

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

**ODYSSEY MANUFACTURING COMPANY'S
RESPONSE TO MOTION FOR LEAVE TO FILE AMENDED PETITION**

ODYSSEY MANUFACTURING COMPANY (“Odyssey”), by and through undersigned counsel, and pursuant to Rule 28-106.204, F.A.C., hereby files this Response to Motion for Leave to File Amended Petition and in support thereof would state and allege as follows:

1. The Motion for Leave to File Amended Petition (“Motion”) filed by Allied Universal Corporation and Chemical Formulators, Inc., (“Allied/CFI”) is the fourth attempt of Allied/CFI to draft a pleading which would state a cognizable claim under the Florida Administrative Procedure Act. While Allied/CFI properly suggest in their Motion that the Commission, and Florida’s courts, freely allow the amendment of pleadings so that disputes may be resolved on their merits, such a protracted and torturous abuse of the administrative process as is personified by Allied/CFI’s “claim” should not be well taken by the Commission. Allied/CFI’s specious filing has inflicted costs,

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expense, aggravation and inconvenience upon the Commission, its staff, Tampa Electric Company (“TECO”) and Odyssey that are the inevitable result of such an abuse of the administrative process.¹

2. The allowance of the free amendment of pleadings is not a concept which is absolute, nor (as this case so amply demonstrates) should it be. Allied/CFI’s continuing attempt to inflict a wound upon Odyssey, whom Allied/CFI have characterized recently to a Circuit Court as their “fierce competitor”, has more lives than a cat and is as inchoate as an apparition. Allied/CFI’s latest version of the “Petition” no more states a cause of action nor sets forth the basis for the relief requested from this Commission than did any of its prior attempts.²

3. The policy of allowing pleadings to be freely amended is a privilege which should not be abused. *In re: Complaint by Supra Tele. & Info. Systems, Inc. against BellSouth Tele. Inc.*, 03FPSC 6:205 (June 17, 2003). Abuse of the privilege is synonymous with prejudice to the Defendants. See, *Wackenhut Protective Services, Inc. vs. Key Biscayne Commodore Club Condo. I, Inc.*, 357 2nd 1150 (Fla.3d DCA 1977). In *Wackenhut*, the court noted that Florida case law applies a test of prejudice to the defendant as the primary consideration in determining whether the plaintiff’s motion to amend should be granted or denied. In this case, the prejudice to Odyssey of allowing the Amended Petition is clearly demonstrated not only by the facts and circumstances surrounding the Motion and the events in this docket since January 13, 2004, but also by the very

¹It is particularly disturbing, when one considers the wasted money and unproductive hours directly resulting from Allied/CFI’s filings, that some 175 days later Allied/CFI are still trying to force their horses to leave the starting gate. If the Commission allows Allied/CFI to continue with their activities, Allied/CFI will have “won” by achieving their purpose to inflict an injury upon Odyssey, even if the case they now seek to make to the Commission is ultimately dismissed.

²This Commission should not just save its staff, TECO and Odyssey from having to respond further to Allied/CFI’s specious filings and theories. It should save Allied/CFI from themselves. Odyssey will demonstrate that Allied/CFI’s filings in this case entitle Odyssey to attorney’s fees under Section 57.105, Florida Statutes, and this further attempt to salvage Allied/CFI’s theory of pain and punishment to Odyssey is only causing the appropriate amount of that attorney fee award to increase.

