

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: November 19<sup>th</sup>, 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. )  
\_\_\_\_\_ )

**ODYSSEY MANUFACTURING COMPANY'S SUPPLEMENT  
TO RENEWED REQUEST FOR CONFIDENTIALITY**

Odyssey Manufacturing Company ("Odyssey"), supplements its October 21, 2004 Renewed Request for Confidentiality rendering certain documents the Commission previously found to be entitled to protection against public disclosure, and says:

1. Odyssey joins in support of Tampa Electric Company's November 19, 2004 Supplement to Request for Extension of Confidential Classification.
2. Odyssey would add further that the Circuit Court has acted to protect Odyssey's proprietary confidential business information related to Odyssey's electric rate. Please see for example the attached Motion to Seal Documents in Court File, the September 21, 2004 transcript of the proceedings thereon, and the Court's Order. *Allied Universal Corporation and Chemical Formulator, Inc. v. Odyssey Manufacturing Company and Sentry Industries, Inc.*, Case No. 01-27699.

Wherefore, Odyssey Manufacturing Corporation requests that its Renewed Request for Confidentiality be granted.



DOCUMENT NUMBER-DATE  
12442 NOV 19 04  
FPSC-COMMISSION CI FRK

Respectfully submitted this 19<sup>th</sup> day of November, 2004.

  
WAYNE L. SCHIEFELBEIN  
Of Counsel  
ROSE, SUNDSTROM & BENTLEY LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301  
(850) 877-6555  
(850) 656-4029 (Fax)  
*Attorneys for Odyssey Manufacturing Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Confidential Classification has been furnished via U.S. Mail to the following on this 19<sup>th</sup> day of September, 2004:

Kenneth A. Hoffman, Esq.  
J. Stephen Menton, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P.O. Box 551  
Tallahassee, FL 32302

Daniel K. Bandklayder, Esq.  
Anania, Bandklayder, Blackwell,  
Baumgarten, Torricella & Stein  
100 S.E. 2<sup>nd</sup> Avenue, Suite 4300  
Miami, FL 33131

James D. Beasley, Esq.  
Ausley & McMullen  
227 South Calhoun Street  
P.O. Box 391  
Tallahassee, FL 32302

Harry W. Long, Jr., Esq.  
Tampa Electric Company  
702 N. Franklin St., 6<sup>th</sup> Floor  
Tampa, FL 33602

Martha C. Brown, Esq.  
Marlene K. Stern, Esq.  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Harold McLean, Esq.  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, Florida 32399-1400



Wayne L. Schiefelbein

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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

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**ORDER ON**  
**DEFENDANTS' MOTION TO SEAL DOCUMENTS IN COURT FILE**  
**AND SUPPLEMENTAL MOTION TO SEAL DOCUMENTS IN COURT FILE**

THIS CAUSE having come on to be heard on Defendants' Motion to Seal Documents in Court File and Supplemental Motion to Seal Documents in Court File, and the Court having heard argument of counsel and otherwise being fully advised in the premises, it is hereby

CONSIDERED, ORDERED AND ADJUDGED:

1. Defendants' Motions are hereby granted.
2. The Clerk of the Court is instructed to seal the following documents contained within the Clerk's file for the above-captioned matter:

(a) Steven Sidelko's Deposition attached to Plaintiffs' Notice of Filing dated January 21, 2004.

(b) Patrick Allman's Deposition filed on April 27, 2004.

(c) Lawrence Rodriguez's Deposition filed on November 10, 2003.

3. The Clerk is instructed to not allow public access or review of the three documents sealed pursuant to paragraph 2 above absent further Court order.

