

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



_____)
In the Matter of)
)
CHICAGO BRIDGE & IRON COMPANY N.V.)
)
a foreign corporation,)
)
CHICAGO BRIDGE & IRON COMPANY)
)
a corporation,)
)
 and)
)
PITT-DES MOINES, INC.)
)
a corporation.)
_____)

Docket No. 9300

**JOINT MOTION FOR ENTERING OF
FIRST REVISED SCHEDULING ORDER**

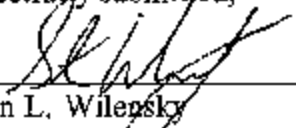
To: The Honorable James P. Timony
Administrative Law Judge

Complaint Counsel and Respondents request that the attached First Revised Scheduling Order be entered in the above captioned proceeding.

Dated: Washington, D.C.

May 6, 2002

Respectfully submitted,



Steven L. Wilensky

Cecelia Waldeck

Michael A. Franchak

Rhett R. Krulla


Federal Trade Commission

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Complaint Counsel



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Counsel for Respondents Chicago

Bridge & Iron Company N.V. and

Pitt Des-Moines, Inc.

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

In the Matter of)	
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CHICAGO BRIDGE & IRON COMPANY N.V.)	
a foreign corporation,)	
)	
CHICAGO BRIDGE & IRON COMPANY,)	Docket No. 9300
a corporation, and)	
)	
PITT-DES MOINES, INC.,)	
a corporation.)	

FIRST REVISED SCHEDULING ORDER

- | | | |
|----------------|---|---|
| April 23, 2002 | - | Complaint Counsel provides preliminary witness list (not including experts) with description of proposed testimony. |
| April 30, 2002 | - | Respondents' Counsel provides preliminary witness lists (not including experts) with description of proposed testimony. |
| April 30, 2002 | - | Complaint Counsel provides expert witness list. |
| May 7, 2002 | - | Respondents' Counsel provides expert witness list. |
| May 21, 2002 | - | Status conference with ALJ to address disputes regarding discovery and other pretrial matters, if requested by parties. |
| May 28, 2002 | - | Complaint Counsel provides revised witness lists, including preliminary rebuttal witnesses, with description of proposed testimony. |
| June 3, 2002 | - | Respondents' Counsel provides revised witness list, including preliminary sur-rebuttal witnesses, with description of proposed testimony. |
| June 7, 2002 | - | Deadline for issuing document requests, requests for admission, interrogatories and subpoenas <i>duces tecum</i> , except for discovery for purposes of authenticity and admissibility of exhibits. |

- July 8, 2002 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- July 8, 2002 - Complaint Counsel provides expert witness reports.
- July 15, 2002 - Parties that intend to offer into evidence at the hearing confidential materials of an opposing party or non-party must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- July 17, 2002 - Complaint Counsel provides to Respondents' counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- July 19, 2002 - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition and copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness. Respondents' Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- July 22, 2002 - Respondents' Counsel provides expert witness reports.
- July 24, 2002 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- July 26, 2002 - Deadline for filing motions *in limine* and motions to strike. (except as to experts)

- August 5, 2002

 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports on behalf of Respondent).

- August 9, 2002

 - Exchange and serve courtesy copy on ALJ of objections to final proposed witness lists and exhibit lists. Exchange objections to the designated testimony to be presented by deposition and counter designations.

- August 12, 2002

 - Complaint Counsel files pretrial brief.

- August 19, 2002

 - Respondents' Counsel files pretrial brief.

- August 22, 2002

 - Exchange proposed stipulations of law, facts, and authenticity.

- August 22, 2002

 - Deadline for depositions of experts (including rebuttal experts).

- August 28, 2002

 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.

- September 4, 2002

 - Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable.

- September 10, 2002

 - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

20 days following close of record

- Parties file proposed findings of fact and conclusions of law.

30 days following close of record

- Parties file responses to proposed findings of fact and conclusions of law.

ADDITIONAL PROVISIONS

1. Pursuant to Rule 3.21(c)(2), extensions or modifications to these deadlines will be made only upon a showing of good cause.

2. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off, that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests shall be filed within 5 days of impasse if the parties are negotiating in good faith and are not able to resolve their dispute.

