

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Allied Universal Corporation and)	
Chemical Formulators, Inc.'s Petition to)	Docket No. 040086-EI
Vacate Order No. PSC-01-1003-AS-EI)	
Approving, as Modified and Clarified, the)	Filed: June 7 th , 2004
Settlement Agreement between Allied)	
Universal Corporation and Chemical)	
Formulators, Inc., and Tampa Electric)	
Company and Request for Additional)	
Relief.)	

**ODYSSEY MANUFACTURING COMPANY'S RESPONSE
TO THE OFFICE OF PUBLIC COUNSEL'S MOTION FOR DETERMINATION
OF THE PROPER TREATMENT OF DEPOSITION TRANSCRIPT
OF MR. PATRICK ALLMAN**

Odyssey Manufacturing Company ("Odyssey"), by and through undersigned counsel and pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby files¹ this Response to the Office of Public Counsel's ("OPC") Motion for Determination of the Proper Treatment of Deposition Transcript of Mr. Patrick Allman (the "Deposition") and states as follows:

1. OPC's rationale for its curious motion is predicated on its assertion that it is somehow compelled to respond to TECO's response to OPC's April 23 motion.² OPC presents a misleading excerpt from TECO's response—omitting and avoiding TECO's well-founded questioning of how

¹ Since its receipt of Order No. PSC-04-0232-PCO-EI, in which the Prehearing Officer requested that the parties avoid "becoming further polarized and distracted by excessive ancillary motion practice," Odyssey has honored this request, filing no motions and keeping its responses to those motions filed by others as brief as possible. To remain silent after OPC's latest filing, in the judgment of undersigned counsel, would prejudice Odyssey.

²The April 23 motion, like that at issue herein, failed to comport with Rule 28-106.204(3), FAC, as OPC neglected to consult, or state that it had consulted with, all other parties of record prior to filing either motion.

DOCUMENT NUMBER-DATE

06347 JUN-7 3

FPSC-COMMISSION CLERK

OPC could make reference to a deposition at which OPC was not present³ and for which the transcription was neither complete,⁴ nor placed in the mail to the parties,⁵ until the date of OPC's April 23 motion.⁶ OPC's omission is but one example of a problematic lack of candor toward this tribunal and lack of fairness to opposing parties and counsel. In an embarrassingly transparent attempt to further mislead the Commission and to avoid TECO's questioning of how OPC came to know the contents of the Deposition completed by the court reporter the same day OPC filed its April 23 Motion,⁷ OPC states in the present tense, that it possesses the deposition and that OPC "obtained it as a public record from the Dade County Circuit Court." However, as shown in the records of court filings with the Miami-Dade County Circuit Court, not only was the deposition absent from the court file until April 27, four days after OPC's first motion referencing it, but the Deposition was filed by counsel for Allied/CFI.⁸ This casts an interesting, and unflattering, light on Allied/CFI as well, since, in their "response" to OPC's motion they piously exclaim that while they will conduct themselves as if confidentiality had not been compromised, the Deposition is no longer privileged as it is in the public records, using the metaphor that the "toothpaste is out of the

³ See Exhibit "A" ("Appearances" sheet from the Deposition).

⁴ See Exhibit "B" (court reporter's "Certificate of Oath" and "Certificate" sheets from the Deposition).

⁵ OPC is not a party to the civil action in which the Deposition was taken.

⁶ See Exhibit "C" (court reporter's transmittal letter from the Deposition).

⁷ See Exhibit "B" (court reporter's "Certificate of Oath" and "Certificate" sheets from the Deposition).

⁸ See April 27, 2004, entry in Exhibit "D" (docket sheet of the Clerk of the Miami-Dade County Circuit Court), and composite Exhibit "E," Plaintiffs' Notices of Filing Deposition Transcript of Patrick Allman.

tube” without mentioning that they were the ones who squeezed it. This is hauntingly reminiscent of Allied/CFI’s previous and repeated compromising of Odyssey’s confidential, proprietary information in this docket, as chronicled in Odyssey’s Motion to Dismiss (Commission Document No. 02390-04), at fn.3. In any event, in this regard, the complaints of Odyssey’s adversaries ring as hollow as those of Hamlet’s Player-Queen—only, here, it is the lawyers, not the lady, who doth protest too much.