4. This Order sealing the above-described documents shall survive the conclusion of the captioned matter.

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

CIRCUIT COURT JUDGE  
**Conformed Copy**

Copies Furnished:

OCT 13 2004

Bryan S. Greenberg, Esq., Ruden McClosky, P.O. Box 1900, Fort Lauderdale, Florida 33302; Phone: (954) 527-2472  
Dale P. Chavies  
Circuit Court Judge

Lawrence D. Silverman, Esq., Akerman, Senterfitt & Eidson, P.A., SunTrust International Center, 28th Floor, One Southeast Third Avenue, Miami, Florida 33131-1704

Daniel K. Bandklayder, Esq., Anania, Bandklayder, et al. 4300 Nations Bank Tower, 100 Southeast Second Street, Miami, Florida 33131

Kenneth A. Hoffman, Esq., Rutledge, Ecenia, Purnell & Hoffman, P.A., 215 South Monroe Street, Suite 420, P.O. Box 551, Tallahassee, FL 32302

Wayne Schiefelbein, Esq., Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, FL 32301

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

GENERAL JURISDICTION DIVISION

CASE NO. 01-27699 CA 25

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

**ORIGINAL**

Plaintiffs,

vs.

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

Defendants.

\_\_\_\_\_  
Miami, Florida  
September 21, 2004

The above-entitled case came on for hearing  
before the Honorable Michael B. Chavies, Judge of  
the above-styled court, at the Miami-Dade County  
Courthouse, commencing at 1:25 p.m.

P R O C E E D I N G S

## 1 APPEARANCES:

2 DANIEL K. BANDKLAYDER, ESQ.  
3 of the firm of ANANIA, BANDKLAYDER,  
4 BLACKWELL, & BAUMGARTEN  
5 on behalf of the Plaintiffs

6 LAWRENCE D. SILVERMAN, ESQ.  
7 of the firm of AKERMAN SENTERFITT  
8 on behalf of the Plaintiffs

9 GLENN N. SMITH, ESQ. and  
10 BRYAN S. GREENBERG, ESQ.,  
11 of the firm of RUDEN, MCCLOSKEY, SMITH  
12 SCHUSTER & RUSSELL  
13 on behalf of the Defendants

14 Also present:

15 Stephen W. Sidelko

16

17

LANCE W. STEINBEISSER,  
Registered Professional Reporter  
Certified Court Reporter (Texas)

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1 (In open court:)

2 THE COURT: Come on up.

3 Okay. Announce your appearances for the  
4 Court, please.

5 MR. BANDKLAYDER: Dan Bandklayder and  
6 Larry Silverman for the Plaintiffs, Allied  
7 and CFI.

8 THE COURT: Okay.

9 MR. GREENBERG: Bryan Greenberg and  
10 Glenn Smith for the Defendants, and with us  
11 is Mr. Steve Sidelko.

12 THE COURT: Okay. Where did we leave  
13 off, folks?

14 MR. GREENBERG: Judge, there was a  
15 series of exceptions that the plaintiffs had  
16 filed to General Master Farrell's rulings.  
17 We had not reached all of them. And in  
18 addition, there's a motion to seal certain  
19 deposition transcripts that have been filed  
20 with the clerk of the court here that we have  
21 asked to be sealed.

22 THE COURT: That's something new I  
23 hadn't --

24 MR. GREENBERG: No, sir. It was set at  
25 the last hearing but we didn't reach it and



1           it was reset again for today. We would  
2           request that we could hear that first, if  
3           possible.

4           THE COURT: Fine.

5           MR. GREENBERG: Your Honor, the motion  
6           to seal -- I don't know if the Court has a  
7           copy, but I have a courtesy copy here for the  
8           Court. I don't know that it was a part of  
9           the binder.

10          THE COURT: I don't know either. But if  
11          you have it there --

12          MR. GREENBERG: If I may approach.

13          THE COURT: Yes.

14          MR. GREENBERG: Thank you.

15          During the proceedings on the motion for  
16          summary judgment that the defendants filed  
17          that the Court granted in part, the  
18          plaintiffs filed with the clerk of the court  
19          deposition transcripts of two either  
20          principals or employees of the defendants,  
21          Mr. Sidelko and Mr. Allman.

