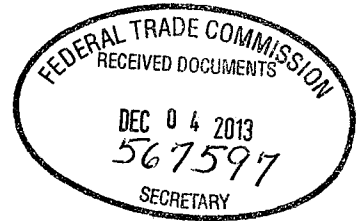


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

Ardagh Group S.A.,  
a public limited liability company, and

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation.

DOCKET NO. 9356

**COMPLAINT COUNSEL'S MOTION *IN LIMINE* TO EXCLUDE TESTIMONY FROM  
WITNESSES THAT RESPONDENTS ADDED TO THEIR FINAL WITNESS LIST BUT  
FAILED TO DISCLOSE ON THEIR PRELIMINARY WITNESS LIST**

Complaint Counsel respectfully moves *in limine* to exclude testimony from those witnesses that Respondents added to their Final Witness List but failed to disclose on their Preliminary Witness List: Respondents' executives Paul Coulson, Robert Ganter, Michael Leahy, Jarrell A. Reeves, J. Steven Rhea, Kenneth Wilkes, and the unidentified "representative(s) of the financial buyer of any divested assets" (collectively, the "Newly Added Witnesses"). Disregarding the Scheduling Order governing this case, Respondents added these witnesses to their Final Witness List without advance notice to, or consent from, Complaint Counsel, without an Order from this Court, and without demonstrating good cause for the additions. Respondents' failure to notify Complaint Counsel of their intent to add these witnesses before the close of discovery denied Complaint Counsel the opportunity to take discovery regarding the Newly Added Witnesses' expected trial testimony.

Respondents' Final Witness List also includes over 35 third parties, and in each case, in addition to the identified witness from that third party, Respondents include "and/or a representative of [third party name] knowledgeable regarding [third party's] strategy and practices relating to beer (or spirits) containers" (together with the unidentified financial buyer, the "Unidentified Witnesses"). Complaint Counsel also moves to exclude testimony from any such Unidentified Witnesses. Permitting testimony from the Newly Added and Unidentified Witnesses at trial would unduly prejudice Complaint Counsel's case.

**I. The Court Should Exclude Testimony from the Newly Added Witnesses and the Unidentified Witnesses Because Respondents Have Disregarded This Court's Order**

Respondents have disregarded this Court's explicit order about witness additions. The August 2, 2013 Scheduling Order ("August 2nd Order") provided witness list submission deadlines and procedures for adding new witnesses. The October 18, 2013 Revised Scheduling Order ("October 18th Order") provided new deadlines for certain submissions and explicitly incorporated the Additional Provisions of the August 2nd Order by reference.<sup>1</sup> The August 2nd Order required Respondents to provide a preliminary witness list to Complaint Counsel by August 16, 2013.<sup>2</sup> The October 18th Order required Respondents to produce a final witness list to Complaint Counsel by November 18, 2013, compliant with Additional Provision 15 of the August 2nd Order.<sup>3</sup> Additional Provision 15 provides that:

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 witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.<sup>4</sup>

<sup>1</sup> Exhibit 1 (October 18th Order at 4) ("All Additional Provisions to the August 2, 2013 Order Remain in effect.").

<sup>2</sup> Exhibit 2 (August 2nd Order at 1).

<sup>3</sup> Exhibit 1 (October 18th Order at 2, 4).

<sup>4</sup> Exhibit 2 (August 2nd Order at 7).

Respondents have failed to comply with any of these requirements. Respondents provided their Preliminary Witness List to Complaint Counsel on August 20, 2013, four days after the Court's deadline established in the August 2nd Order.<sup>5</sup> Respondents chose not to include the Newly Added Witnesses on their Preliminary Witness List. On November 18, 2013, Respondents provided Complaint Counsel with their Final Witness List that, for the first time, included the Newly Added Witnesses.<sup>6</sup>

Respondents also disregarded the Court's explicit instructions for adding witnesses set forth in Additional Provision 15. Respondents failed to "notify the opposing party *promptly* of any changes in witness lists."<sup>7</sup> Indeed, Respondents provided *no notice* to Complaint Counsel of their intent to include additional witnesses on their Final Witness List. In fact, this twelfth-hour change came nearly two months after the September 23rd close of discovery.<sup>8</sup> This scenario is precisely what Additional Provision 15 seeks to prevent by requiring prompt notice of witness additions in order "to facilitate completion of discovery within the dates of the scheduling order."

Neither Complaint Counsel nor this Court has consented to the addition of the Newly Added Witnesses. Respondents chose not to seek "consent of all [the] parties" or "an order of the Administrative Law Judge" to include the Newly Added Witnesses.<sup>9</sup> Nor have Respondents made a "showing of good cause," as required by Additional Provision 15, demonstrating why this Court should allow them to include the Newly Added Witnesses three months after they failed to include them on their Preliminary Witness List.

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<sup>5</sup> See Exhibit 3 (Defendants' Preliminary Witness List, dated August 20, 2013).

<sup>6</sup> See Exhibit 4 (Respondents' Final Witness List, dated November 18, 2013).

<sup>7</sup> Exhibit 2 (August 2nd Order, Additional Provision 15) (emphasis added).

<sup>8</sup> Exhibit 2 (August 2nd Order at 1).

<sup>9</sup> Exhibit 2 (August 2nd Order, Additional Provision 15).

Even had Respondents attempted to show good cause for the Newly Added Witnesses, such an attempt would have failed. As this Court recognized in *In re Chicago Bridge & Iron Company, N.V.*, “[g]ood cause is demonstrated if a party seeking to extend a deadline demonstrates that a deadline cannot reasonably be met despite the diligence of the party seeking the extension.”<sup>10</sup> Here, there is no reason why Respondents, exercising diligence, could not have included the Newly Added Witnesses on their Preliminary Witness List. In fact, the named Newly Added Witnesses are all high-level executives at either Ardagh or Saint-Gobain. Respondents, therefore, have known the significance of these individuals’ business roles, and thus, their potential as witnesses, since well before the Preliminary Witness List deadline. Similarly, Respondents have contemplated divesting assets in an effort to resolve the transaction’s anticompetitive effects since at least July 2, 2013, when Respondents first approached Complaint Counsel to discuss possible divestitures. If Respondents wanted to preserve their right to call the “[r]epresentative(s) of a financial buyer of any divested assets,” they had well over a month to add these persons to their Preliminary Witness List. Accordingly, no good cause exists for Respondents’ failure to disclose the Newly Added Witnesses on their Preliminary Witness List.<sup>11</sup>

