

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL



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

**RESPONDENTS' MOTION FOR *IN CAMERA* TREATMENT OF MATERIAL
PREVIOUSLY DESIGNATED AS CONFIDENTIAL**

Respondents¹ file this Motion for *In Camera* Treatment of Material Previously Designated as Confidential pursuant to Rule 3.45(b) of the Federal Trade Commission ("FTC") Rules of Practice, 16 C.F.R. § 3.45(b). Respondents respectfully request that the Commission enter a protective order directing *in camera* treatment for certain material containing highly confidential and sensitive CB&I business information.

**I.
INTRODUCTION**

On June 20, 2005, Complaint Counsel in this action filed its Response to CB&I Respondents' Further Briefing on Specific Remedy Issues (the "Response"). Complaint Counsel's Response included material that CB&I included in its *In Camera* version of the brief to which Complaint Counsel was responding, and which CB&I had previously designated as highly confidential. Complaint Counsel requested that their Opposition be placed temporarily under seal pursuant to Commission Rule 4.10(g), 16 C.F.R. § 4.10(g),

¹ Respondents Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company are referred to herein collectively as "Respondents" or "CB&I."

in order to afford Respondents the opportunity to seek a protective order for *in camera* treatment of this material. Respondents now do so.

The material in question concerns [] That proposal contained confidential, sensitive information regarding CB&I's business, the disclosure of which would substantially harm CB&I's current operations. See Exhibit A. []

] See

Declaration of David Bordages, attached hereto at Exhibit A ("Bordages Declaration"). As such, CB&I requests that the material be treated as highly confidential and remain on file under seal.

II. THE LEGAL STANDARD

Rule 3.45 governs *in camera* treatment of materials, stating that material shall be "placed *in camera* only after finding that its public disclosure would likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment." 16 C.F.R. § 3.45(b). The rule also indicates the FTC decisions which articulate the standard for placing materials *in camera*. See *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); see also *General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). According to this authority, applicants for *in camera* treatment must make a "clear showing that the information concerned is

sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury." *General Foods Corp.*, 95 F.T.C. at 355.

Moreover, the Commission has established six factors to consider in determining whether an *in camera* applicant has made a sufficient showing: (1) the extent to which the information is known outside the party's business; (2) the extent to which the information is known by employees and others involved in the party's business; (3) the extent of measures taken by the party to guard the secrecy of the information; (4) the value of the information to the party and its competitors; if the information is old, a greater burden is placed on the party to demonstrate its value; (5) the amount of effort or money expended by the party in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Bristol-Myers Co.*, 90 F.T.C. at 456. In addition, "[t]he loss of business advantage is a good example of a 'clearly defined, serious injury.'" *Hoechst Marion Roussel, Inc.*, 2000 F.T.C. LEXIS 138 at *6 (citing *General Foods*, 95 F.T.C. at 355).

III.

THE MATERIAL AT ISSUE MEETS THE LEGAL STANDARD FOR *IN CAMERA* TREATMENT – PUBLIC DISCLOSURE OF THE INFORMATION WOULD RESULT IN A CLEARLY DEFINED, SERIOUS INJURY TO CB&I

Those portions of the instant motion, Exhibit A hereto, and Complaint Counsel's Response at page 7, the first full paragraph of page 13, a portion of the last paragraph of page 14, and Attachment B thereto, all as designated by Complaint Counsel as Temporarily Under Seal Pursuant to Rule 4.10(g), should be afforded *in camera* treatment. The public disclosure of this information would damage CB&I's business by revealing [

] Competitors who are privy to [

over CB&I, [] will have a competitive advantage

] In fact, information of this nature is some of the most sensitive that CB&I maintains.

Moreover, this information meets the six criteria set forth by the Commission for use in evaluating the need for *in camera* treatment. First, this information is not known publicly outside of CB&I's business. *See* Bordages Declaration. Second, within CB&I's business this information is known to only a handful of high level executives. *See id.* Third, CB&I has taken all due precautions to safeguard the confidential nature of this information, including filing the information *in camera*. *See id.* Fourth, this information is of great value to CB&I, as it represents [

] *See id.* [

] *See id.* Finally, this is the type of information that CB&I would not allow to be obtained by anyone outside of its organization and which could not be duplicated by anyone outside of CB&I. *See id.*

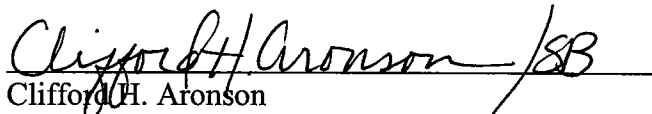
**IV.
THE MATERIAL AT ISSUE SHOULD BE KEPT *IN CAMERA* FOR A PERIOD
OF FIVE YEARS**

Once it is established that material deserves *in camera* treatment, the duration of such treatment must be determined. *See* 16 C.F.R. § 3.45(b). When *in camera* treatment is granted for ordinary business records, as opposed to trade secrets or other sensitive

technical information, it is typically extended for two to five years. *See e.g., In re E.I. Du Pont de Nemours & Co.*, 97 F.T.C. 116 (Jan. 21, 1981). Accordingly, CB&I requests that the material at issue here be granted *in camera* treatment for five years. Previously in this action, similar competitive information has been granted *in camera* treatment for a period of five years or more. *See, e.g., Order Granting Respondents' Motions for In Camera Treatment*, January 8, 2003; *Order Granting Respondents' Renewed Motion for In Camera Treatment of Certain Exhibits*, December 3, 2002.