22          THE COURT: Okay.

23          MR. GREENBERG: There is a  
24          confidentiality protective order that's in  
25          place that is attached to the motion to seal

1 as Exhibit A --

2 THE COURT: All right.

3 MR. GREENBERG: -- which requires that  
4 before such deposition transcripts be filed  
5 by either party that they go through a  
6 procedure by transmitting notice to the other  
7 side, letting them know that they want to  
8 submit that. And if there's no objection,  
9 they can then file it; otherwise, if there's  
10 an objection, it would be filed under seal so  
11 that the confidential matter contained within  
12 that transcript would be protected from  
13 public disclosure. That's the procedure  
14 that's laid out in the agreed protective  
15 order signed by the parties.

16 The agreement provides -- and basically  
17 the scope of the agreement is all discovery  
18 produced by the parties, be it documents, be  
19 it depositions, everything is covered in the  
20 definition of confidential material, the idea  
21 being that absent the party asserting that  
22 something is not confidential, there will be  
23 a presumption that it is and then that will  
24 eliminate the need to discuss every single  
25 thing that the parties are going to use in

1 the case.

2 THE COURT: Okay.

3 MR. GREENBERG: The agreement further  
4 provides that all such materials will be  
5 either designated confidential by putting on  
6 them that they're confidential or by any  
7 other reasonable method as agreed to by the  
8 parties.

9 And what was discussed between  
10 counsel -- and I filed an affidavit in  
11 support of this motion. At the very  
12 beginning of this lawsuit when this order was  
13 entered, what was agreed to was that as far  
14 as the parties' materials and depositions and  
15 things where we're producing confidential  
16 business information, everything will be  
17 confidential. We don't need to stamp things  
18 or designate things or go through that  
19 unnecessary exercise. And that's the way we  
20 proceeded in this case, both sides. There  
21 were some documents produced that had a stamp  
22 of confidential but most did not.

23 None of the deposition transcripts were  
24 designated confidential in any way up until  
25 the case was two years old and many, many

1 party depositions had taken place.

2 Despite the contents of the protective  
3 order and despite the procedure laid out in  
4 there and the agreement of the parties, in  
5 opposition to the defendants' motion for  
6 partial summary judgment, the plaintiffs  
7 filed these two transcripts, Mr. Sidelko and  
8 Mr. Rakes, and they failed to follow  
9 procedure and they became in essence public  
10 record at that time in the Miami-Dade County  
11 Clerk's Office.

12 We had filed a motion to seal the court  
13 file with regard to those deposition  
14 transcripts because they contain confidential  
15 proprietary business information about the  
16 two defendant entities as well as about  
17 Mr. Sidelko and Mr. Allman. There will be no  
18 prejudice to the plaintiffs. They have full  
19 use of these documents. We just don't want  
20 them in the court file, open to the public.

21 And the thing that necessitated this  
22 motion is that after the plaintiffs filed  
23 these transcripts in our courthouse, in the  
24 PSC matter in Tallahassee they jumped all  
25 over it and said well, now these transcripts

1 are public records. And they went down to  
2 the clerk's office allegedly and copied them  
3 and now filed them for public disclosure up  
4 in Tallahassee.

5 So we've now had to, A, file a request  
6 in Tallahassee to keep those transcripts  
7 confidential, and I've now followed suit here  
8 to seek the same confidential status.

9 THE COURT: Okay. Sir?

10 MR. BANDKLAYDER: Well, in response,  
11 Your Honor, I believe Mr. Greenberg has  
12 completely misstated the terms of the  
13 protective order that we have in this case.  
14 If -- I think it's attached to the motion.

15 THE COURT: I have it right here in  
16 front of me.

17 MR. BANDKLAYDER: It's a five-page order  
18 that was carefully negotiated at the time  
19 that it was signed by Judge Bloom. And  
20 contrary to what Mr. Greenberg has just  
21 stated, this order does not blanketedly apply  
22 to all discovery in this case; to the  
23 contrary.