Respondents’ Final Witness List also lists individual executives from 35 third parties, each of whom was deposed during the discovery period. But for each of those third parties, in addition to listing the executive who was deposed, Respondents also include “and/or a

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<sup>10</sup> *In re Chicago Bridge & Iron Co., N.V.*, FTC Dkt. 9300, Order on Respondents’ Motion to Strike Witnesses at 3 (Oct. 23, 2002) (citing *Bradford v. Dana Corp.*, 249 F.3d 807, 809 (8th Cir 2001); *Sosa v. Airprint Systems, Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998); Fed R. Civ. P. 16 Advisory Committee Notes (1983 Amendment)). In *Chicago Bridge & Iron*, this Court ruled that Complaint Counsel could not present testimony from two witnesses who were omitted from Complaint Counsel’s preliminary witness list but included on their final witness list, because Complaint Counsel failed to demonstrate good cause for adding the witnesses to the final list.

<sup>11</sup> Moreover, as set forth in Complaint Counsel’s Motion *in Limine* to Exclude Any Evidence of Respondents’ Possible Divestitures to Undetermined Third-Party Buyers, although the trial of this matter is scheduled to commence in 15 days, Respondents have not signed a contract to divest assets; indeed, they have not even identified who the mysterious divestiture buyer, if any, will be.

representative of [third party name] knowledgeable regarding [third party's] strategy and practices relating to beer (or spirits) containers." Complaint Counsel has no objection to Respondents eliciting testimony from third party witnesses who were identified and deposed during the discovery period and are now listed on Respondents' Final Witness List. But to the extent Respondents now seek to adduce testimony from other unidentified "representatives" of those third parties, the time to identify those witnesses and notify counsel that they would be added to Respondents' witness list has long-since passed.<sup>12</sup>

This Court should not reward Respondents' disregard for this Court's deadlines and procedures for adding new witnesses, and Complaint Counsel should not be expected to cross-examine witnesses who, two months after the close of fact discovery, have yet to be identified. Permitting Respondents to amend their witness list at this late date would unfairly prejudice Complaint Counsel's case.

## **II. Complaint Counsel Would Be Prejudiced by Inclusion of Additional Witnesses Not Listed on Respondents' Preliminary Witness List**

Respondents' disregard of this Court's deadlines and procedures has prejudiced Complaint Counsel's ability to take adequate discovery of the Respondents' Newly Added or Unidentified Witnesses. Because Respondents did not disclose them as witnesses, Complaint Counsel's discovery relating to Paul Coulson, Jarrell Reeves, J. Steven Rhea, and Kenneth Wilkes has been insufficient. Complaint Counsel did not receive notice until the November 18th Final Witness List that Respondents intended to offer testimony from these witnesses at trial, and therefore conducted limited discovery and deposed these witnesses without any indication that they would testify at trial, much less the basic information required by this Court's Scheduling

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<sup>12</sup> *In re Basic Research LLC*, FTC. Dkt. 9318, December 7, 2005 Order on Complaint Counsel's Motion to Strike at 2-3 (excluding Respondents from calling additional unidentified third-party representative).

Order setting forth the topics that Respondents expect these witnesses would cover at trial. In addition, Complaint Counsel did not depose Robert Ganter, and conducted a limited examination of Michael Leahy in his capacity as a corporate spokesman on specific topics, since Respondents did not disclose them as trial witnesses before the expiration of discovery. Complaint Counsel has not taken discovery of third-party Unidentified Witnesses. Finally, Respondents' late identification of a still unnamed "financial buyer" witness has doubly impeded Complaint Counsel's ability to conduct additional discovery. As Respondents have not reached any agreement to divest assets, or identified a buyer, Complaint Counsel remains unable to depose or conduct any discovery of this future person.

Moreover, even now the testimony Respondents propose to elicit from these witnesses remains unclear. Respondents failed to comply with this Court's October 18th Order which requires Respondents to include a "brief summary of the testimony of each witness" with its Final Witness List.<sup>13</sup> Respondents' Final Witness List, however, fails to include these summaries. For each Ardagh or Saint-Gobain employee listed, Respondents provide a job title and a sweeping description of the person's job responsibilities, with no summary or other indication of what the witness' proposed trial testimony will be.<sup>14</sup> For example, Respondents describe Ardagh Chairman Paul Coulson's responsibilities as "overseeing Ardagh's management," providing no insight as to what myriad topics implicated in overseeing a major glass and metal container company Mr. Coulson may testify about at trial.<sup>15</sup> Respondents' descriptions of third-party witnesses are equally oblique. Each third-party witness description

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<sup>13</sup> Exhibit 1 (October 18th Order at 2); *see also* Exhibit 2 (August 2nd Order at 1) (similarly requiring that the Preliminary Witness List include "a brief summary of the proposed testimony").

<sup>14</sup> Exhibit 4 (Respondents' Final Witness List at 2).

<sup>15</sup> Exhibit 4 (Respondents' Final Witness List at 2).

consists of the name of a company, the name and job title of one employee<sup>16</sup> of that company, and a boilerplate statement that in addition to or instead of the named employee, Respondents may call at trial another employee of that company who is “knowledgeable regarding . . . strategies and practices related to . . . containers.”<sup>17</sup> These descriptions provide no insight whatsoever as to the specific topics about which each third-party witness will testify, nor do they provide any information regarding the content of that testimony.

Given Respondents’ disregard of the August 2nd and October 18th Scheduling Orders in an effort to add witnesses without the timely notice, consent, or good cause required, and in light of the resulting prejudice to Complaint Counsel’s case, this Court should exclude the Newly Added Witnesses from testifying at trial. As Judge McGuire recognized in *In re Basic Research, LLC*, “[a] scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.”<sup>18</sup>

### III. Conclusion

For the foregoing reasons, Complaint Counsel respectfully requests that the Court exclude the testimony of the Newly Added Witnesses.

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<sup>16</sup> For MillerCoors and Boston Beer, Respondents name two employee witnesses.

