, but the new cells can ramp up to
18 nearly double the speed for a period of time while
19 the first one is fixed.

20 Q Is there an interval at which the FM
21 1,500 cells have to be refurbished?

22 A Yes.

23 Q What's involved in that?

24 A The membranes are changed and the
25 gasket is replaced.

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1 Q And at what interval is that done?

2 A Between three and seven years of
3 operation.

4 Q And has Odyssey been -- has Odyssey
5 refurbished any of its cells?

6 A Odyssey has refurbished all but a few.

7 Q Where is the refurbishment done?

8 A In the cell maintenance room adjacent
9 to the cell room.

10 Q It's done on the premises?

11 A Certainly.

12 Q Who does it?

13 A Odyssey staff.

14 Q You don't have to send the cells back
15 to Ineos or have Ineos personnel come in to do it?

16 A No.

17 Q what are the costs involved in
18 refurbishing a cell?

19 MR. SMITH: Objection. Same objection.
20 Same instruction.

21 Q (BY MR. BANDKLAYDER) How often do you
22 have to replace the membranes?

23 A Every three to seven years.

24 Q Is that what Odyssey's experience has
25 been?

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1 A Yes.

2 Q How many membranes have you replaced so
3 far?

4 A All but a few.

5 (Thereupon, the document referred to
6 was marked for identification as Plaintiff's
7 Exhibit No. 9.)

8 Q (BY MR. BANDKLAYDER) Moving on to the
9 next exhibit, which would be SS9. Have you
10 refurbished any anodes?

11 A A few.

12 Q Is that done on premises as well?

13 A Those were just replaced.

14 Q Instead of refurbished them?

15 A Yes.

16 Q Have you had a chance to look at
17 Exhibit No. 9?

18 A Okay.

19 Q Now, Mr. Allman said that most of the

20 information in this document came from you,
21 although he concedes that he edited it. Is that
22 true?

23 A Yes, some of this information came from
24 me.

25 Q On the second page of this exhibit, the

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1 second paragraph says, the plant's estimated costs
2 to produce a gallon of bleach is about blank, and
3 it's redacted out. I'm not asking what your cost
4 now is, but what was it estimated to be at that
5 time prospectively?

6 A I don't know what cost he was referring
7 to. There's a loose cost of raw materials, the
8 electricity and the salt, which is a fairly low
9 number, and then after you spend the money on the
10 plant itself and the operators, and that's quite a
11 high number. I don't know which number he would
12 have referred. He probably would have used the
13 lower number because it's more impressive to his
14 supervisor.

15 Q Let's assume he was using the total
16 number since he then goes on to talk about the
17 competitors's costs in the same paragraph. What do
18 you recall the total number being at that time?

19 MR. SMITH: Same objection. Same
20 instruction.

21 Q (BY MR. BANDKLAYDER) He then says, the
22 other six competitors' in the state costs are

23 estimated to range between blank and blank. what
24 were those figures that you gave him?

25 A Those would have been raw material

281

1 costs.

2 Q Do you recall what they were?

3 A No.

4 Q And then it goes on to say the
5 production costs competitive advantage of this
6 plant is due to the fact that they will make their
7 own caustic and chlorine rather than purchase these
8 raw materials in the production of the bleach.

9 Is that information he obtained from
10 you?

11 A Not verbatim.

12 Q What is it that you think is different
13 than what you told him?

14 A If we had talked about total cost, I
15 would have told him that we did not expect
16 Odyssey's total cost always to be less than the
17 competitors's. If we talked about raw material
18 costs, I did expect Odyssey's raw material costs
19 always to be cheaper than the competitors because
20 it's salt against processed chlorine and caustic
21 soda transported to Florida.

22 Q If you didn't expect Odyssey's total
23 cost to be less than its competitors, how did you
24 expect Odyssey to make money?

25 A The competitors made money. I don't

1 understand the question.

2 Q well, how would Odyssey have a

3 ~~competitive advantage if its costs were no lower~~

4 than its competitors?

5 A Some years they would be lower. Some
6 years they weren't. When the competitors's costs
7 were high, Odyssey could say -- when competitors's
8 costs were low, Odyssey could say, sure, today is
9 cheaper but ours don't change much, and we thought
10 that would be an advantage in the water plants.