24 On Page 1, Paragraph A at the bottom, it  
25 says that the following shall be deemed

1 confidential: Any written, recorded or  
2 graphic materials or documents, tangible  
3 items or any other form of information that a  
4 party produces in this case which a party in  
5 good faith believes to contain trade secrets  
6 or confidential, sensitive or proprietary  
7 commercial information. And then Paragraph 2  
8 on the next page says, the herein described  
9 confidential information shall be designated  
10 as such by stamping the word "confidential"  
11 on the documents or by any other reasonable  
12 method as agreed to by the parties.

13 THE COURT: So you're saying the  
14 depositions don't fall within the four  
15 corners of this?

16 MR. BANDKLAYDER: Yes, because they were  
17 never designated by the defendants as  
18 confidential in any way, shape or form. We  
19 filed these depositions January of this year  
20 and April of this year. These things have  
21 been filed in the public record for eight  
22 months as to some of them and for five months  
23 as to others of them. The toothpaste is out  
24 of the tube on this, Judge.

25 I don't think you can take something

1 that's been of public record for nine months  
2 and then retroactively seal it. I suppose  
3 you can sign a paper that does that, but as a  
4 practical matter, as they say, the toothpaste  
5 is out of tube. The first time that this  
6 case up in terms of confidentiality was just  
7 this July, a few days before a Public Service  
8 Commission hearing when all of a sudden the  
9 defendants decided they wanted to try to seal  
10 these things because they didn't want the  
11 Office of Public Counsel to know what was  
12 going on in this case with their discounted  
13 electric rate.

14 But be that as it may, Judge, the test  
15 here under the Rules of Judicial  
16 Administration is whether the defendants have  
17 shown that there are trade secrets that must  
18 be protected, and there's no less restrictive  
19 means other than sealing these deposition  
20 transcripts, and they haven't even come close  
21 to making that sort of showing.

22 THE COURT: Well, upon a new  
23 application, I guess. But let's look back  
24 then at the protective order.

25 Mr. Greenberg, it doesn't reference

1 depositions, does it?

2 MR. GREENBERG: Yes, sir, it does.

3 THE COURT: Where?

4 MR. GREENBERG: If you look at  
5 Paragraph 1A, first of all, it generically  
6 describes any documents, tangible items or  
7 any other form of information that a party  
8 produces in this case. And then it goes on  
9 in Paragraph 3E, if you'll read 3E, it  
10 specifically mentions deposition transcripts  
11 repeatedly and says --

12 THE COURT: Okay. I haven't read that  
13 part. Let's see.

14 MR. GREENBERG: Okay.

15 MR. BANDKLAYDER: Judge, I don't have a  
16 problem with him including deposition  
17 transcripts --

18 THE COURT: Okay.

19 MR. BANDKLAYDER: -- within the scope of  
20 the protective order. But what I'm  
21 suggesting is -- what I'm stating is that  
22 there was -- the other side never designated  
23 these particular transcripts that are at  
24 issue now as confidential. They never sent  
25 us a letter saying they're confidential.



1 They never stated on the record at the  
2 deposition we want this to be deemed  
3 confidential under the protective order.  
4 They could have done that. And I should  
5 point out, we have done that at the  
6 depositions of our people when we felt they  
7 were confidential.

8 We went on the record at the beginning  
9 of the deposition or at the end of the  
10 deposition and said we want this deposition  
11 to be deemed confidential under the  
12 protective order.

13 The defendants didn't do that with  
14 regard to these depositions. They're coming  
15 in now eight months or nine months later and  
16 doing that by filing this motion.

17 THE COURT: What about that?  
18 Mr. Bandklayder says the procedure wasn't  
19 followed here and it's no fault of his but  
20 rather of ours.

21 MR. GREENBERG: Your Honor, as I've  
22 noted, I filed an affidavit which explains  
23 what the understanding of the parties was  
24 specifically in regard to Paragraph 2 of the  
25 confidentiality order which says that you can

1 designate something as confidential by either  
2 stamping it or by any other reasonable method  
3 as agreed to by the parties.

