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	)	Docket No. 9300
PITT-DES MOINES, INC. a corporation.	)	

To: The Honorable D. Michael Chappell
Administrative Law Judge

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR LEAVE TO FILE REPLY

Enough is enough. More briefing on this issue is unnecessary at this time and is certainly not fair rebuttal. Under Rule 3.22(c), the "moving party shall have no right to reply, except as permitted by the Administrative Law Judge or the Commission." However, Respondents argue that this Tribunal should grant them permission to file a reply because Complaint Counsel surprised them by supposedly raising new issues: (i) "the finding of *any* violation requires a divestiture" and (ii) "what is required of a divested entity." (Mot. For Leave ¶ 3). This is not correct.

To the contrary, on the first point, Respondents' Motion expressly identified the following issue: "Should the break-up remedy be imposed if liability is found in some but not all of the markets challenged?" (Mot. for Directed Verdict 13). Thus, it should not surprise Respondents that Complaint Counsel stated,

as we did at closing argument, that the law (15 U.S.C. § 21(b)) requires such a divestiture. (Opposition Mot. 2-7). How can Respondents be surprised by the governing law on the issue they raised?

On the second point, Respondents acknowledged in their Motion that the matter of remedy "was an important part of the trial on liability" and that they had "elicited testimony touching on the issue of remedy from a dozen witnesses." (Mot. for Directed Verdict 9). This evidence, which Respondents acknowledge is uncontradicted (*id.*), demonstrates that a successful divestiture must be implemented through a restoration of a competitive entity, including assignment of contracts, restoration of sufficient personnel, a sufficient revenue base and scale, assets of the former PDM's EC and Water Divisions and fabrication facilities, intangible assets including technology and knowhow, customer goodwill and a track record, and oversight by a monitor trustee. (Opposition Mot. 18-28) . Having elicited this testimony at trial and having admitted these very points in the closing argument, Respondents cannot now claim to have been surprised by what the evidence shows on the very issue they presented in their Motion.

Accordingly, Complaint Counsel opposes Respondents Motion for Leave to File a Reply. The issue of remedy will surely be briefed in the post-trial briefs, and Respondents have shown no good cause for getting another bite at the apple now.

Dated: January 28, 2003

Respectfully submitted,

_____

J. Robert Robertson
Rhett R. Krulla
Steven Wilensky
Cecelia Waldeck

Federal Trade Commission
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ORDER

On January 24, 2003, Respondents filed a Motion for Leave to File Reply to Complaint Counsel's Opposition to Respondents' Motion for Directed Verdict on the Issue of Remedy ("Motion for Leave to Reply"). On January 28, 2003, Complaint Counsel filed an Opposition to Respondents' Motion for Leave to Reply. Having fully considered Respondents' Motion and Complaint Counsel's Opposition thereto, the Court denies Respondents' Motion for Leave to Reply.

IT IS HEREBY ORDERED that Respondents' motion is denied in its entirety.

ORDERED

D. Michael Chappell
Administrative Law Judge

Date: January __, 2003

CERTIFICATE OF SERVICE

I hereby certify that I caused two copies of Complaint Counsel's Opposition to Respondents' Motion for Leave to File Reply to be delivered by hand to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
H-104
600 Pennsylvania Avenue, N.W.
Washington D.C. 20580

Administrative Law Judge

and one copy by facsimile and by first-class mail to:

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

Dated: January 28, 2003

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Cecelia Waldeck