<sup>17</sup> Exhibit 4 (Respondents’ Final Witness List at 3-6).

<sup>18</sup> *In re Basic Research LLC*, FTC. Dkt. 9318, December 7, 2005 Order on Respondents’ Motions to Exclude Complaint Counsel Witnesses Heymsfield, Mazis, and Nunberg (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) in denying Respondents’ untimely *in limine* motions).

Dated: December 4, 2013

Respectfully submitted,

s/ Edward D. Hassi

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

Ardagh Group S.A.,  
a public limited liability company, and

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation.

DOCKET NO. 9356

**(Proposed) ORDER**

After reviewing Complaint Counsel's Motion *in Limine* to Exclude Testimony from Witnesses That Respondents Added to Their Final Witness List But Failed to Disclose on Their Preliminary Witness List, it is ordered that Respondents may not offer testimony into evidence from the following witnesses listed in Respondents November 18, 2013 Final Witness List: Paul Coulson, Robert Ganter, Michael Leahy, Jarrell A. Reeves, J. Steven Rhea, Kenneth Wilkes, "representative(s) of the financial buyer of any divested assets," and any unidentified representatives of third parties.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: December \_\_, 2013

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Ardagh Group S.A.,  
a public limited liability company, and

Compagnie de Saint-Gobain, a corporation,  
and

Saint-Gobain Containers, Inc.,  
a corporation.

DOCKET NO. 9356

**STATEMENT REGARDING MEET AND CONFER**

Pursuant to Paragraph 4 of the Scheduling Order, Complaint Counsel and Counsel for the Respondents met and conferred in good faith in an effort to resolve by agreement the issues raised in this motion and have been unable to reach such an agreement.

Dated: December 4, 2013

Respectfully submitted,

s/ Edward Hassi

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# **EXHIBIT 1**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

\_\_\_\_\_  
In the Matter of )  
)  
)

Ardagh Group S.A., )  
a public limited liability company, and )

Saint-Gobain Containers, Inc., )  
a corporation, and )  
)

Compagnie de Saint-Gobain, )  
a corporation, )  
Respondents. )  
\_\_\_\_\_

DOCKET NO. 9356

**REVISED SCHEDULING ORDER**

In accordance with the September 30, 2013 Commission Order and due to the partial shutdown of the federal government from October 1-16, 2013, the remaining dates in the August 2, 2013 Scheduling Order are hereby revised as follows:

October 29, 2013 - Deadline for Complaint Counsel to provide expert witness reports.

November 1, 2013 - Complaint Counsel provides to Respondents' Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, 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, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

November 15, 2013 - Deadline for Respondents' Counsel to provide expert witness reports. Respondents' expert report shall include (without

limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).

- November 18, 2013 - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondents' basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.  
  
Respondents' Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- November 19, 2013 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b). *See Additional Provision 7.*
- November 25, 2013 - Exchange deposition transcript counter-designations.
- November 26, 2013 - 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, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).
- November 26, 2013 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- December 3, 2013 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- December 4, 2013 - Deadline for filing motions *in limine* to preclude admission of evidence. *See Additional Provision 9.*
- December 4, 2013 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- December 5, 2013 - Deadline for filing motions for *in camera* treatment of proposed expert related exhibits.

- December 11, 2013 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- December 11, 2013 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
- December 11, 2013 - Exchange objections to the designated testimony to be presented by deposition and counter-designations.
- December 12, 2013 - Deadline for filing responses to motions for *in camera* treatment of proposed expert related exhibits.
- December 12, 2013 - Complaint Counsel files pretrial brief supported by legal authority.
- December 12, 2013 - Exchange proposed stipulations of law, facts, and authenticity.
- December 13, 2013 - Respondents' Counsel files pretrial brief supported by legal authority.
- December 16, 2013 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- December 17, 2013 - Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits and any designated deposition testimony. To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed stipulations.

Counsel may present any objections to the final proposed witness lists and exhibits, including to any designated deposition testimony. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party with no signature for the judge required.

- December 19, 2013 - Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

All Additional Provisions to the August 2, 2013 Scheduling Order remain in effect.

ORDERED:

Dm Chappell  
D. Michael Chappell  
Chief Administrative Law Judge

Date: October 18, 2013

# **EXHIBIT 2**



**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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In the Matter of

Ardagh Group S.A.,  
a public limited liability company, and

Saint-Gobain Containers, Inc.,  
a corporation, and

Compagnie de Saint-Gobain,  
a corporation,  
Respondents.

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DOCKET NO. 9356

**SCHEDULING ORDER**

- August 9, 2013 - Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- August 16, 2013 - Respondents' Counsel provides preliminary witness lists (not including experts) with a brief summary of the proposed testimony.
- August 20, 2013 - Complaint Counsel provides expert witness list.
- August 23, 2013 - Deadline for issuing document requests, interrogatories and subpoenas *duces tecum*, except for discovery for purposes of authenticity and admissibility of exhibits.
- August 30, 2013 - Respondents' Counsel provides expert witness list.
- September 6, 2013 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity and admissibility of exhibits.
- September 23, 2013 - 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.
- September 23, 2013 - Deadline for filing "[m]otions to dismiss filed before the

evidentiary hearing, motions to strike, and motions for summary decision” pursuant to Rule 3.22(a).

- October 4, 2013 - Deadline for Complaint Counsel to provide expert witness reports.
- October 7, 2013 - Complaint Counsel provides to Respondents’ Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel’s basis of admissibility for each proposed exhibit, 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, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- October 21, 2013 - Deadline for Respondents’ Counsel to provide expert witness reports. Respondents’ expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel’s expert witness report(s).
- October 23, 2013 - Respondents’ Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions or designated portions thereof, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondents’ basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.  
  
Respondents’ Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.
- October 24, 2013 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b). *See* Additional Provision 7.
- October 28, 2013 - Exchange deposition transcript counter-designations.
- October 31, 2013 - 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,

Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).