4 And what was agreed to by the parties  
5 was that the documents produced by the  
6 parties as well as the deposition transcripts  
7 of the parties would remain confidential  
8 absent compliance with the provisions of 3E  
9 for disclosure.

10 THE COURT: So you don't have to stamp.  
11 It's done and effectuated by Paragraph 2 of  
12 your protective order; correct?

13 MR. GREENBERG: That's correct.

14 THE COURT: All right.

15 MR. GREENBERG: And Your Honor, in  
16 response to Mr. Bandklayder's statement that  
17 he, on behalf of the plaintiffs, have  
18 designated documents and deposition  
19 transcripts as confidential, that is not  
20 correct. They did not start doing it until  
21 2004. That is the first time they did it  
22 when they came -- when they filed  
23 Mr. Sidelko -- when Mr. Sidelko's deposition  
24 transcript was filed in Tallahassee, that is  
25 the first time that on the record at a

1 deposition they stated we declare this  
2 deposition to be confidential, and the  
3 response at that time was well, okay, all of  
4 them have been confidential. And we  
5 continued to abide by the understanding the  
6 parties had, Judge.

7 There is no harm to the plaintiffs to  
8 have these documents sealed. All we're  
9 seeking is to protect them from public  
10 inspection, and counsel is right; it's hard  
11 to put toothpaste back in the tube, but when  
12 it is the plaintiffs' conduct in violation of  
13 an order that results in the toothpaste  
14 coming out, we believe the court should in  
15 good faith attempt to put it back into the  
16 tube.

17 THE COURT: Well, what about that,  
18 Mr. Bandklayder, with regard to this  
19 Paragraph 2 that Mr. Greenberg says there was  
20 an agreement that depositions of the parties  
21 would be deemed to be confidential.

22 MR. SILVERMAN: Your Honor, I've been  
23 the discovery guy on our side --

24 THE COURT: Okay. Fine. Mr. Silverman  
25 then.

1 MR. SILVERMAN: Since we first started  
2 producing documents in 2001 we have stamped  
3 them as confidential. I wrote them a letter  
4 every time we produced documents stamping  
5 them as confidential.

6 In the deposition of Michael Koven which  
7 was the first deposition --

8 THE COURT: I don't care about that. It  
9 says here, by any other reasonable method as  
10 agreed to by the parties.

11 MR. SILVERMAN: That certainly is it.

12 THE COURT: And Mr. Greenberg said there  
13 was an agreement, that being that depositions  
14 of parties would be deemed to be  
15 confidential. That's what he said.

16 MR. SILVERMAN: That is absolutely not  
17 an agreement that we had because, A, we did  
18 designate things throughout -- deposition  
19 testimony, that first deposition of Michael  
20 Koven, we went ahead and designated that as  
21 confidential.

22 In July they finally on the record at  
23 the deposition of Mr. Koven noted  
24 retroactively that they were designating all  
25 of these depositions as confidential. We

1 never agreed to that. There's no writing.  
2 We've done a lot of stuff orally, and they  
3 are people of good faith and high standing,  
4 but we never agreed that everything was going  
5 to be confidential; you can't in a case like  
6 this.

7 THE COURT: Has it been memorialized  
8 then, Mr. Greenberg?

9 MR. GREENBERG: No, sir, it was not. It  
10 was understood as professionals and I have  
11 filed my affidavit in support of this and  
12 there is -- Your Honor, if we believed we  
13 needed to simply say we deem this  
14 confidential, obviously we would have done  
15 that. And for two years this case proceeded,  
16 for two years, and not a single deposition  
17 transcript including depositions of the  
18 principals in this case; my side, their side.  
19 At least six, seven depositions of the  
20 principals took place; no statement on the  
21 record by them or by us.