nature of the Amended Petition itself. The Amended Petition is a heavily redacted document whose content is to a substantial degree unknown to Odyssey and TECO. Odyssey contacted Allied/CFI in an attempt to gain access to the full content of the Amended Petition by suggesting a protective agreement that counsel responsible for drafting responsive pleadings have access to the same. Allied/CFI declined, instead requesting that Odyssey agree to waive any argument it had that any of the implicated information was confidential. Odyssey declined to agree to that request, which would affect not only the public status of numerous documents in this administrative proceeding but also possibly in the pending related Circuit Court case of which this Commission is aware. Odyssey should not be required to capitulate on the issue in exchange for access to the four corners of the Amended Petition, access which the tenets of fair play and due process afford to Odyssey in any case. The prejudice visited upon Odyssey and TECO of being placed in the impossible position of having to adequately and properly respond to a pleading which contains substantial and substantive hidden provisions is palpable. While the redaction of numerous substantive allegations in the Petition might, in a vacuum, be an effective strategy to prevent the Petition's summary dismissal, such a denial of due process to Odyssey and TECO cannot be allowed or maintained consistent with the well established canons of American jurisprudence. The party to whom a complaint or a petition is directed in a judicial or quasi-judicial proceeding in modern America is entitled to know every word of the allegations against him before he is required to respond. At a minimum, the Commission should deny the Motion for this reason alone and direct Allied/CFI, should their best judgment compel them to attempt to recast this case as something new once again, to only make such an attempt after an unredacted Amended Petition is timely filed (or otherwise pursuant to an appropriate protective agreement among the parties).

4. The Motion cannot be seen in the proper context unless one considers the tenuous foundation upon which Allied/CFI rest the latest iteration of their theories as embodied therein. On January 20, 2000, Allied/CFI filed with the Commission a formal Complaint against Tampa Electric Company (“TECO”) alleging, *inter alia*, that TECO had offered a discriminatory rate in the form of a CISR tariff to Odyssey. Odyssey intervened. After the parties collectively expended what may be reasonably assumed to be many hundreds of thousands of dollars in fees and costs and underwent a year of discovery and motion practice, TECO and Allied/CFI reached a settlement agreement in principle on the day of the scheduled hearing (February 19, 2001). This Complaint, which was the subject of Docket No. 000061-EI and Order No. PSC-01-1003-AS-EI, was ultimately deemed withdrawn by Allied/CFI with prejudice, upon issuance of the Commission’s Order on April 24, 2001.

5. Thirty-two months later, on January 13, 2004, Allied/CFI filed with the Commission the first attempt to initiate this case. Allied/CFI dismissed that pleading on January 16, 2004, and on that same date, filed a document identical to what it had just withdrawn, the only discernable differences being that the document was filed in Docket No. 040050-EI and bore the pseudonym, “Petition.” On January 29, 2004, the January 16, 2004 Petition was dismissed by Allied/CFI. On January 30, 2004, another “Petition” was filed by Allied/CFI.³

6. The other context in which the Commission should review the Motion is in light of the fact that this PSC proceeding is, as argued in previous filings by Odyssey, a straw man whose purpose, at least in substantial part, is to perpetuate a pending Circuit Court proceeding in which

³ This is the Petition, pending now for over five months, which Allied/CFI, obviously duly motivated by staff’s June 23, 2004 recommendation, suddenly deemed was in need of amendment.

Allied/CFI is, similar to its actions in this case, foisting upon Odyssey all of the costs, expenses, efforts and time required to defend against frivolous litigation. More specifically, Allied/CFI have repeatedly used the existence of this proceeding to delay the timely resolution of the Circuit Court proceeding.

- a) On January 22, 2004, counsel for Allied/CFI argued to the court in favor of a motion to stay the case that “if the PSC rules in Odyssey’s favor, then this case will be substantially different . . .”. Counsel for Odyssey at that time argued that “that claim will not change no matter what is going on in the PSC. We want to get this trial done, Judge. You have the major competitor of the market against a smaller guy. We want to get this trial done and over with. It is frivolous. The point is, the PSC will not affect their claim for \$25 million because it is based on the current electric rates”.⁴
- b) At a hearing in this same Circuit Court case on May 13, 2004, Allied/CFI’s attorney again argued for a postponement and stated “. . . as a practical matter, it makes no sense to try this case in June when the Public Service Commission hasn’t decided what they are going to be deciding”. Odyssey’s attorney pointed out to the court that the Circuit Court case “is almost three years old . . . This is, of course, the Plaintiffs’ fourth attempt, I believe, to push off the trial . . .”