11 Q It then goes on to say in the next
12 sentence, these production costs are based on
13 blank, with the information redacted out, per
14 megawatt hour electric cost, which the company used
15 in its business plan. That would have referred to
16 the

17 A I could assume that just like you are.

18 MR. SMITH: The question is do you
19 know.

20 THE WITNESS: I have no idea.

21 Q (BY MR. BANDKLAYDER) And then two
22 sentences further along, it reads, additionally,
23 the cost advantages associated with building a new
24 bleach plant are significant enough that it is
25 expected that other competitors will do so in the

1 next ten years and most of the existing bleach
2 plants will go out of business. Where did you get
3 that information from?

4 A He made that up.

5 Q Mr. Allman made that up?

6 A Yes.

7 Q That was pure fiction as far as you
8 were concerned?

9 A No. We thought that some existing
10 companies within ten years might build membrane
11 cell plants. That hasn't happened. There are none
12 in the U.S. because the price of caustic soda and
13 chlorine has gone down, but I told Pat that
14 somebody will copy this, and he apparently
15 exaggerated it and said that everybody will copy
16 it. We are surprised that nobody copied it in the
17 whole country.

18 Q Is it your testimony that you never
19 told him that in your opinion most of the existing
20 bleach plants will go out of business?

21 A I did not tell him that.

22 Q Did you tell him anything like that?

23 A I don't recollect telling him anything
24 to those -- in that context, no.

25 Q Do you and he get along?

1 A Yes.

2 Q He said you didn't.

3 A I heard that.

4 MR. SMITH: Object to the form.

5 Misstates testimony.

6 Q (BY MR. BANDKLAYDER) But you don't
7 agree with that? You think that you do get along?

8 A I think I do get along.

9 Q Apparently this is something that the
10 two of you don't agree, that is whether or not you
11 get along?

12 MR. SMITH: Objection to the form of
13 the question. Misstates Allman's testimony.

14 Q (BY MR. BANDKLAYDER) Mr. Allman said
15 that one of the reasons Mr. Rakes was brought in
16 was to act as a buffer between you and Mr. Allman.
17 Is that true?


18 A No.

19 Q And specifically he said that because
20 you and he don't get along, Mr. Rakes was brought
21 in as a buffer between the two of you.

22 MR. SMITH: Objection to the form of
23 the question. Misstates the testimony.

24 THE WITNESS: I have no knowledge to
25 that, no.

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1 Q (BY MR. BANDKLAYDER) On the last
2 sentence of this page, it says the customer has
3 expressed a desire to obtain  per megawatt hour
4 electric power pricing. Was that true?

5 A That's what he told me to ask him.

6 Q Does Odyssey plan to keep Mr. Allman on
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7 after his contract expires and this lawsuit is
8 presumably over?

9 A Yes.

10 (Thereupon, the document referred to
11 was marked for identification as Plaintiff's
12 Exhibit No. 10.)

13 Q (BY MR. BANDKLAYDER) Have you ever
14 seen this before?

15 A No.

16 Q It says in paragraph 3 of this document
17 that the proposed Sentry Industries bleach plant is
18 not designed to compete with any of these existing
19 companies. The existing companies being Allied and
20 others. Is that true?

21 A That's largely true, yes.

22 Q In fact, doesn't Odyssey compete with
23 Allied or perhaps CFI or both?

24 A Odyssey competes with Allied for the
25 utility business and possibly some industrial

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1 business, but we don't -- we don't compete with
2 Allied in their core business, which is swimming
3 pools.

4 Q In what areas does Odyssey not compete
5 with Allied? Is there any type of customer for
6 which Allied and Odyssey do not compete?

7 A Odyssey doesn't compete with Allied for
8 most of their present business. Now, in the years
9 after the startup when Odyssey was undersold, they

10 called on swimming pool accounts. They called on
11 James Austin, a bleach repackager for which
12 business Allied also competed.

13 They bid one year on a pinch a penny
14 contract for the zone -- I believe zone 3, which
15 would encompass Sarasota, and they did not win
16 that, but in more recent years, I don't think we
17 call on Allied's pool accounts, which are about
18 [REDACTED] gallons out of [REDACTED]
19 So we are not trying to take [REDACTED] gallons out
20 of [REDACTED].