22 And finally in January of 2004 for the  
23 first time, after the deposition transcripts  
24 of Mr. Sidelko was filed in Tallahassee, they  
25 said oh, by the way, we now have decided the

1 way to do this for depositions is to say  
2 something. That's the first time --

3 THE COURT: Even though there's nothing  
4 here that would proscribe the depositions  
5 being filed in the manner that they were and  
6 not done -- and not determined to be  
7 confidential, what's the prejudice to you to  
8 have them sealed at this point in time?

9 MR. BANDKLAYDER: The only prejudice is  
10 it does put a -- it does make it very  
11 difficult to have the Office of Public  
12 Counsel and other people involved in the  
13 Public Service Commission who want to see  
14 these things. It's very difficult for us to  
15 then disclose the information to them when we  
16 have a circuit court ruling that's deeming it  
17 confidential.

18 THE COURT: And it hasn't been done yet?  
19 They don't have it yet? They don't have the  
20 information?

21 MR. BANDKLAYDER: We've been very  
22 cautious about filing everything with the  
23 Public Service Commission under -- there's a  
24 confidentiality procedure that they have up  
25 there that's very cumbersome, and we've used

1 that to keep things confidential up till now.

2 So the transcripts that we're talking  
3 about, no, I don't believe -- with the  
4 exception of one, one of Mr. Allman's  
5 depositions which the Office of Public  
6 Counsel already obtained from the court file.  
7 With the exception of that, I don't think the  
8 Office of Public Counsel has obtained  
9 complete copies of the other three  
10 depositions.

11 THE COURT: So Allman wouldn't fall  
12 under this anyway; right?

13 MR. GREENBERG: Yes, Mr. -- I'm sorry,  
14 Your Honor.

15 THE COURT: He would?

16 MR. GREENBERG: Yes, sir. He is an  
17 employee of Defendant Odyssey Manufacturing.

18 THE COURT: Okay. I thought you said of  
19 the parties.

20 MR. GREENBERG: I said of the  
21 principals.

22 THE COURT: Okay.

23 MR. GREENBERG: Yes, he would be within  
24 that scope.

25 THE COURT: I don't see the harm though

1 in sealing the depositions at this time.

2 MR. BANDKLAYDER: Substantively, Judge,  
3 there probably isn't any. It just creates a  
4 lot of time and expense. But Judge, may I  
5 just suggest if Your Honor is going to allow  
6 them to have some sealing of these things, I  
7 mean clearly these depositions in their  
8 entirety are not all confidential and trade  
9 secrets. They should be required to  
10 designate what they believe is confidential  
11 and/or trade secrets and not subject to  
12 disclosure.

13 THE COURT: Okay.

14 MR. GREENBERG: Your Honor, I suppose  
15 what's good for the goose is good for the  
16 gander. If Mr. Bandklayder wants to take the  
17 position that both parties have to go through  
18 every deposition transcript of the parties  
19 and their representatives and segregate out  
20 that which we are asserting is confidential,  
21 both parties can do that at this point.

22 I think it's superfluous and unnecessary  
23 and I think the flip-side, as we've handled  
24 this, is the appropriate way which is if a  
25 party wants to disclose something, they can



1 make a request to do it under the  
2 procedure --

3 THE COURT: Well, I think that was the  
4 spirit of this agreement at that time and  
5 although it's not actually --

6 MR. BANDKLAYDER: No, the agreement says  
7 the contrary. The agreement says that the  
8 party asserting the confidentiality will  
9 designate what's confidential and they did  
10 not do that in this case. It's really only  
11 pertinent to depositions that a party wants  
12 to file. So we're limiting this now to the  
13 two depositions of Allman and the two or  
14 three depositions of Sidelko. It really  
15 doesn't apply to any others at this point.