⁴On January 22, 2004, Allied/CFI’s attorney represented to the Court that it was his understanding that a “guesstimate” of how long it would take the PSC to handle this matter would be “4 to 5 months”. That was in January. This response is being written in mid-July, and the procedural status of this case, which is the sole responsibility of Allied/CFI, makes a mockery of that “guesstimate”. Allied/CFI is still trying to get this PSC case up and running.

- c) In a motion hearing on July 1, 2004, in the Circuit Court case, counsel for Allied/CFI argued against picking “a specially set trial date” because of a scheduled PSC agenda conference six days later.⁵ In that motion hearing, Allied/CFI’s counsel argued that while discovery should be ongoing, the trial should remain stayed, because “things are still happening in the PSC”.⁶

7. Finally, the plethora of redactions in the Amended Petition clearly places Odyssey in a poor position, at best, to respond.⁷ The substantially redacted Amended Petition places Odyssey at a clear disadvantage in responding to the Motion and greatly prejudices Odyssey in that regard. However, a more serious issue is that presented by the sequence of events if the Commission grants Allied/CFI’s Motion. Odyssey and TECO cannot, under any scenario or by any means or method, adequately respond to the Amended Petition with Motions to Dismiss or other appropriate responses to the Amended Petition if the Amended Petition remains redacted. Any Order of the Prehearing Officer granting Allied/CFI’s Motion, should such occur, should take this fact into account, and abate the response to the Amended Petition until such time as Odyssey and TECO have access to its full contents.

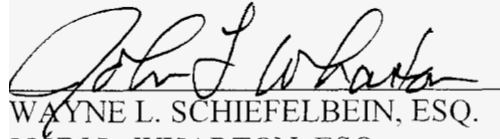
WHEREFORE and in consideration of the above, Odyssey respectfully requests that Allied/CFI’s Motion be denied.

⁵In fact, Allied/CFI successfully had this agenda conference item delayed by and through efforts which were well underway when this representation was made to the Circuit Court.

⁶It is notable that at each point Allied made these representations to the Circuit Court in order to postpone an imminent trial date. Each of the transcripts from which these quotes are taken are attached for the ready reference of the reader.

⁷The context of many of the redactions in the Amended Petition certainly suggest that much of the redacted information is contained in, or is supportive of, the very allegations which most demand response by Odyssey.

Dated this 14th day of July, 2004



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished as indicated to the following on this 14th day of July, 2004:

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IN THE CIRCUIT COURT OF THE ELEVENTH
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,

ORIGINAL

Plaintiffs,

vs.

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

Defendants.

Miami, Florida
January 22, 2004

The above-entitled case came on for
hearing before the Honorable Michael B. Chavies,
Judge of the above-styled court, at the Dade
County Courthouse, commencing at 9:40 a.m.

APPEARANCES:

DANIEL BANDKLAYDER, ESQ.
- and - DOUGLAS STEIN, ESQ.
of the firm Anania Bandklayder
Blackwell Baumgarten Torricella
& Stein
on behalf of the Plaintiff

GLENN N. SMITH, ESQ.
of the firm Ruden, McClosky, Smith,
Schuster & Russell, P.A.
on behalf of the Defendant

ALSO PRESENT: STEVE SIDELKO

MARIANNE TERTAN, REPORTER

1 MR. SMITH: Good morning, Judge.
2 Judge, I represent the Defendants.
3 This is Allied versus Odyssey. The
4 Defendant is Odyssey and this is the
5 fight between bleach manufacturers.

6 THE COURT: I certainly know the
7 case.

8 MR. SMITH: We have a motion for
9 in-camera inspection, release of
10 documents --

11 THE COURT: Why would I do that
12 and not the General Master? I thought
13 I sent all discovery matters to the
14 General Master. In fact, you have a
15 date coming up with the General Master.

16 MR. BANDKLAYDER: We do.
17 Candidly, this may not be the time and
18 place, but Judge Farrell has been ill.
19 There are a lot of motions between --

20 THE COURT: His assistant told us
21 there was a date set for all pending
22 motions.

23 MR. BANDKLAYDER: We have a date
24 set aside during the trial calendar.
25 The hearing date on the discovery is

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during the first week of trial.