2. In fact, there were only two parties in attendance during the taking of Mr. Allman’s deposition: Odyssey and Allied/CFI.⁹ Moreover, as Odyssey never provided the deposition to, nor discussed its contents with, OPC, it is abundantly clear that OPC either

(1) in a single day:

- (a) miraculously received the Deposition from Allied/CFI the same day it was transcribed;
- (b) was able to read and digest its more than 100 pages;
- (c) made a reasoned decision to file its April 23 Motion;
- (d) drafted said motion; and
- (e) filed it;

or

(2) relied upon an interpretation of the Deposition given it by Allied/CFI, an adverse party to the deponent.

And while it is clear that only the latter is possible, in either event, one thing is certain: OPC is acting as nothing more than a straw man for Allied/CFI in the docket.

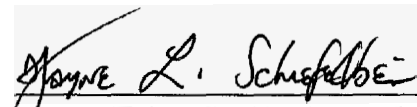
⁹ See Exhibit “A” (“Appearances” sheet from the Deposition).

3. In its latest motion, OPC reiterates its mantra that “whether the Contract Service Agreement between TECO and Odyssey Manufacturing Company comports with the requirements of Order No. PSC-98-1081-FOF-EI” is a “disputed issue of material fact.” This assertion is in fact **irrelevant** to the allegations of the “Petition” filed by Allied/CFI and against which Odyssey’s pending Motion to Dismiss is directed.

4. Odyssey filed its Motion to Dismiss in February, 2004, prior to OPC’s intervention in the proceeding. Odyssey’s Motion has yet to be heard. Odyssey should not be forced to endure delay attributable to OPC’s [and Allied/CFI’s] ongoing efforts to distract the Commission with decidedly collateral matters. OPC’s Motion should only be addressed (if necessary) after Odyssey’s long-standing Motion is heard and ruled upon.

WHEREFORE, Odyssey Manufacturing Corporation respectfully requests that the Commission (1) defer ruling on OPC’s Motion for Determination of the Proper Treatment of Deposition Transcript of Mr. Patrick Allman until after the Commission rules on Odyssey’s Motion to Dismiss (if any such ruling is necessary at that time); (2) rule that OPC’s Motion is improper and deny same; and (3) grant such other relief as it deems appropriate.

Respectfully submitted this 7th day of June, 2004.



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(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 has been furnished via fax and U.S. Mail to the following on this 7th day of June, 2004:

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Baumgarten, Torricella & Stein
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Florida Public Service Commission
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Tallahassee, Florida 32399-0850

Harold McLean, Esq.
Steve Burgess, Esq.
Office of Public Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



Wayne L. Schiefelbein

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Exhibit “A”

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

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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.

COPY

No. 01-27699 CA 25

Fort Lauderdale, Florida
April 19, 2004
2:00 o'clock P.M.

DEPOSITION
OF

PATRICK ALLMAN

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APPEARANCES:

ANANIA, BANDKLAYDER, BLACKWELL, BAUMGARTEN,
TORRICELLA & STEIN

By: DANIEL K. BANDKLAYDER, ESQ.
Appearing on behalf of the Plaintiff/Allied

*
AKERMAN, SENTERFITT & EDISON, P.A.

By: LAWRENCE D. SILVERMAN, ESQ.
Appearing on behalf of the Plaintiff

RUDEN, McCLOSKEY, SMITH.

SCHUSTER AND RUSSELL, P.A.

By: GLENN N. SMITH, ESQ.
Appearing on behalf of the Defendants

ALSO PRESENT: Michael Koven, Allied Universal

- - - - -

Exhibit "B"

CERTIFICATE OF OATH

1
2 STATE OF FLORIDA)
3 COUNTY OF BROWARD)

4 I, the undersigned authority, certify that
5 PATRICK ALLMAN personally appeared before me and was
6 duly sworn.

7 WITNESS my hand and official seal this
8 23rd day of April, 2004.

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11 _____
12 SUSAN J. REICH, RPR
13 Notary Public, State of Florida
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CERTIFICATE

STATE OF FLORIDA)
COUNTY OF BROWARD)

I, SUSAN J. REICH, Registered Professional Reporter and Notary Public duly commissioned and qualified in and for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing deposition; and that the transcript is a true record of the testimony given by the witness.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 23rd day of April, 2004.