16 THE COURT: That's all that's been  
17 applied for. Go ahead and seal them. I'll  
18 grant your motion.

19 MR. GREENBERG: Just to note, Judge, we  
20 had filed a supplement to the motion with  
21 regard to a transcript that we had filed  
22 accidentally because it had been designated  
23 confidential in the PSC matters that had  
24 occurred back in '98, '99. I don't believe  
25 that plaintiffs object, but we had filed it

1 here and we just want this sealing to  
2 encompass that one deposition as well because  
3 it contained -- it's a TECO representative,  
4 and there was an order from the PSC  
5 designating that testimony as confidential,  
6 and we just want to make sure that that does  
7 not similarly -- we violated the order in  
8 Tallahassee unknowingly because we didn't  
9 know it covered this testimony.

10 So we just want to comply with that  
11 order in Tallahassee by having you further  
12 designate that prefiled testimony that we  
13 filed for Mr. Rodriguez.

14 THE COURT: Fine.

15 MR. GREENBERG: Thank you, Judge.

16 MR. BANDKLAYDER: Are they then going to  
17 be designating the deposition excerpts that  
18 they deem confidential on these Allman and  
19 Sidelko depositions; is that your ruling?

20 THE COURT: No, that wasn't the ruling.  
21 The ruling was that they would be as applied  
22 for, that the depositions would be sealed.  
23 So that's the ruling of the court. Let's  
24 move on.

25 Next.

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, :

Case No. 01-27699 CA25

v.

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

---

**MOTION TO SEAL DOCUMENTS IN COURT FILE**

Defendants, ODYSSEY MANUFACTURING COMPANY and SENTRY INDUSTRIES, INC. ("Defendants"), by and through undersigned counsel, hereby move to seal certain deposition transcripts contained within the Court file, and in support thereof state:

1. On September 3, 2002, the Court entered an Agreed Protective Order ("Order"), a copy of which is attached hereto as Exhibit "A."
2. Pursuant to the Order, all transcripts of depositions containing confidential, proprietary business information concerning the parties was to remain confidential and was precluded from being filed without following a specific procedure.
3. Specifically, ¶ 1(A) defines the term "confidential information" very broadly to include any material produced by a party that the party believes in good faith to contain "trade secrets or confidential, sensitive or proprietary commercial information...."

4. Paragraph 3(E) of the Order then expressly prohibits any party from disclosing confidential information "used in any deposition testimony" except after following the procedure delineated in the Order. Critically, ¶ 3(E) goes on to state the following with regard to deposition transcripts containing confidential information:

In the event a party wishes to file a document, transcript, or thing containing Confidential Information described in this Order with the Court for any purpose, the party shall first serve the opposing party with the document, transcript, or thing containing the alleged Confidential Information. After service, the parties agree to consult with each other to discuss whether the document, transcript or thing actually contains Confidential Information as described herein. If the parties agree that the document, transcript or thing does not include Confidential Information, the document, transcript, or thing may be filed with the Court. If any of the parties believe that the material served contains Confidential Information, then any of the parties, prior to any filing of the document, transcript, or thing involved, shall apply to the Court pursuant to Rule of Judicial Administration 2.051 for a determination of whether the Confidential Information are confidential as described herein, and the document, transcript or thing involved shall be filed only in a form as specified pursuant to the resulting Court Order.

5. On April 22, 2004, the Court entered an Agreed Order on Defendants' Emergency Motion for Contempt and For Sanctions, a copy of which is attached hereto as Exhibit "B." That Agreed Order permitted the parties to file transcripts from depositions in this matter with the Florida Public Service Commission, but only and subject to "their seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C."

6. Plaintiffs, in direct violation of the Order, filed several deposition transcripts with the Court in opposition to Defendants' Motions for Summary Judgment. Specifically, Plaintiffs filed (i) deposition transcript of Stephen Sidelko on January 21, 2004; and, (ii) deposition transcript of Patrick Allman on April 27, 2004.

7. Mr. Sidelko is a principal of Defendants and Mr. Allman is an employee of Odyssey. Their deposition transcripts contain confidential, proprietary business information about Odyssey's and Sentry's business operations.