THE COURT: We'll see how that pans out, but I said a long time ago discovery issues in this case would be heard by the General Master. That's still my feeling.

MR. SMITH: We understand he's been ill and this makes it impossible for us to prepare for trial. We would like to try it this docket.

THE COURT: Even if it were to come before me, you are on my next trial calendar?

MR. SMITH: Yes, sir.

MR. BANDKLAYDER: Judge, the next motion is my motion to stay this case --

THE COURT: Excuse me. Let me ask this question: When is the next hearing?

MR. SMITH: The first week of the trial docket.

MR. BANDKLAYDER: I'm not sure. I think it is February 11.

THE COURT: That sounds familiar.

1 How long is this case going to take to
2 try?

3 MR. BANDKLAYDER: Probably two
4 weeks.

5 THE COURT: So is there any
6 possibility that if these discovery
7 issues were handled on that date and
8 that time that you would still have two
9 weeks of my trial schedule available?
10 Could it happen? Could it be
11 accomplished?

12 MR. BANDKLAYDER: I believe it is
13 a two-week trial docket. If Judge
14 Farrell is ruling on the discovery on
15 the 11th and everybody has discovery
16 that has to be done, I don't see that
17 happening as a practical matter.

18 THE COURT: Let me talk to him. I
19 have not talked to him directly. I
20 talked to his assistant. Let's see how
21 we can manage this.

22 MR. SMITH: All right, sir.

23 MR. BANDKLAYDER: Our motion ties
24 into that, our motion to stay the case
25 or at least the trial ending the Public

1 Service Commission's ruling on our
2 petition to adjudicate and vacate the
3 Defendants' electric rate up in Tampa.

4 You may recall, this case
5 basically arises from an issue
6 regarding the Defendants obtaining a
7 preferential rate for electricity. We
8 had litigated that matter before the
9 Public Service Commission before we
10 filed this lawsuit.

11 THE COURT: That was sometime ago.

12 MR. BANDKLAYDER: Yes, in 2000,
13 and we reached a settlement agreement
14 before the Public Service Commission,
15 and then we got involved in this case
16 before your Honor. And what's
17 happening now is when we deposed Mr.
18 Sidelko, the Defendants for the third
19 time, literally the day before
20 Christmas Eve, we uncovered testimony
21 from Mr. Sidelko which was directly
22 contradictory to the testimony and
23 affidavit upon which the commission
24 settlement was based. We filed a
25 petition to reopen, to have the Public

1 Service Commission vacate the electric
2 rate. And frankly, the outcome of the
3 Public Service Commission case is going
4 to have a major impact on this case.

5 For example, candidly, Judge, if
6 the PSC acts promptly and rules in our
7 favor, this case goes away. There's no
8 getting around that. If the PSC rules
9 in Odyssey's favor, then this case will
10 be substantially different than the way
11 it is now in terms of the damages and
12 certainly the claims that are going to
13 disappear. I have a copy of what is
14 pending before the PSC.

15 THE COURT: When did you file it?

16 MR. BANDKLAYDER: We filed it
17 about a week ago. And just so it is
18 clear, there was no undue delay on our
19 part. We first uncovered this evidence
20 on December 18th or December 19th, and
21 we filed our petition within
22 two-and-a-half weeks thereafter.

23 THE COURT: Do you have any idea
24 when they may rule?

25 MR. BANDKLAYDER: The attorney

1 handling this up there would
2 guesstimate four to five months.

3 MR. SMITH: Well, sir, this is
4 pretty surprising. Since the time they
5 taken our client's deposition they have
6 issued their damages calculation
7 claiming \$25 million. It is based upon
8 a calculation based upon the existing
9 rates, the ones in effect now. They
10 calculated \$25 million. That's not
11 going to change. That claim will not
12 change no matter what is going on in
13 the PSC. We want to get this trial
14 done, Judge. You have the major
15 competitor in the market against a
16 smaller guy. We want to get this trial
17 done and over with. It is frivolous.
18 The point is, the PSC will not affect
19 their claim for \$25 million because it
20 is based on the current electric rates.