- October 31, 2013 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- November 6, 2013 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- November 7, 2013 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 9.
- November 7, 2013 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- November 8, 2013 - Deadline for filing motions for *in camera* treatment of proposed expert related exhibits.
- November 14, 2013 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- November 14, 2013 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists.
- November 14, 2013 - Exchange objections to the designated testimony to be presented by deposition and counter-designations.
- November 15, 2013 - Deadline for filing responses to motions for *in camera* treatment of proposed expert related exhibits.
- November 15, 2013 - Complaint Counsel files pretrial brief supported by legal authority.
- November 15, 2013 - Exchange proposed stipulations of law, facts, and authenticity.
- November 19, 2013 - Respondents' Counsel files pretrial brief supported by legal authority.
- November 20, 2013 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- November 21, 2013 - Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits and any designated deposition testimony. To the extent the parties stipulate to certain issues, the parties shall prepare a Joint Exhibit which lists the agreed stipulations.

Counsel may present any objections to the final proposed witness lists and exhibits, including to any designated deposition testimony. Trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other's exhibits, the parties shall prepare a Joint Exhibit which lists the exhibits to which neither side objects. Any Joint Exhibit will be signed by each party with no signature for the judge required.

December 2, 2013 -

Commencement of Hearing, to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

#### ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: [ojl@ftc.gov](mailto:ojl@ftc.gov). The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. The [ojl@ftc.gov](mailto:ojl@ftc.gov) email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. The subject line of all electronic submissions to [ojl@ftc.gov](mailto:ojl@ftc.gov) shall set forth only the Docket Number and the title of the submission. Service by email shall be followed promptly by delivery of one hard copy by the next business day. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges. The parties are reminded that all filings with the Office of the Secretary, including electronic filings, are governed by the provisions of Commission Rule 4.3(d), which states: "Documents must be received in the Office of the Secretary of the Commission by 5:00 p.m. Eastern time to be deemed filed that day. Any documents received by the agency after 5:00 p.m. will be deemed filed the following business day."

2. The parties shall serve each other by electronic mail and shall include "Docket 9356" in the re line and all attached documents in .pdf format. Complaint Counsel and Respondents' Counsel agree to waive their rights to Service under 16 C.F.R. § 4.4(a)-(b).

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss or a motion for summary decision) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006), and summarized herein. Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

8. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

9. Motions *in limine* are discouraged. Motion *in limine* refers “to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered.” *In re Daniel Chapter One*, 2009 FTC LEXIS 85, \*18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm’n v. U.S. Environmental, Inc.*, 2002 U.S. Dist. LEXIS 19701, at \*5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and 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 30 days of service of the responses and/or objections to the discovery requests or within 20 days after the close of discovery, whichever first occurs.

11. Each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions including all discrete subparts except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. 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. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information. All discovery taken in connection with *FTC v. Ardagh Group, S.A.*, Case No. 13-CV-1021 (RMC) (D.D.C.) (the “Federal Action”) can be used in this action and vice versa. However, document requests, interrogatories and requests for admissions served by the parties in connection with the Federal Action will count not against the limits noted above.

12. No fact witness that has been deposed in the Federal Action may be deposed again in this action. 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. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

13. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the deposition date is

scheduled. The parties need not separately notice the deposition of a third party noticed by an opposing party. At the request of any party, the time and allocation for a third party deposition shall be divided evenly between them, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

14. 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 three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition as agreed to by all parties involved.

15. The final witness lists shall represent counsels' 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 witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

16. The final exhibit lists shall represent counsels' 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 consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

17. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

18. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

19. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert. Notwithstanding the foregoing, transcripts subject to protective orders preventing their disclosure in this action need not be produced if the governing protective orders are produced to the other parties, unless, upon motion of any party and for good cause shown, the court that issued the protective order orders their production.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case. Unless otherwise agreed by the parties, the experts' notes and drafts of expert reports need not be produced. Likewise, communications between experts and with counsel or consultants need not be produced unless relied upon by the expert in formulating an opinion in this case.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours. Experts who have been deposed in the Federal Action will not be deposed again in this action. Notwithstanding the foregoing, in the event an expert submits in this action an expert report that is different from the expert report that expert has submitted in the Federal Action, that expert may be deposed a second time regarding such differences between the two reports.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel (i) a list of all commercially-available computer programs used by the expert in the preparation of the report; (ii) a copy of all data sets used by the expert, in native file format and processed data file format; and (iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

20. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

21. The parties shall provide one another, and the Administrative Law Judge, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or other unforeseen circumstances.




22. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

23. Complaint Counsel's exhibits shall bear the designation CX and Respondents' exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation CXD and Respondents' demonstrative exhibits shall bear the designation RXD or some other appropriate designation. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number. Additionally, parties must account for all their respective exhibit numbers. Any number not actually used at the hearing shall be designated "intentionally not used."

24. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if RX 100 and CX 200 are different copies of the same document, only one of those documents shall be offered into evidence. In addition, the parties shall confer in advance of the final prehearing conference to prepare a Joint Stipulation that lists the proposed exhibits to which neither party has an objection to admissibility. Additional exhibits may be added after the final prehearing conference only by order of the Administrative Law Judge upon a showing of good cause. Counsel shall contact the court reporter regarding submission of exhibits.

ORDERED:

  
D. Michael Chappell  
Chief Administrative Law Judge

Date: August 2, 2013

# **EXHIBIT 3**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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**In the Matter of**

**Ardagh Group S.A,  
a public limited liability company, and**

**Saint-Gobain Containers, Inc.,  
a corporation, and**

**Compagnie de Saint-Gobain,  
a corporation.**

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**Docket No. 9356**

**DEFENDANTS' PRELIMINARY WITNESS LIST**

This list designates the witnesses whom Ardagh Group S.A. ("Ardagh Group"), Compagnie de Saint-Gobain, and Saint-Gobain Containers, Inc. (collectively, the "Defendants") currently contemplate as potential witnesses to testify in the above-captioned matter, either orally as live witnesses or by deposition and/or investigational hearing transcript or declaration, based on the information available on the undersigned date. Discovery is ongoing and that discovery will likely have an impact on Defendants' final witness list. Subject to the limitations in the Scheduling Order entered in this matter, Defendants reserve the right:

- A. To present testimony, orally by live witness or by deposition transcript or declaration, from any person who has been or may be identified by the Federal Trade Commission as a potential witness in this matter.
- B. To present testimony by deposition transcript of any person identified by a Party or non-Party as a FTC Rule 3.33(c) or Federal Rule 30(b)(6) representative of that Party or non-Party pursuant to a 3.33(c) or 30(b)(6) notice served by Plaintiff or Defendants.
- C. To call the custodian of records of any non-Party from whom documents or records have been obtained – including but not limited to those non-Parties listed below – to the extent necessary to authenticate documents in the event a

stipulation cannot be reached concerning the authentication of non-Party documents.