21 Q What types of business does Odyssey
22 have that it's not in competition with Allied for,
23 if any?

24 A Allied can compete with Odyssey, but we
25 didn't take Allied's business is my point.

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1 Q My question is what types of customer
2 does Odyssey have that it does not compete with
3 Allied for?

4 A When you phrase it that way, Allied
5 could compete for every Odyssey customer, that's
6 correct, but Odyssey cannot compete for every
7 Allied customer because most of them are too
8 seasonal, and Odyssey wants to run the plant 24/7,
9 even in December, January and February when the
10 pool companies buy little or nothing.

11 Q It says here that Allied is actually a
12 potential customer for the Odyssey facility.

13 A I saw that.
14 Q Was that part of Odyssey's business
15 plan?
16 A No.
17 Q Did it ever -- did Odyssey ever
18 consider selling to Allied?
19 A Yes, we considered it.
20 Q What was the decision?
21 A The decision was not to do it.
22 Q Why was that?
23 A We decided it wasn't in our best
24 interest.
25 Q Why was it not in your best interest?

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1 (Thereupon, there was a discussion off
2 the record.)
3 THE WITNESS: A decision I made as the
4 executive in charge of the direction of the
5 company. We would be independent and make our
6 way as best we could by ourselves.
7 Q (BY MR. BANDKLAYDER) Well, what you
8 want to do with Odyssey is sell bleach, right?
9 A Yes.
10 Q And hopefully make money doing it?
11 A Yes.
12 Q And did there come a point in time
13 where someone from Allied contacted you and asked
14 if Odyssey would sell bleach to Allied?
15 A Yes.

16 Q Who was that?

17 A Jim Palmer.

18 Q And when did that happen?

19 A It happened before Odyssey started up,
20 and it happened again after the lawsuit was dropped
21 before the amended complaint was filed. We had a
22 settlement conference.

23 Q So Mr. Palmer -- I'm not asking about
24 any settlement conferences. Put that aside because
25 that's inadmissible, but so Mr. Palmer called you

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1 before the Odyssey plant actually started
2 commercial operations and inquired as to whether
3 Odyssey would sell to Allied?

4 A I'm not absolutely sure of the timing.
5 I believe it was before Odyssey started up.

6 Q Maybe it was after Odyssey started?

7 A Maybe it was after.

8 Q Somewhere in that general time frame he
9 made that call?

10 A Yes.

11 Q Did he speak to you personally?

12 A Yes.

13 Q And you knew Mr. Palmer from before,
14 didn't you?

15 A Yes.

16 Q And for how long have you known Mr.
17 Palmer?

18 A About 15 years.

19 Q And how long of a conversation did you
20 have when Mr. Palmer called you?

21 A We had lunch.

22 Q Where did you go for lunch?

23 A I don't remember.

24 Q Who asked for the lunch meeting?

25 A Palmer.

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1 Q And when he first called you to see if
2 you could meet with him for lunch, did he tell you
3 what topic it was that he hoped to discuss with
4 you?

5 A No.

6 Q So what happened when the two of you
7 went to lunch? First of all, was anybody else
8 there?

9 A No.

10 Q Just the two of you?

11 A Yes.

12 Q What did he say to you and what did you
13 say to him?

14 A He said I know you're building a
15 membrane cell plant in Tampa, which would date it
16 prior to the startup because after the startup,
17 everybody knew we were in business. He said that
18 Allied would be interested in purchasing some or
19 all of the tonnage and solve our sales problem for
20 us.

21 Q Solve whose sales problem?

22 A Odyssey.
23 Q In other words, if Odyssey --
24 A He didn't use those words.
25 Q Basically --

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1 A He could sell out the plant for me like
2 that.

3 Q The idea he was conveying was you would
4 be an overnight success? You would instantly sell
5 out all of your production?

6 A That was his argument.

7 Q what did you say to him?

8 A I believe I told him I would think
9 about it and I decided later against it and
10 informed him of my decision.

11 Q What was the basis for your deciding
12 not to sell to Allied?

13 A It put a ceiling on the amount of money
14 we would ever make. No matter what market prices
15 for bleach were, we would be locked into a lower
16 number with Allied and never realize our full
17 potential, but it took away the risk. I decided to
18 take the risk rather than take the easy road.