3. The parties are limited to a total of 50 document requests, 50 interrogatories, and 50 requests for admissions, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Additional discovery may be permitted only for good cause upon application to and approval by the Administrative Law Judge. Responses to document requests, interrogatories, and requests for admission shall be due within 20 days of service. Objections to document requests, interrogatories, and requests for admission shall be due within 10 days of service.

The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition.

4. The revised and final witness lists shall represent counsel's good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary or revised preliminary witness lists previously exchanged unless by order of the Administrative Law Judge upon a showing of good cause.

5. The final exhibit lists shall represent counsel's good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by order of the Administrative Law Judge upon a showing of good cause.

6. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. Counsel scheduling depositions shall immediately notify all other counsel that a deposition has been scheduled.

Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within five business days of receiving the documents.

7. At the time an expert is first listed as a witness by a party, the listing party will provide to the other party:

- (a) materials fully describing or identifying the background and qualifications of the expert, list of all publications, and all prior cases in which the expert has testified or has been deposed; and
- (b) transcripts of such testimony in the possession, custody or control of the listing party or the expert.

At the time an expert report is produced, the listing party will provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case.

Each expert report shall include the subject matter on which the expert is expected to testify and the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds of each opinion.

8. Demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) shall be supplied to opposing counsel no later than 24 hours prior to the day that they are to be offered at trial.

9. Service of all papers filed with the Commission shall be made on opposing counsel and two courtesy copies to the Administrative Law Judge by 5:00 p.m. on the designated date. Unless requested, the parties shall not serve courtesy copies on the ALJ of any papers (including discovery requests and responses) that are not required to be filed with the Office of the Secretary.

Deliveries shall be as follows:

For Complaint Counsel: Steven Wilensky, Esquire
FEDERAL TRADE COMMISSION
601 Pennsylvania Avenue, N.W.
Room S-3602
Washington, D.C. 20580

For Respondents' Counsel: Jeffrey Leon, Esquire
WINSTON & STRAWN
35 West Wacker Dr.
Chicago, IL 60601

All deliveries by facsimile shall be followed promptly by delivery of an original by hand or by U.S. mail, first class postage prepaid. It shall be the obligation of the serving party to ensure that service by facsimile has been effected.

10. All pleadings that cite to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

11. The procedure for marking of exhibits referred to in the adjudicative proceeding shall be as follows both parties shall number their exhibits with a single series of consecutive numbers. Complaint Counsel's exhibits shall bear the designation CX and Respondents' exhibits shall bear the designation RX or some other appropriate designation. (For example, the first exhibit shall be marked CX-1 for Complaint Counsel.) When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive bates number or some other consecutive page number.

All exhibit numbers must be accounted for, even if a particular number is not actually used at trial. If a party selects certain, but not all, documents that it previously designated as deposition exhibits, the party must indicate that certain numbers were not used in the numbering process for designating trial exhibits. For example, if Complaint Counsel decided to not introduce at trial documents previously marked at deposition as exhibits CX-2, CX-4, and CX-6. Complaint Counsel's list of exhibits would begin CX-1, CX-3, and CX-5. This method of numbering exhibits for trial is acceptable, as long as the party also prepares a list of its exhibits indicating that CX-2, CX-4, and CX-6 were never designated as trial exhibits. Using this example, in preparing the set of original exhibits to give to the court reporter, Complaint Counsel must indicate that CX-2, CX-4, and CX-6 were never designated as trial exhibits by inserting in their place a piece of paper or tab indicating the appropriate number.

12. At the final pre-hearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. Counsel will also be required to give *the originals* of exhibits to the court reporter, which the court reporter will keep.

ORDERED:

James P. Timony
Chief Administrative Law Judge

Date: _____

ORDERED:

CERTIFICATE OF SERVICE

I hereby certify that I today caused a copy of the Joint Motion for Entering of First Revised Scheduling Order to be delivered this day by hand to

The Honorable James P. Timony
Federal Trade Commission
H-104
6th and Pennsylvania Ave. N.W.
Washington D.C. 20580

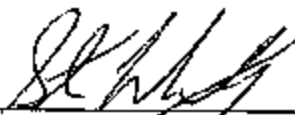
Administrative Law Judge

and by facsimile and by first-class mail to:

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(312) 558-5600

Nada Sulaiman
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Washington, D.C. 20005

Counsel for Respondents Chicago Bridge & Iron Company
N.V. and Pitt-Des Moines, Inc.



Steven L. Wilensky
Commission Counsel

Dated: May 6, 2002