- D. To supplement this list in light of the fact that discovery in this matter is ongoing.
- E. Not to call at the hearing any of the witnesses listed below.
- F. To call any witnesses to rebut the testimony of witnesses proffered by the Federal Trade Commission.
- G. To call any of these or other witnesses for rebuttal testimony.

Subject to these reservations of rights, Defendants' preliminary witness list is as follows:

**PARTY WITNESS LIST**

- 1. Reiner Brand – Sales Director for European Operations of Ardagh Group. Mr. Brand is involved in negotiating sales contracts with glass bottle customers.
- 2. James Fredlake – President of Ardagh Glass Americas. Mr. Fredlake is responsible for managing Ardagh Glass Americas.
- 3. Joseph Grewe – President and Chief Executive Officer of Saint-Gobain Containers, Inc. Mr. Grewe is responsible for managing Saint-Gobain Containers, Inc.
- 4. John Riordan – Finance Director of Ardagh Group. Mr. Riordan is responsible for the financial management of Ardagh Group.
- 5. Niall Wall – Chief Executive Officer of Ardagh Group. Mr. Wall is responsible for managing Ardagh Group.

Defendants currently intend to present the testimony of the above-named party witnesses through live testimony at the hearing. Defendants reserve the right to offer the prior testimony of additional party witnesses who have been deposed or otherwise given testimony in connection with the FTC's investigation of Ardagh Group's proposed acquisition of Saint-Gobain Containers, Inc. (the "Proposed Transaction").

**THIRD PARTY WITNESS LIST<sup>1</sup>**

6. 21st Amendment Brewery ("21st Amendment") – Representative of 21st Amendment knowledgeable regarding 21st Amendment's strategy and practices related to beer containers.
7. Abita Brewing Company ("Abita") – David Blossman, President of Abita, and/or a representative of Abita knowledgeable regarding Abita's strategy and practices related to beer containers.
8. Amcor Rigid Plastics ("Amcor") – Frederick Piercy Jr., Business Director at Amcor, and/or a representative of Amcor knowledgeable regarding Amcor's strategy and practices related to spirits containers.
9. Anchor Hocking Company ("Anchor Hocking") – Bert Filice, Senior Vice President of Anchor Hocking, and/or a representative of Anchor Hocking knowledgeable regarding Anchor Hocking's strategy and practices related to spirits containers.
10. Anheuser-Busch InBev North America ("ABI") – Lee Keathley, Vice President of Procurement at ABI, and/or a representative of ABI knowledgeable regarding ABI's strategy and practices related to beer containers.
11. August Schell Brewing Company ("August Schell") – Theodore Marti, President of August Schell, and/or a representative of August Schell knowledgeable regarding August Schell's strategy and practices related to beer containers.
12. Bacardi USA, Inc. ("Bacardi") – Representative of Bacardi knowledgeable regarding Bacardi's strategy and practices related to spirits containers.
13. Ball Corporation ("Ball") – Representative of Ball knowledgeable regarding Ball's strategy and practices related to beer containers.
14. Beam Inc. ("Beam") – Kenneth Edwards, Vice President and Chief Procurement Officer, and/or a representative of Beam knowledgeable regarding Beam's strategy and practices related to spirits containers.
15. Big Sky Brewing Company ("Big Sky") – Kevin Keeter, Purchasing Manager for Big Sky, and/or a representative of Big Sky knowledgeable regarding Big Sky's strategy and practices related to beer containers.
16. The Boston Beer Company ("Boston Beer") – C. James Koch, Chairman of Boston Beer, Martin F. Roper, President and Chief Executive Officer of Boston Beer, Judy Embree, Senior Director of Procurement at Boston Beer, and/or a

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<sup>1</sup> Defendants reserve the right to call any third party witness to present live testimony at the hearing or to rely on such person's declaration or deposition transcript.

representative of Boston Beer knowledgeable regarding Boston Beer's strategy and practices related to beer containers.

17. Boulevard Brewing Company ("Boulevard") – Jeffery Krum, Chief Financial Officer at Boulevard, and/or a representative of Boulevard knowledgeable regarding Boulevard's strategy and practices related to beer containers.
18. Brown-Forman Corporation ("Brown-Forman") – Tim Nall, Vice President at Brown-Forman, and/or a representative of Brown-Forman knowledgeable regarding Brown-Forman's strategy and practices related to spirits containers.
19. Bruni Glass ("Bruni") – Ray Kor, Chief Financial Officer, and/or a representative of Bruni knowledgeable regarding Bruni's strategy and practices related to spirits containers.
20. Cigar City Brewing ("Cigar City") – Representative of Cigar City knowledgeable regarding Cigar City's strategy and practices related to beer containers.
21. City Brewing Company, LLC ("City Brewing") – Representative of City Brewing knowledgeable regarding City Brewing's strategy and practices related to beer containers.
22. Constellation Brands, Inc. ("Constellation") – Peter Lijewski, Vice President of Procurement at Constellation, and/or a representative of Constellation knowledgeable regarding Constellation's strategy and practices related to spirits containers.
23. Costco Wholesale Corporation ("Costco") – Representative of Costco knowledgeable regarding Costco's strategy for buying, marketing, and selling beer and spirits.
24. Crown Holdings, Inc. ("Crown") – Representative of Crown knowledgeable regarding Crown's strategy and practices related to beer containers.
25. Diageo North America, Inc. ("Diageo") – Rick Thielen, Senior Vice President of Procurement, and/or a representative of Diageo knowledgeable regarding Diageo's strategy and practices related to spirits containers.
26. Fevisa Industrial, S.A. de C.V. ("Fevisa") – Representative of Fevisa knowledgeable regarding Fevisa's strategy and practices related to beer and spirits containers.
27. Founders Brewing Company ("Founders") – Brad Stevenson, Vice President of Operations of Founders, and/or a representative of Founders knowledgeable regarding Founders' strategy and practices related to beer containers.