SUSAN J. REICH, RPR

Exhibit "C"

1
2
3 Glenn N. Smith, Esq.
4 RUDEN, McCLOSKEY, SMITH,
5 SCHUSTER AND RUSSELL, P.A.
6 200 East Broward Blvd.
7 15th Floor
8 Fort Lauderdale, Florida 33302

9
10 IN RE: Allied Universal vs. Odyssey
11 Deposition of Patrick Allman

12 Dear Mr. Smith:

13
14 The deposition of PATRICK ALLMAN taken in
15 the above-styled cause on April 19, 2004 is now
16 ready for signature of the witness. Please have the
17 witness call this office to schedule an appointment
18 to read the same; or, if you wish to waive the
19 signature of the deposition, please so advise.

20
21 If this deposition has not been signed by
22 May 24, 2004, or the signature thereto waived,
23 we shall consider such a delay a refusal to sign
24 under Rule 1.310(e) of the Florida Rules of
25 Civil Procedure.

If you have any reason which you would like for
me to place on the deposition as to the witness'
failure to sign the same, please advise.

Very truly yours,
ESQUIRE DEPOSITION SERVICES
600 South Andrews Avenue
Fort Lauderdale, Florida
(954) 331-4400

By: _____
Susan J. Reich, RPR

Dated: April 23, 2004
cc: Counsel of Record

.

Exhibit “D”

04/28/2004 RESPONSE:
TO MTN FOR PARTIAL SUMMARY JUDGMENT
04/28/2004 DOCUMENTS UNDER SEAL (ROOM #133 IN VAULT)
04/28/2004 NOTICE OF ANSWER TO INTERROGATORIES
04/28/2004 NOTICE OF FILING:
DEPOSITIONS TRANSCRIPT ROBERT NAMOFF, MICHAEL KOVEN U/SEA
04/28/2004 NOTICE OF ANSWER TO INTERROGATORIES
04/28/2004 TEXT ENTERED OR DUPLICATED IN ERROR
04/28/2004 DEPO ENTERED OR DUPLICATED IN ERROR
04/28/2004 AFFIDAVIT OF:
LAWRENCE D. SILVERMAN:
04/28/2004 NOTICE:
OF CANCELLATION OF HEARING: 4-28-2004
04/27/2004 EXCEPTIONS TO GENERAL MASTERS REPORT ETC...
04/27/2004 EXCEPTIONS TO GENERAL MASTERS REPORT ETC...
04/27/2004 EXCEPTIONS TO GENERAL MASTER'S REPORT
04/27/2004 DEPOSITION OF
PATRICK HENRY ALLMAN, III
04/27/2004 DEPOSITION OF
PATRICK ALLMAN
04/27/2004 NOTICE OF FILING:
DEPOSITION OF PATRICK ALLEN
04/26/2004 NOTICE OF TAKING DEPOSITION
04/26/2004 NOTICE OF FILING:
EXHIBIT & WITNESS LIST
04/26/2004 MOTION TO COMPEL
DEPOSITION OF PETER DEANGELIS
04/26/2004 MOTION FOR SANCTIONS
04/26/2004 MOTION TO STRIKE
04/26/2004 NOTICE OF HRG SPECIAL APPT 04/28/2004 02:00 PM
04/23/2004 ORDER:
GRANTING MOTION FOR CONTEMPT AND FOR SANCTIONS
04/22/2004 REQUEST FOR PRODUCTION
04/22/2004 NOTICE OF TAKING DEPOSITION
RE
04/22/2004 MOTION TO COMPEL
04/21/2004 NOTICE OF TAKING DEPOSITION
CANCELLATION
04/21/2004 NOTICE OF TAKING DEPOSITION
04/21/2004 NOTICE OF TAKING DEPOSITION
04/21/2004 REQUEST FOR PRODUCTION
04/21/2004 MOTION TO COMPEL
04/21/2004 NOTICE OF HRG SPECIAL APPT 04/28/2004 02:00 PM
04/21/2004 NOTICE OF HRG SPECIAL APPT 04/28/2004 02:00 PM
04/16/2004 MOTION:
TO EXPEDITE PRODUCTION OF ELECTRIC BILLS
04/16/2004 MOTION TO COMPEL
04/16/2004 REQUEST FOR PRODUCTION
04/16/2004 NOTICE OF HEARING-MOTIONS 04/28/2004 02:00 PM
04/15/2004 COURT ORDER BK-22272 PG 4719
REPORT ON DEF'S MTN FOR SANCTIONS
04/15/2004 OBJECTION:
TO DEF'S 2ND-AMENDED SUBPOENA FOR DEPOSITION
04/15/2004 AFFIDAVIT OF:
SERVICE
04/15/2004 NOTICE:
OF APPEARANCE FOR THE DOW CHEMICAL CO
04/15/2004 REPORT:
ON MTN FOR PROTECTIVE ORDER
04/15/2004 REPORT:
ON MTN FOR PROTECTIVE ORDER
04/15/2004 REPORT:
ON MTN FOR PROTECTIVE ORDER
04/15/2004 REPORT:
ON SUPPLEMENTAL MTN FOR CONTEMPT & SANCTIONS