21 THE COURT: Okay. I don't know
22 that you are going to get to trial this
23 trial period. It doesn't feel like
24 it. I'm going to reserve on your
25 motion.

1 MR. BANDKLAYDER: Yes, your Honor.

2 THE COURT: I'm going to talk to
3 General Master Farrell to find out how
4 soon he believes he can deal with these
5 discovery issues and rule. And after
6 I've done that I'll let you know what
7 my ruling is with regard to your motion
8 to stay pending. We have to get this
9 thing, you know, finalized at some
10 point. It is too old and too
11 cumbersome.

12 MR. SMITH: May I ask the judge to
13 ask counsel to specify which claims he
14 says will disappear or change in the
15 event the PSC upholds the electric
16 rates he's based this case upon? I
17 would like to know that. That's
18 important.

19 MR. BANDKLAYDER: Well, your
20 Honor, if the Public Service Commission
21 tomorrow, hypothetically, were to grant
22 our petition and vacate the Defendants'
23 electric rate, the damages we have
24 projected out into the future to 2010,
25 we're dealing with that time frame,

1 would go away. We would not sustain
2 those future damages. We might have
3 some damages as a result of the delays
4 we have incurred in being able to build
5
6 minimum. And we conceded that.
7 Because of the things happening in the
8 marketplace and the price of raw
9 materials, we're able to compete with
10 them up until now, but the prices for
11 raw materials have gone up. And from
12 2004 to 2010, that's when 90 percent of
13 our damages will occur.

14 But if the PSC sustains their
15 rate, yes, we will have the same
16 damages.

17 THE COURT: That's something you
18 two can discuss if you need to file a
19 motion to specify and response
20 thereto. But I'll get back to you
after I've spoken to General Master
22 Farrell.

23 MR. SMITH: Thank you, sir.

24 (Thereupon, the hearing was concluded
25 at 9:50 a.m.)

CERTIFICATE OF REPORTER

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STATE OF FLORIDA :
COUNTY OF DADE :

I, MARIANNE TERTAN, Shorthand
Reporter, do hereby certify that I was authorized
to and did stenographically report the foregoing
proceedings and that the transcript is a true and
complete record of my stenographic notes.

DATED this 30th day of January, 2004.



MARIANNE TERTAN

1 IN THE CIRCUIT COURT OF THE
 2 11th JUDICIAL CIRCUIT IN AND FOR
 MIAMI-DADE COUNTY, FLORIDA
 3 GENERAL JURISDICTION DIVISION
 4 CASE NO. 01-27699 CA 25

5 ALLIED UNIVERSAL CORPORATION, a
 Florida corporation, and CHEMICAL
 6 FORMULATORS, INC., a Florida
 corporation,
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8 Plaintiffs,

9 vs.

10 ODYSSEY MANUFACTURING COMPANY, a
 Delaware corporation, and SENTRY
 11 INDUSTRIES, INC., a Florida
 corporation,
 12

13 Defendants.

14 _____/ Miami, Florida
 May 13, 2004

15 The above-entitled case came on for hearing
 16 before the Honorable Michael B. Chavies, Judge of
 the above-styled court, at the Miami-Dade County
 17 Courthouse, commencing at 9:46 a.m.

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 19 PROCEEDINGS

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1 APPEARANCES:
 2 Daniel K. Bandklayder, Esq.
 of the firm of ANANIA, BANDKLAYDER,
 3 BLACKWELL, & BAUMGARTEN
 on behalf of the Plaintiffs
 4
 Lawrence D. Silverman, Esq.
 5 of the firm of AKERMAN SENTERFITT
 on behalf of the Plaintiffs



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Bryan S. Greenberg, Esq.,
of the firm of RUDEN, MCCLOSKEY, SMITH
SCHUSTER & RUSSELL
on behalf of the Defendants

Also present:

Stephen W. Sidelko

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

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(In open court:)

MR. BANDKLAYDER: Good morning, Your
Honor. Dan Bandklayder and Larry Silverman
for the plaintiffs, Allied Universal and
Chemical Formulators.