28. F.X. Matt Brewing Company ("Matt Brewing") – Fred Matt, President of Matt Brewing, and/or a representative of Matt Brewing knowledgeable regarding Matt Brewing's strategy and practices related to beer containers.
29. Gamer Packaging, Inc. ("Gamer") – Kenneth Gamer, President of Gamer, and/or a representative of Gamer knowledgeable regarding Gamer's strategy and practices relating to beer and spirits containers.
30. The Gambrinus Company ("Gambrinus") – John Horan, Director of Tax and Assistant Treasurer for Gambrinus, and/or a representative of Gambrinus knowledgeable regarding Gambrinus's strategy and practices related to beer containers.
31. Genesee Brewing Company ("Genesee") – Representative of Genesee knowledgeable regarding Genesee's strategy and practices related to beer containers.
32. Glass Packaging Institute – Lynn Bragg, President of the Glass Packaging Institute regarding historical performance and trends in the glass packaging industry and the use, or non-use, of glass for food and beverage containers.
33. Campari America ("Campari") – Representative of Campari knowledgeable regarding Campari's strategy and practices related to spirits containers.
34. Harpoon Brewery ("Harpoon") – Daniel Kenary, President of Harpoon, and/or a representative of Harpoon knowledgeable regarding Harpoon's strategy and practices related to beer containers.
35. Heaven Hill Distilleries ("Heaven Hill") – Representative of Heaven Hill knowledgeable regarding Heaven Hill's strategy and practices related to spirits containers.
36. Kroger Company ("Kroger") – Representative of Kroger knowledgeable regarding Kroger's strategy for buying, marketing, and selling beer and spirits.
37. The Lagunitas Brewing Company ("Lagunitas") – Leon Sharyon, Chief Financial Officer of Lagunitas, and/or a representative of Lagunitas knowledgeable regarding Lagunitas's strategy and practices related to beer containers.
38. Lion Brewery, Inc. ("Lion") – Representative of Lion knowledgeable regarding Lion's strategy and practices related to beer containers.
39. Mad Scientists Brewing Partners, LLC, d/b/a Sixpoint Craft Ales ("Sixpoint") - Representative of Sixpoint knowledgeable regarding Sixpoint's strategy and practices related to beer containers.

40. Mars & Co. ("Mars") – Representative of Mars knowledgeable regarding Mars's consulting for ABI and ABI's strategy and practices related to beer containers and beer container purchasing.
41. MillerCoors, LLC ("MillerCoors") – Jim Sheehy, Vice President of Procurement at MillerCoors, and/or a representative of MillerCoors knowledgeable regarding MillerCoors's strategy and practices related to beer containers.
42. Moosehead Breweries Limited ("Moosehead") – Andrew Oland, President of Moosehead, and/or a representative of Moosehead knowledgeable regarding Moosehead's strategy and practices related to beer containers.
43. New Belgium Brewing Company ("New Belgium") – David Larsen, Packaging and Materials Buyer at New Belgium, and/or a representative of New Belgium knowledgeable regarding New Belgium's strategy and practices related to beer containers.
44. Oskar Blues Brewing Company ("Oskar Blues") – Daniel O'Connor, Chief Financial Officer of Oskar Blues, and/or a representative of Oskar Blues knowledgeable regarding Oskar Blues' strategy and practices related to beer containers.
45. Owens-Illinois, Inc. ("Owens-Illinois") – Anthony Caracciolo, Vice President of Global Sales at Owens-Illinois, and/or a representative of Owens-Illinois knowledgeable regarding Owens-Illinois's sale of beer and spirits containers.
46. Pernod Ricard ("Pernod") – Adam Gelles, Vice President of New Product Development and Purchasing at Pernod, and/or a representative of Pernod knowledgeable regarding Pernod's strategy and practices related to spirits containers.
47. Rexam Inc. ("Rexam") – Representative of Rexam knowledgeable regarding Rexam's strategy and practices related to beer containers.
48. Saxco International ("Saxco") – Herbert Sachs, President of Saxco International, and/or a representative of Saxco knowledgeable regarding Saxco's strategy and practices related to beer and spirits containers.
49. Sazerac Company ("Sazarec") – Philip Cissell, Vice President of Purchasing for Sazerac, Steven Wyant, Vice President of Sales and Marketing at Sazerac, and/or a representative of Sazerac most knowledgeable regarding Sazerac's strategy and practices related to spirits containers.
50. Sierra Nevada Brewing Company ("Sierra Nevada") – Albert Spinelli, Director of Operations at Sierra Nevada, and/or a representative of Sierra Nevada knowledgeable regarding Sierra Nevada's strategy and practices related to beer containers.



51. Sly Fox Brewing Company ("Sly Fox") - Representative of Sly Fox knowledgeable regarding Sly Fox's strategy and practices related to beer containers.
52. Surly Brewing Company ("Surly") - Representative of Surly knowledgeable regarding Surly's strategy and practices related to beer containers.
53. Target Corporation ("Target") – Representative of Target knowledgeable regarding Target's strategy for buying, marketing, and selling beer and spirits.
54. United States Distilled Products ("U.S.D.P.") – Patricia Pelzer, Chief Financial Officer of U.S.D.P., and/or a representative of U.S.D.P. knowledgeable regarding U.S.D.P.'s strategy and practices related to spirits containers.
55. Vitro Packaging, LLC ("Vidro") – Representative of Vitro knowledgeable regarding Vitro's strategy and practices related to beer and spirits containers.
56. Whole Foods Markets, Inc. ("Whole Foods") – Representative of Whole Foods knowledgeable regarding Whole Foods' strategy for buying, marketing, and selling beer and spirits.
57. Yuengling Beer Company ("Yuengling") – Representative of Yuengling knowledgeable regarding Yuengling's strategy and practices related to beer containers.

Dated: New York, New York  
August 20, 2013

SHEARMAN & STERLING LLP

By: /s/ Richard F. Schwed  
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*Counsel for Defendant Ardagh Group  
S.A.*

CRAVATH, SWAINE & MOORE LLP,

by

/s/ Christine A. Varney

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*Counsel for Defendant Saint-Gobain  
Containers, Inc.*

I, Edward G. Timlin, an associate at Shearman & Sterling LLP, hereby certify that on August 20, 2013, I caused the foregoing document to be served by electronic mail on the persons listed below.