Exhibit "E"



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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 CA 25

RECEIVED
APR 28 2004

B.S.G.

PLAINTIFFS' NOTICE OF FILING
DEPOSITION TRANSCRIPT OF PATRICK ALLMAN

Plaintiffs, Allied Universal Corporation and Chemical Formulators, Inc. (collectively "Plaintiffs"), through their undersigned counsel, hereby notify the Court and Defendants, Odyssey Manufacturing Company and Sentry Industries, Inc., that they have filed the attached original deposition transcripts taken November 25, 2003 and April 19, 2004 of Patrick Allman, to be considered by the Court in support of Plaintiffs' Response to Defendants' Motions for Summary Judgment.

Respectfully submitted,

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SunTrust International Center, 28th Floor
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Miami, Florida 33131-1704
Phone: (305) 374-5600
Fax: (305) 374-5095
Email: lsilverman@akerman.com

By: 

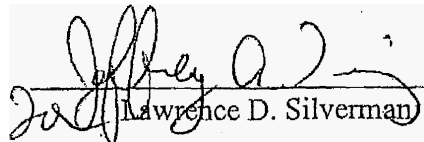
Lawrence D. Silverman, Esq.
Florida Bar No.: 007160

Daniel K. Bandklayder, Esq.
Anania, Bandklayder, Blackwell Baumgarten
& Torricella
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Miami, Florida 33131
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Kenneth A. Hoffman, Esq.
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and Correct copy of the foregoing was sent via facsimile and U.S. Mail this 27th day of April, 2004 to: Bryan S. Greenberg, Esq., Ruden, McClosky, Smith, Schuster & Russell, P.A., 200 East Broward Boulevard, 15th Floor, P.O. Box 1900, Ft. Lauderdale, Florida 33302.


Lawrence D. Silverman

f

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

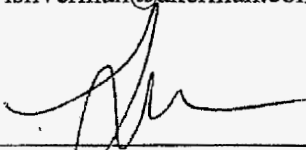
Defendants.

**PLAINTIFFS' NOTICE OF FILING DEPOSITION TRANSCRIPTS
OF STEPHEN SIDELKO**

Plaintiffs, Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI") (hereinafter jointly referred to as "Allied/CFI"), hereby notify the Court and all parties that they are filing the original deposition transcripts of Stephen Sidelko, taken on October 1, 2003 and December 18, 2003, respectively. The transcripts, and exhibits thereto, are being filed for consideration by the Court at the hearings on various pending motions, and for such other proceedings as may be required by the Court or the parties to this action.

Respectfully submitted,

AKERMAN, SENTERFITT & EIDSON, P.A.
SunTrust International Center, 28th Floor
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Phone: (305) 374-5600
Fax: (305) 374-5095
Email: lsilverman@akerman.com

By: 
Lawrence D. Silverman, Esq.
Florida Bar No.: 007160

Daniel K. Bandklayder, Esq.
Anania, Bandklayder, Blackwell Baumgarten
& Torricella
4300 Nations Bank Tower
100 Southeast Second Street
Miami, Florida 33131
Phone: 305-373-4900
Fax: 305-373-6914

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via facsimile and U.S. Mail upon Glenn N. Smith and Bryan S. Greenberg, Ruden, McClosky, Smith, Schuster & Russell, P.A., Attorneys for Defendants, 200 East Broward Boulevard, 15th Floor, P.O. Box 1900, Fort Lauderdale, FL 33302 this 21st day of January, 2004.


ATTORNEY