We're back on our motion to stay the
trial. We've brought it to your attention
before. You've held off on ruling on it.
Our trial is set for June 7th. You may
recall this is a tortious interference,
unfair competition case which also had

12 antitrust claims which were removed at the
13 summary judgment. It involves two bleach
14 manufacturers in Tampa --

15 THE COURT: I know what the case is.

16 MR. BANDKLAYDER: The companion case
17 between the parties is still pending before
18 the Public Service Commission. You may
19 recall we filed a motion to stay just the
20 trial, not the case, pending the Public
21 Service Commission's disposition of the
22 matter, and it has not disposed of it yet.

23 My understanding is that the Public
24 Service Commission may vote on what they're
25 going to do with the case on June 1st. But
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1 even if they do, their decision isn't going
2 to be issued until 15 or 20 days afterwards
3 and then each side would have 10 or 15 days
4 to file motions for reconsideration, if
5 appropriate.

6 we've already briefed the reason why
7 this case should be stayed pending the Public
8 Service Commission's decision. The long and
9 the short of it is whatever the Public
10 Service Commission does will likely have an
11 affect on the damages in this case and then
12 the future course of this case, the clearest
13 example of which is if the Public Service
14 Commission grants the relief that we are
15 seeking with regard to the defendants'
16 electric rate, this case essentially is over
17 and will likely be dismissed. That's the

18 clearest example.

19 There are a number of other possible
20 things that the Public Service Commission
21 might do that might have different affects on
22 this case, but the bottom line is it makes no
23 sense to have a two, possibly three-week
24 trial in this case when the entire outcome of
25 this case may be decided by the Public

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1 Service Commission in the very near future.
2 That's basically the long and the short of
3 it.

4 we've briefed the doctrine of primary
5 jurisdiction and exclusive jurisdiction over
6 electric rates and all that, but the bottom
7 line as a practical matter is it makes no
8 sense to try this case in June when the
9 Public Service Commission hasn't decided what
10 they're going to be deciding. We're not
11 looking for an indefinite postponement. It
12 may be for one or two or possibly three
13 months, and I think when you balance all the
14 considerations, this is what makes all the
15 sense.

16 MR. GREENBERG: Your Honor, on behalf of
17 the defendants, we very much oppose this
18 motion. As you know, we've argued this
19 before you before. This case is almost three
20 years old, Judge. Interestingly this is, of
21 course, the plaintiffs' fourth attempt, I
22 believe, to push off the trial. They're the
23 ones --

24 THE COURT: I mean doesn't it make good
25 sense if it's going to affect or it may 6

1 affect the issues in this case, to that
2 extent doesn't it make good sense to wait a
3 month?

4 MR. GREENBERG: Two important responses,
5 Your Honor. No. 1, the decision by the
6 Public Service Commission will have
7 absolutely no affect on the issues in this
8 lawsuit.

9 THE COURT: well, your adversary just
10 told me that there may not be a lawsuit
11 anymore after the decision is rendered.

12 MR. GREENBERG: Your Honor, if he's
13 asserting to you that his client is
14 stipulating that they're going to voluntarily
15 dismiss the case, that's one thing. But
16 legally, Judge, the result in the Public
17 Service Commission has absolutely nothing to
18 do with the merits in this case or the
19 damages in this case, and I've argued this to
20 you at the summary judgment hearing.

21 The damages alleged by the plaintiff in
22 this case solely relate to their own costs,
23 what they're paying now and what they would
24 have paid had they built the plant they say
25 they can't build. The Public Service 7

1 Commission -- and counsel just said this to
2 you, this will have no affect on their real
3 damages calculations in this case, but he's
4 saying well, if their rate is raised, we

5 won't feel we're as damaged, we think we
6 might compete and then we'll drop the
7 lawsuit. That is not relevant before the
8 issues at trial.

9 THE COURT: How long is it going to take
10 to try the case?

11 MR. BANDKLAYDER: Ten to 15 days.

12 MR. GREENBERG: I would say it's
13 probably closer to eight to seven days.

14 MR. BANDKLAYDER: Just so we're clear --

15 THE COURT: You wouldn't get tried in
16 June anyway because most of my trial calendar
17 is not available. We have a judges
18 conference and a couple other things going
19 on, so it wouldn't happen in June.