19 Q Did you discuss Mr. Palmer's proposal
20 with any of the other people associated with
21 Odyssey?

22 A No.

23 Q If you had accepted Mr. Palmer's
24 proposal and agreed upon terms -- well, first of

25 all, you wouldn't have had to worry about sales

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1 obviously because all of your production would
2 already be presold, right?

3 A Presumably.

4 Q And in addition, it would have been
5 sold at a price that obviously the two of you would
6 have had to have agreed upon, right?

7 A We never got that far.

8 Q And you wouldn't have had to -- well,
9 did Mr. Palmer talk with you about how it would
10 work in terms of truck and deliveries if Allied
11 were to buy Odyssey's production?

12 A We never got that far.

13 Q Did it occur to you that it would save
14 Odyssey -- potentially save Odyssey all the expense
15 of having to have a fleet of trucks and to make
16 deliveries?

17 A No.

18 Q Did it occur to you that it would save
19 Odyssey the expense of perhaps having to pay sales
20 commissions?

21 A No.

22 Q Did it occur to you that it would save
23 Odyssey all marketing expenses? In other words,
24 there would be no marketing expenses?

25 A Those are all profitable areas for

1 Allied. I understood that I would be giving away
2 several profitable areas and limit the amount of
3 money I would ever make. Allied wasn't going to do
4 those for me below their own cost. They are making
5 money on every single thing you mentioned, and that
6 would have prevented me from making money on those
7 same areas. I decided to spend the trouble and
8 take the risk. It was a business decision.

9 Q Were there any other reasons why you
10 decided that you would not sell any of Odyssey's
11 bleach to Allied?

12 A Not that I recall.

13 Q Is there any reason why you didn't
14 elect to sell a portion of Odyssey's bleach to
15 Allied? In other words, given that you decided you
16 would not sell all of Odyssey's output to Allied,
17 did you consider perhaps selling some portion of
18 the production to Allied?

19 A We considered it but we sold it
20 elsewhere.

21 Q Why did you -- I understood from what
22 you told me a few minutes ago that Mr. Palmer
23 proposed to buy some or all of Odyssey's bleach.
24 So my question is why did you elect to not even
25 sell a portion of Odyssey's bleach to Allied?

1 A Because Allied wanted a long-term

2 commitment. Most of our sales were day to day.

3 Q Wasn't part of your early marketing
4 plan to sell at long-term fixed pricing?

5 A We discussed trying to convert
6 utilities who used chlorine gas to bleach, and we
7 discussed offering them, if it were in their own
8 best interest, the opportunity to buy a longer term
9 contract than one year if they saw it as an
10 advantage.

11 Q So why wouldn't Odyssey want -- why
12 didn't you on behalf of Odyssey want to at least
13 ensure that some portion of Odyssey's bleach would
14 be sold for certain to a customer like Allied on a
15 long-term basis?

16 A Because it's only worth the chlorine
17 and caustic to Allied. It's worth the value of
18 bleach to the utility, and we make a living from
19 the spread. It's fairly simple.

20 Q How come then you sell to other bleach
21 manufacturers?

22 MR. SMITH: Other than the reasons he's
23 already given at length?

24 Q (BY MR. BANDKLAYDER) Other than
25 Allied. You told us you won't sell to Allied but

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1 you sell to other bleach manufacturers?

2 MR. SMITH: He's testified at length
3 why he's selling to them.

4 MR. BANDKLAYDER: He testified at

5 length as to why they buy from him. This is a
6 very different question. This is the opposite
7 question.

8 MR. SMITH: I presume this is relevant
9 to something in this lawsuit?

10 MR. BANDKLAYDER: Yes, I'm quite sure
11 it is.

12 MR. SMITH: I hope it's cozy.

13 MR. BANDKLAYDER: Or else?

14 MR. SMITH: Seems like we are wasting a
15 lot of time here on this issue.

16 Q (BY MR. BANDKLAYDER) The question
17 is --

18 MR. SMITH: Is there some allegation
19 for him to sell to Allied? Is there something
20 in this case we are suing because you refused
21 to sell to us?