8. Plaintiffs were obligated, prior to filing the above listed transcripts, to comply with the procedural requirements of the Order by serving the transcript on Defendants, consulting with them regarding which portions should remain confidential and then taking appropriate measures to protect the confidential portions of those transcripts prior to filing. Plaintiffs failed to do so.

9. Odyssey will be greatly prejudiced if the Court does not protect Odyssey's and Sentry's business interests by sealing the transcripts referenced above in the court file.

10. Odyssey and Sentry have already been harmed by Plaintiffs' conduct. Public Counsel has relied upon Plaintiffs' improper filing of the transcripts in this matter as a basis to file those transcripts with the Florida Public Service Commission without seeking confidential classification.

WHEREFORE, Defendants, ODYSSEY MANUFACTURING COMPANY and SENTRY INDUSTRIES, INC. request that the Court enter an Order instructing the Clerk to seal the transcripts in the Court file referenced above, and for such other and further relief as the Court deems just and proper.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by prepaid U.S. Mail to: Lawrence D. Silverman, Esq., AKERMAN, SENTERFITT & EIDSON, P.A., SunTrust International Center, 28th Floor, One Southeast Third Avenue, Miami, Florida 33 131-1704; Daniel K. Bandklayder, Esq., ANANIA, BANDKLAYDER, BLACKWELL BAUMGARTEN & TORRICELLA, 4300 Nations Bank Tower, 100 Southeast Second Street, Miami, Florida 33131; Kenneth A. Hoffman, Esq., RUTLEDGE, ECENIA, PURNELL & HOFFMAN, P.A., 215 South Monroe Street, Suite 420, P.O. Box 551, Tallahassee, FL 32302 and to Wayne Schiefelbein, Esq., ROSE, SUNDSTROM & BENTLEY, LLP, 2548 Blairstone Pines Drive, Tallahassee, FL 32301, this 13<sup>th</sup> day of July, 2004.

Respectfully submitted,

RUDEN, McCLOSKEY, SMITH  
SCHUSTER & RUSSELL, P.A.  
Attorneys for Defendants  
Post Office Box 1900  
Fort Lauderdale, Florida 33302  
(954) 764-6660 (954) 764-4996 (Fax)

By: 

Bryan S. Greenberg  
Florida Bar No. 968315

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

CASE NO. 01-27699 CA 25

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

Plaintiffs,

vs.

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

Defendants.

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B.S.G.

*Agreed (S)*  
**PROTECTIVE ORDER**

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

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

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

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

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

3. That Confidential Information shall not:

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

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

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

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

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



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

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

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

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

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

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

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

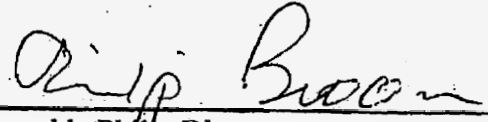
9. Nothing in this Order shall prevent any party from seeking modification of this Order with either written consent of both parties or Court order.

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

SEP 03 2002

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

\_\_\_\_\_, 2002.



Honorable Philip Bloom  
Circuit Court Judge

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



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

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

FURTHER AFFIANT SAYETH NAUGHT.

---

Subscribed and sworn to before  
me on this \_\_\_\_ day of \_\_\_\_\_

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

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

(“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

Lawrence D. Silverman, Esq., AKERMAN, SENTERFITT & EIDSON, P.A., SunTrust International Center, 28th Floor, One Southeast Third Avenue, Miami, Florida 33131-1704

Daniel K. Bandklayder, Esq., ANANIA, BANDKLAYDER, BLACKWELL BAUMGARTEN & TORRICELLA, 4300 Nations Bank Tower, 100 Southeast Second Street, Miami, Florida 33131

Kenneth A. Hoffman, Esq., RUTLEDGE, ECENIA, PURNELL & HOFFMAN, P.A., 215 South Monroe Street, Suite 420, P.O. Box 551, Tallahassee, Florida 32302

Wayne L. Schiefelbein, Esq., ROSE, SUNDSTROM & BENTLEY, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301