20 I'm going to go ahead and grant the
21 motion. We're going to try this case in
22 either July or August, depending on what my
23 calendar looks like. And if they have not
24 spoken by then, then so be it, and we'll find
25 you those two weeks to try this case in

1 either July or August. As soon as I get an
2 opportunity to talk to my J.A. about setting
3 it, I will let all of you know.

4 MR. GREENBERG: Very good. Thank you.

5 MR. BANDKLAYDER: Thank you, judge.

6 THE COURT: Thank you very much.

7 (The proceedings were concluded at
8 9:51 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA :
: SS.
COUNTY OF MIAMI-DADE :

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I, LANCE W. STEINBEISSER, Registered Professional Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

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Dated this 3rd day of June, 2004.

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

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1 IN THE CIRCUIT COURT OF THE ELEVENTH
 2 JUDICIAL CIRCUIT IN AND FOR
 3 MIAMI-DADE COUNTY, FLORIDA
 4 GENERAL JURISDICTION DIVISION
 5 CASE NO. 01-27699 (CA 25)

6 **ALLIED UNIVERSAL CORPORATION, a**
 7 **Florida corporation, and CHEMICAL**
 8 **FORMULATORS, INC., a Florida corporation,**
 9
 10 **Plaintiffs,**

11 **vs.**

12 **ODYSSEY MANUFACTURING COMPANY, a**
 13 **Delaware Corporation, and SENTRY**
 14 **INDUSTRIES, a Florida Corporation,**
 15
 16 **Defendants.**

17 Miami, Florida
 18 Thursday, July 1, 2004

19 The above-entitled case came on for
 20 hearing before the Honorable Michael B. Chavies,
 21 Judge of the above-styled Court, at the Miami-Dade
 22 ounty Courthouse, commencing at 9:30 a .m.

23 **APPEARANCES:**

24 **DANIEL K. BANDKLAYDER, ESQ.**
 25 Anania, Bandklayder, Blackwell,
 26 Baumgarten & Torricella
 27 on behalf of the Plaintiffs

28 **LAWRENCE D. SILVERMAN, ESQ.**
 29 Akerman, Senterfitt & Eidson, P.A.
 30 on behalf of the Plaintiffs

31 **BRYAN S. GREENBERG, ESQ.**
 32 Ruden, McClosky, Smith, Schuster & Russell, P.A.
 33 on behalf of the Defendants

34 IRENE L. ELLIOTT, REPORTER

1 MR. GREENBERG: Good morning, Judge.

2 MR. BANDKLAYDER: Good morning, Your
 Page 1

3 Honor.

4 MR. BANDKLAYDER: This is Allied
5 Universal versus Odyssey.

6 MR. GREENBERG: We are actually here on
7 two things, Your Honor. One is a request to get a
8 specially set trial date from the Court.

9 THE COURT: Didn't I grant the motion to
10 stay the trial?

11 MR. GREENBERG: Yes, you did, Your
12 Honor. And at that hearing you had stated that you
13 would put us on a two-week special set docket in
14 either July or August, and that regardless of
15 whether the proceeding in Tallahassee was
16 completed, you would pick a date and proceed.

17 we had contacted your judicial
18 assistant, and I inquired about what docket we
19 might be put on. And because Mr. Smith from my
20 office had sent a letter indicating unavailability
21 for August, she had suggested we come back before
22 you and actually solicit the Court to set us at a
23 hearing on motion calendar. So that's why we're
24 here.

25 THE COURT: So what's your suggestion

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1 then?

2 MR. GREENBERG: We are requesting
3 September, if you have a two-week period when you
4 can pencil us in.

5 MR. BANDKLAYDER: First, Judge, I don't
6 recall you saying that you were going to set this

7 regardless of what the PSC did. The case was
8 stayed; the trial was stayed. Discovery is
9 ongoing, but you stayed the trial, and you entered
10 an order to that effect.