22 MR. BANDKLAYDER: Are you instructing
23 him not to answer?

24 MR. SMITH: No. Just a little
25 frustrated we're going down a rabbit hole that

1 has nothing to do with that case.

2 Q (BY MR. BANDKLAYDER) Why is it that
3 Odyssey is willing to sell to other Florida bleach
4 manufacturers but it will not sell to Allied?

5 A We sell to [REDACTED] originally because
6 we were overproduced, and they would buy it on a
7 day-to-day contract as long as we had excess. We

8 sell to [REDACTED] as emergency backup because they
9 provide emergency back-up for us. Same deal with
10 [REDACTED]. We provide emergency back-up to [REDACTED].
11 [REDACTED] provides emergency backup to Odyssey. Same
12 thing with Sentry. All other transactions are at
13 market prices.

14 Allied never talked about market
15 prices. Allied was talking more on the level of
16 what the chlorine and caustic would be worth to
17 them. Maybe a tolling fee to turn it into bleach
18 but not a retail bleach price.

19 If Allied had to turn around and sell
20 it, there wouldn't have been any room, and the fact
21 that it was long-term, was a low price at long-term
22 was the worst thing that we could have signed up
23 for. We took a low price for a short term.

24 Q I thought you told me earlier that your
25 discussions with Jim Palmer never got to the point

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1 of discussing price?

2 A Right.

3 Q What's your basis for saying that
4 Allied was only to willing to pay a low price?

5 A Because Allied had to resell.

6 Q Don't the other bleach manufacturers
7 have to resell it also, [REDACTED],
8 Sentry?

9 A Yeah, but it's all -- yeah, [REDACTED]
10 decided it was worth it at that price rather than

11 add capacity. Allied is not at capacity.
12 Everybody else only buys in emergency when the
13 option is to be out of it. I don't know why
14 [REDACTED] bought it. Frankly I'm surprised.

15 MR. BANDKLAYDER: Glenn, what do you
16 want to do? I've got a fairly significant
17 amount of stuff to go through. I don't want
18 to ruin your Christmas party. If you want to
19 break, I mean we can pick up on one of the
20 other days we talked about.

21 MR. SMITH: why don't we take a short
22 break anyway for a minute, okay?

23 MR. BANDKLAYDER: Sure.

24 (Thereupon, the deposition was
25 adjourned at 3:50 p.m.)

1
2 EXCEPT FOR THE CORRECTIONS
3 MADE HEREIN BY ME, I CERTIFY
4 THIS IS A TRUE AND ACCURATE
5 TRANSCRIPT.
6 FURTHER DEPONENT SAYETH NOT

7 _____
8 DEPONENT

9 STATE OF FLORIDA)
10 COUNTY OF BROWARD) ss:

11 Sworn and subscribed to before me this
12 ____ day of _____, 2004

13 PERSONALLY KNOWN _____ OR I.D. _____.

14 _____
15 Notary Public in and for
16 the State of Florida at
17 Large.

18 My commission expires: _____.

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E R R A T A S H E E T

In Re: Allied Universal Corporation, et al. v.
Odyssey Manufacturing Company, et al.
Case No. 01-27699 CA 25
DO NOT WRITE ON TRANSCRIPT -- ENTER CHANGES HERE:

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STATE OF FLORIDA)
)SS
COUNTY OF BROWARD)

Under penalties of perjury, I declare
that I have read my deposition and that it is true
and correct subject to any changes in form or
substance entered here.

DATE STEPHEN SIDELKO

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CERTIFICATE OF OATH

STATE OF FLORIDA)
)SS:
COUNTY OF BROWARD)

I, JAMIE TAYLOR, RPR-CCR, Notary Public in and
for the State of Florida at Large, certify that the
witness, STEPHEN SIDELKO, personally appeared
before me and was duly sworn.

WITNESS my hand and official seal this 23rd
day of December, 2003.

JAMIE TAYLOR, CCR-RPR
Notary Public, State of Florida
My Commission expires 8/25/04.
No. CC966638

REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA)
)SS:
COUNTY OF BROWARD)

I, JAMIE TAYLOR, Registered Professional
Reporter, certify that I was authorized to and did
stenographically report the deposition of STEPHEN
SIDELKO, the witness herein; that a review of the
transcript was not waived; that the foregoing pages
numbered from 146 to 300, inclusive, is a true and
complete record of my stenographic notes of the
deposition by said witness; and that this
computer-assisted transcript was prepared by me.