WHEREFORE, CB&I respectfully requests that the Commission enter an Order granting *in camera* treatment for those portions of the instant motion, Exhibit A hereto, and Complaint Counsel's Response at page 7, the first full paragraph of page 13, a portion of the last paragraph of page 14, and Attachment B thereto, all as designated by Complaint Counsel as Temporarily Under Seal Pursuant to Rule 4.10(g), that have been redacted in the public record, for a period of five years.

Dated: June 30, 2005


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ATTORNEYS FOR RESPONDENTS
CHICAGO BRIDGE & IRON COMPANY N.V.
AND CHICAGO BRIDGE & IRON COMPANY

CERTIFICATE OF SERVICE

I, Sara L. Bensley, hereby certify that on June 30, 2005, true and correct copies of the foregoing *Respondents' Motion for In Camera Treatment of Material Previously Designated as Confidential* were served as follows:

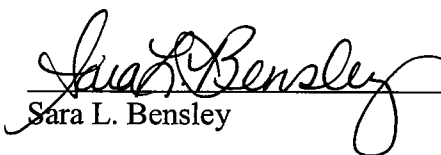
One original and twelve copies served by hand delivery upon:

Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

One copy served by hand delivery upon each of:

Rhett R. Krulla, Esq.
Assistant Director
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-6120
Washington, D.C. 20001

Steven L. Wilensky, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-6120
Washington, D.C. 20001



Sara L. Bensley



RECYCLED

3. CB&I designated the Alternative Suggestions as highly confidential and redacted the Alternative Suggestions from the public document, seeking *in camera* treatment of same.

4. CB&I considers the Alternative Suggestions as highly confidential and extremely sensitive business information, the release or publication of which would substantially harm CB&I's business.

5. To CB&I's knowledge, no one outside of CB&I and its counsel are aware of the Alternative Suggestions prior to its inclusion in CB&I's Brief, *in camera* version.

6. Only a small number of high level executives at CB&I are privy to information concerning the Alternative Suggestions. This information constitutes a highly confidential executive level strategy, and I would not casually discuss it even within CB&I.

7. CB&I has taken, and continues to take, all due precautions to safeguard the confidential nature of this information.

8. Information concerning the Alternative Suggestions, or any discussion thereof, is of great value to CB&I because it concerns [

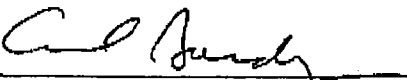
]

9. Information concerning the Alternative Suggestions is the type of information that cannot be duplicated outside of CB&I and which CB&I will not allow anyone outside of its business to obtain.

10. CB&I is particularly concerned that the release of this information would disadvantage CB&I with respect to its competitors because it would give competitors inside information concerning **[CB&I's business strategies regarding continued operations, and may provide competitors with the opportunity to raid CB&I's employees, or to exploit the situation with customers of the water business.]**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 6/30/05



David Bordages

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of))) CHICAGO BRIDGE & IRON COMPANY N.V.) a foreign corporation,)) CHICAGO BRIDGE & IRON COMPANY) a corporation,)) PITT-DES MOINES, INC.,) a corporation.))	Docket No. 9300
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**PROPOSED ORDER GRANTING RESPONDENTS' MOTION FOR
IN CAMERA TREATMENT OF MATERIAL PREVIOUSLY
DESIGNATED AS CONFIDENTIAL**

Pursuant to Commission Rule 3.45(b), Respondents Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company (collectively "CB&I") have filed a Motion for *In Camera* Treatment of Material Previously Designated as Confidential ("Respondents' Motion"). It is hereby ordered that those portions of Respondents Motion, Exhibit A thereto, and Complaint Counsel's Response to CB&I Respondents' Further Briefing on Specific Remedy Issues at page 7, the first full paragraph of page 13, a portion of the last paragraph of page 14, and Attachment B thereto, all as designated by Complaint Counsel as Temporarily Under Seal Pursuant to Rule 4(10)(g), which were redacted in the public record, shall be afforded *in camera* treatment for a period of five years.

ORDERED:

Donald S. Clark
Secretary

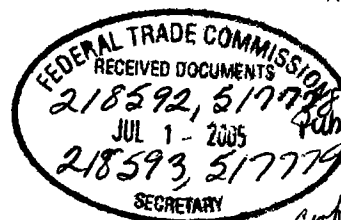
Date: _____, 2005

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June 30, 2005

BY HAND

Donald S. Clark
Secretary
Federal Trade Commission
6th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: In the Matter of Chicago Bridge & Iron Company, et al., Docket No. 9300

Dear Mr. Clark:

Respondents Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company have filed today a Motion for *In Camera* Treatment of Material Previously Designated As Confidential ("Respondents' Motion"), which Respondents hereby request be placed under seal pursuant to Commission Rule 4.10(g), 16 C.F.R. § 4.10(g). Respondents seek *in camera* treatment for material submitted to the Commission in Complaint Counsel's Response to CB&I Respondents' Further Briefing on Specific Remedy Issues ("Complaint Counsel's Response"), dated June 20, 2005, pursuant to Rule 3.45, 16 C.F.R. § 3.45.

Respondents have also filed today, on the public record, a redacted copy of Respondents' Motion that omits material that Respondents deem confidential. Accordingly, Respondents further request that those redacted portions of Respondents' Motion and Exhibit A thereto, as well as the redacted portions of

Donald S. Clark
June 30, 2005
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Complaint Counsel's Response, be afforded *in camera* treatment pursuant to Rule 3.45.

Finally, please be advised that the copy of Exhibit A that is included in this filing is a facsimile copy. The original executed Exhibit A will be submitted under separate cover within 1-2 business days.

Very truly yours,


Clifford H. Aronson

cc: Rhett R. Krulla, Esq.

Enclosures