11 The PSC is having a hearing on the other
12 side's dismissal motions next Wednesday, July 7th.
13 I don't know why we should pick a specially set
14 trial date today when we're going to know -- I'm
15 not going to say we will know definitively what's
16 going to happen with the PSC, but we will have a
17 pretty darn good idea, because their one-hour
18 hearing is next Wednesday.

19 THE COURT: Didn't I stay it for a
20 specified period of time?

21 MR. GREENBERG: No, sir. This is the
22 transcript. You had specifically stated you were
23 going to set us, regardless of what happened with
24 the PSC hearing, in July or August.

25 And just quoting, you said: If they

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1 have not spoken by then, then so be it. We'll find
2 you the two weeks and try the case in August, July
3 or August.

4 And just responding to what counsel
5 stated --

6 THE COURT: It's right there.

7 MR. BANDKLAYDER: I didn't take that,
8 Judge, as saying we are going to trial in July or
9 August regardless of what the PSC did. I thought
10 Your Honor's intent was let's see what the PSC
11 does, and maybe it will be over in the PSC by July

12 or August. The hearing is next Wednesday, and --

13 THE COURT: Well, if I said it, and what
14 the PSC does determines the issues in this case,
15 then we can take it off.

16 MR. BANDKLAYDER: That's true, Judge,
17 but I'm reluctant to be in a position of having to
18 come in and ask for a continuance because things
19 are still happening in the PSC and it hasn't ruled.

20 You know, you granted the motion to
21 stay, and nothing has changed to warrant reversing
22 your order staying the case.

23 THE COURT: Anything?

24 MR. SILVERMAN: Got a six-day special
25 set trial September 13th, so if we can avoid that

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1 week

2 THE COURT: Consistent with that which I
3 said, it should be set. I don't know what my
4 calendar looks like for September, but presumably
5 there's a three-week trial period. If there's not
6 anything else specially set, then you will have two
7 of those weeks.

8 MR. GREENBERG: Procedurally, how would
9 we go about getting ourselves on that docket;
10 should I contact your judicial assistant?

11 THE COURT: I would rather talk to
12 Sandra about it than having you all go in there.
13 If I look at the calendar with her, I can pick out
14 that two-week period for you.

15 MR. BANDKLAYDER: Where does that leave

16 us? If the PSC is going to take jurisdiction and
17 do something in the case, are we still going to --

18 THE COURT: You're going to come in and
19 let me know that. You'll file a motion and you'll
20 come in and argue that motion to me as to why the
21 case should not go forward.

22 MR. BANDKLAYDER: That's the same motion
23 we previously filed, the motion to stay.

24 THE COURT: Right, but the ingredients
25 there will be different, presumably, based on what

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1 they do, right? We don't know yet.

2 MR. BANDKLAYDER: We don't know.
3 There's a whole bunch of options.

4 THE COURT: We will just have to see.

5 MR. GREENBERG: There's a second thing
6 I have set before Your Honor, which is exceptions
7 that the plaintiffs have filed to a discovery
8 ruling by Judge Farrell.

9 They have excepted, and presumably it's
10 their burden to show that Judge Farrell erred.

11 MR. BANDKLAYDER: I don't know that we
12 can do this on a motion calendar, Judge. They set
13 this.

14 THE COURT: You need to take some time
15 with it?

16 MR. BANDKLAYDER: Yes. We sure took a
17 lot of time with Judge Farrell.

18 MR. GREENBERG: The only concern I have,
19 Judge, is they had tried to get a 15-minute
20 hearing, and we were told October, which in theory

21 would be after the trial date. So I have a
22 concern.

23 THE COURT: There are exceptions to
24 that. I have a 10:30 to 11:30 time on Tuesdays and
25 Thursdays, and if there's an emergency, I've got

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1 some other time set aside for those type
2 situations, too.

3 So explain to Sandra that you have a
4 trial date upcoming and you need this heard
5 previous thereto and she will accommodate you.

6 MR. GREENBERG: Thank you, Your Honor.

7 MR. BANDKLAYDER: Thank you, Judge.

8 (Thereupon, the hearing was concluded
9 at 9:35 a.m.)

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