I further certify that I am not a relative,
Page 140

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20 employee, attorney or counsel of any of the
21 parties, nor am I a relative or employee of any of
the parties' attorney or counsel connected with the
22 action.

23 DATED this 23rd day of December, 2003.

24 JAMIE TAYLOR, RPR, CCR

25

301

1 PEGGY ANN COOK & ASSOCIATES, INC.
2 19 West Flagler Street, Suite 1020
3 Miami, Florida 33130
305/371-1884

4
5 December 23, 2003

6 Mr. Stephen Sidelko
7 c/o Ruden McClosky
200 E. Broward Blvd.
8 Ft. Lauderdale, FL 33301

9 RE: Allied v. Odyssey

10 This letter is to advise you that the transcript of
your deposition taken in the above-styled cause on
11 December 18, 2003 has been completed and is
awaiting your reading and signing.

12 Please arrange to stop by our office in suite 1020,
19 West Flagler Street, Miami, Florida, to read and
13 sign this transcript. Office hours are from 8:00
a.m. to 4:00 p.m. Monday through Friday. The
14 transcript is 155 pages long, and you should allow
yourself sufficient time.

15 If the reading and signing has not been completed
16 prior to January 25, 2004, we shall conclude that
you have waived the reading and signing of the
17 transcript.

18 Your prompt attention to this matter is
appreciated.

19 Sincerely,

20

21 Jamie Taylor, CCR, RPR

22 cc: Original transcript

23 Daniel Bandklayder, Esq.
24
25

302

1 PEGGY ANN COOK & ASSOCIATES, INC.
2 19 West Flagler Street, Suite 1020
3 Miami, Florida 33130
4 305/371-1884

5 January 25, 2004

6 Mr. Daniel Bandklayder
7 Ste. 4300
8 100 S.E. Second Street
9 Miami, FL 33131

10 RE: Allied v. Odyssey
11 Dear Mr. Bandklayder:

12 The original transcript of the deposition of
13 STEPHEN SIDELKO taken on December 18, 2003 in the
14 above cause is enclosed for your files.

15 The witness did not waive reading and signing and
16 was duly notified to come in and read the
17 deposition transcript.

18 — Attached to this letter you will find a copy
19 of the corrections made by the witness.
20 Please attach them to your copy of the
21 deposition so it will be complete.

22 — As of the above date, the witness has not come
23 in to read and sign the transcript, which has
24 been noted on the original transcript.

25 Sincerely,

Jamie Taylor, CCR, RPR

cc: Glenn Smith, Esq., Ruden & McClosky, 200 E.
Broward Blvd., Ft. Lauderdale, FL 33131

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ATTACHMENT 3

ERRATA SHEET

CERTIFICATE


I, STEPHEN SIDELKO, do hereby certify that I have read the transcript of my deposition taken on December 18, 2003 and that to the best of my knowledge, said transcription is true and accurate (with the exception of the following corrections listed below).

If I make changes in form or substance to the deposition, I understand that I must give a reason for the change (pursuant to Florida Rule 1.310-e).

<u>PAGE</u>	<u>LINE</u>	<u>CHANGE</u>	<u>REASON</u>
202	20	Add "including" before "tax"	Missed word
203	8	In the first sentence, delete "was" and substitute "may have been some". After "leeway", add "subject to what the Bank would have allowed as a condition of financing".	Incomplete answer
205	10	Delete "The number was not important to me". Substitute "I'm not sure at this point. As I said before, what was important to me was obtaining a CISR tariff rate, which had been offered to me at [REDACTED]".	Misunderstood question and clarification
252	2	Delete "built the plant" and substitute "considered that rate, subject once again to what the Bank would have allowed as a condition of financing".	Incomplete answer and clarification
283	4	Delete "He made that up". Substitute "I didn't get that information".	Misunderstood question
284	6	Delete "yes". Substitute "I believed that at least some existing plants would be replaced by Odyssey-type cell plants and may have communicated that to Pat".	Mistake

Dated:

JAN. 23, 2004



 Stephen Sidelko