Edward D. Hassi  
Catharine M. Moscatelli  
Brendan J. McNamara  
Sebastian Lorigo  
Victoria Lippincott  
Meredith Robinson  
Devon Kelly  
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*Complaint Counsel*

August 20, 2013

By: /s/ Edward G. Timlin  
Edward G. Timlin

# **EXHIBIT 4**

**Docket No. 9356**

Subject to these reservations of rights, Respondents' final witness list is as follows:

**PARTY WITNESS LIST**

1. Reiner Brand – Sales Director for European Operations of Ardagh. Mr. Brand is involved in negotiating sales contracts with glass bottle customers.
2. Paul Coulson – Chairman of the Board of Ardagh. Mr. Coulson is responsible for overseeing Ardagh's management.
3. James Fredlake – President of Ardagh Glass Americas. Until approximately November 2013, Mr. Fredlake was responsible for managing Ardagh Glass Americas.
4. Robert Ganter – General Manager and Senior Vice President of the Beer Sector of Activity for Saint-Gobain Containers, Inc. Mr. Ganter is responsible for beer container manufacturing and sales at Saint-Gobain Containers, Inc.
5. Joseph Grewe – President and Chief Executive Officer of Saint-Gobain Containers, Inc. Mr. Grewe is responsible for managing Saint-Gobain Containers, Inc.
6. Michael Leahy – Operational Excellence Director of Ardagh. Mr. Leahy is responsible for overseeing Ardagh's program to improve operational metrics.
7. Jarrell A. Reeves – Vice President of Sales of Saint-Gobain Containers, Inc. Mr. Reeves is responsible for food, beverage, and spirits sales at Saint-Gobain Containers, Inc.
8. J. Steven Rhea – Senior Vice President, Strategic Development, of Saint-Gobain Containers, Inc. Mr. Rhea is responsible for purchasing, distribution, marketing, and corporate quality at Saint-Gobain Containers, Inc.
9. John Riordan – Finance Director of Ardagh. Mr. Riordan is responsible for the financial management of Ardagh.
10. Niall Wall – Chief Executive Officer of Ardagh. Mr. Wall is responsible for managing Ardagh.
11. Kenneth Wilkes – Chief Financial Officer of Ardagh Glass Americas. Until approximately November 2013, Mr. Wilkes was responsible for the financial management of Ardagh Glass Americas.

**EXPERT WITNESS LIST**

12. Dr. Chetan Sanghvi – Senior Vice President at NERA Economic Consulting. Respondents expect that Dr. Sanghvi will testify about the relevant markets, market structure, competitive effects, barriers to entry, and efficiencies of the Proposed Transaction.
13. Michael Kallenberger – consultant with First Key Consulting Inc., a brewery consultancy. Respondents expect that Mr. Kallenberger will testify about trends involving glass and non-glass beer containers.
14. Dr. Raymond Bourque – President of RAY-PAK, Inc., a packaging innovation and technology consultancy. Respondents expect that Dr. Bourque will testify about trends involving glass and non-glass spirits containers.
15. Robert Wallace – Managing Partner of Wallace Church Inc., a global brand identity strategy and package design consultancy. Respondents expect that Mr. Wallace will testify about trends involving glass and non-glass beer and spirits containers.

**THIRD PARTY WITNESS LIST**

16. 21st Amendment Brewery (“21st Amendment”) – Ryan Frank, Brewery Production Manager of 21st Amendment, and/or a representative of 21st Amendment knowledgeable regarding 21st Amendment’s strategy and practices related to beer containers.
17. Abita Brewing Company (“Abita”) – David Blossman, President of Abita, and/or a representative of Abita knowledgeable regarding Abita’s strategy and practices related to beer containers.
18. Amcor Rigid Plastics (“Amcor”) – Frederick Piercy Jr., Business Director at Amcor, and/or a representative of Amcor knowledgeable regarding Amcor’s strategy and practices related to beer and spirits containers.
19. Anchor Hocking Company (“Anchor Hocking”) – Umberto Filice, Senior Vice President of Anchor Hocking, and/or a representative of Anchor Hocking knowledgeable regarding Anchor Hocking’s strategy and practices related to spirits containers.
20. Anheuser-Busch InBev North America (“ABI”) – Lee Keathley, Vice President of Procurement at ABI, and/or a representative of ABI knowledgeable regarding ABI’s strategy and practices related to beer containers.
21. August Schell Brewing Company (“August Schell”) – Theadore Marti, President of August Schell, and/or a representative of August Schell knowledgeable regarding August Schell’s strategy and practices related to beer containers.

22. Ball Corporation ("Ball") – Bruce Doelling, Director of Sales North America, and/or a representative of Ball knowledgeable regarding Ball's strategy and practices related to beer containers.
23. Beam Inc. ("Beam") – Kenneth Edwards, Vice President and Chief Procurement Officer, and/or a representative of Beam knowledgeable regarding Beam's strategy and practices related to spirits containers.
24. Big Sky Brewing Company ("Big Sky") – Kevin Keeter, Purchasing Manager for Big Sky, and/or a representative of Big Sky knowledgeable regarding Big Sky's strategy and practices related to beer containers.
25. The Boston Beer Company ("Boston Beer") – Judy Embree, Senior Director of Procurement at Boston Beer, Corey Lewis, Director of Strategy, Research, and Business Support at Boston Beer, and/or a representative of Boston Beer knowledgeable regarding Boston Beer's strategy and practices related to beer containers.
26. Boulevard Brewing Company ("Boulevard") – Jeffery Krum, Chief Financial Officer at Boulevard, and/or a representative of Boulevard knowledgeable regarding Boulevard's strategy and practices related to beer containers.
27. Brown-Forman Corporation ("Brown-Forman") – Tim Nall, Vice President at Brown-Forman, and/or a representative of Brown-Forman knowledgeable regarding Brown-Forman's strategy and practices related to spirits containers.
28. Bruni Glass ("Bruni") – Ray Kor, Chief Financial Officer, and/or a representative of Bruni knowledgeable regarding Bruni's strategy and practices related to spirits containers.
29. Cigar City Brewing ("Cigar City") – Joey Redner, Founder and Chief Executive Officer of Cigar City, and/or a representative of Cigar City knowledgeable regarding Cigar City's strategy and practices related to beer containers.
30. Constellation Brands, Inc. ("Constellation") – Peter Lijewski, Vice President of Procurement at Constellation, and/or a representative of Constellation knowledgeable regarding Constellation's strategy and practices related to spirits containers.
31. Diageo North America, Inc. ("Diageo") – Rick Thielen, Senior Vice President of Procurement, and/or a representative of Diageo knowledgeable regarding Diageo's strategy and practices related to spirits containers.
32. Founders Brewing Company ("Founders") – Brad Stevenson, Vice President of Operations at Founders, and/or a representative of Founders knowledgeable regarding Founders's strategy and practices related to beer containers.



33. F.X. Matt Brewing Company ("Matt Brewing") – Fred Matt, President of Matt Brewing, and/or a representative of Matt Brewing knowledgeable regarding Matt Brewing's strategy and practices related to beer containers.
34. Gamer Packaging, Inc. ("Gamer") – Kenneth Gamer, President of Gamer, and/or a representative of Gamer knowledgeable regarding Gamer's strategy and practices relating to beer and spirits containers.
35. The Gambrinus Company ("Gambrinus") – John Horan, Director of Tax and Assistant Treasurer at Gambrinus, and/or a representative of Gambrinus knowledgeable regarding Gambrinus's strategy and practices related to beer containers.
36. Glass Packaging Institute – Lynn Bragg, President of the Glass Packaging Institute regarding historical performance and trends in the glass packaging industry and the use, or non-use, of glass for food and beverage containers.
37. Harpoon Brewery ("Harpoon") – Daniel Kenary, President of Harpoon, Warren Dibble, Vice President and Chief Financial Officer of Harpoon, and/or a representative of Harpoon knowledgeable regarding Harpoon's strategy and practices related to beer containers.
38. Heaven Hill Distilleries ("Heaven Hill") – Max Shapira, President of Heaven Hill, and/or a representative of Heaven Hill knowledgeable regarding Heaven Hill's strategy and practices related to spirits containers.
39. The Lagunitas Brewing Company ("Lagunitas") – Leon Sharyon, Chief Financial Officer of Lagunitas, and/or a representative of Lagunitas knowledgeable regarding Lagunitas's strategy and practices related to beer containers.
40. MillerCoors, LLC ("MillerCoors") – Jim Sheehy, Vice President of Procurement at MillerCoors, David Kroll, Vice President of Innovation and Insights at MillerCoors, and/or a representative of MillerCoors knowledgeable regarding MillerCoors's strategy and practices related to beer containers.
41. Moosehead Breweries Limited ("Moosehead") – Andrew Oland, President of Moosehead, and/or a representative of Moosehead knowledgeable regarding Moosehead's strategy and practices related to beer containers.
42. New Belgium Brewing Company ("New Belgium") – David Larsen, Packaging and Materials Buyer at New Belgium, and/or a representative of New Belgium knowledgeable regarding New Belgium's strategy and practices related to beer containers.
43. Oskar Blues Brewing Company ("Oskar Blues") – Daniel O'Connor, Chief Financial Officer of Oskar Blues, and/or a representative of Oskar Blues knowledgeable regarding Oskar Blues' strategy and practices related to beer containers.

44. Owens-Illinois, Inc. ("Owens-Illinois") – Anthony Caracciolo, Vice President of Global Sales at Owens-Illinois, and/or a representative of Owens-Illinois knowledgeable regarding Owens-Illinois's strategy and practices related to beer and spirits containers.
45. Pernod Ricard ("Pernod") – Adam Gelles, Vice President of New Product Development and Purchasing at Pernod, and/or a representative of Pernod knowledgeable regarding Pernod's strategy and practices related to spirits containers.
46. Representative(s) of the financial buyer of any divested assets knowledgeable regarding the financial buyer's business plan with respect to any divested assets.
47. Sazerac Company ("Sazarec") – Philip Cissell, Vice President of Purchasing at Sazerac, Steven Wyant, Vice President of Sales and Marketing at Sazerac, and/or a representative of Sazerac most knowledgeable regarding Sazerac's strategy and practices related to spirits containers.
48. Sierra Nevada Brewing Company ("Sierra Nevada") – Albert Spinelli, Director of Operations at Sierra Nevada, and/or a representative of Sierra Nevada knowledgeable regarding Sierra Nevada's strategy and practices related to beer containers.
49. United States Distilled Products ("U.S.D.P.") – Patricia Pelzer, Chief Financial Officer of U.S.D.P., and/or a representative of U.S.D.P. knowledgeable regarding U.S.D.P.'s strategy and practices related to spirits containers.
50. Vitro Packaging, LLC ("Vitro") – John Shaddox, President of FIC Exports, and/or a representative of Vitro knowledgeable regarding Vitro's strategy and practices related to beer and spirits containers.
51. Whole Foods Markets, Inc. ("Whole Foods") – Doug Bell, Global Beverage Buyer at Whole Foods, and/or a representative of Whole Foods knowledgeable regarding Whole Foods' strategy for buying, marketing, and selling beer and spirits.
52. Yuengling Beer Company ("Yuengling") – Dick Yuengling, Jr., President of Yuengling, David Casinelli, Chief Operating Officer of Yuengling, and/or a representative of Yuengling knowledgeable regarding Yuengling's strategy and practices related to beer containers.

Dated: New York, New York  
November 18, 2013

SHEARMAN & STERLING LLP

By: /s/ Richard F. Schwed

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*Counsel for Respondent Ardagh Group  
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I, Jason M. Swergold, an associate at Shearman & Sterling LLP, hereby certify that on November 18, 2013, I caused the foregoing document to be served by electronic mail on:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Rm. H-110  
Washington, DC 20580

I further certify that on November 18, 2013, I caused the foregoing document to be served by electronic mail on the persons listed below.

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*Complaint Counsel*

November 18, 2013

By: /s/ Jason M. Swergold  
Jason M. Swergold

**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2013, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

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**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

December 4, 2013

By: /s/ Edward D. Hassi  
Attorney