

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of )  
)  
)  
CHICAGO BRIDGE & IRON COMPANY N.V. )  
)  
a foreign corporation, ) **PUBLIC RECORD VERSION<sup>1</sup>**  
)  
CHICAGO BRIDGE & IRON COMPANY )  
)  
a corporation, )  
) **Docket No. 9300**  
)  
and )  
)  
PITT-DES MOINES, INC. )  
)  
a corporation. )  

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To: The Honorable D. Michael Chappell  
Administrative Law Judge

**COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENTS’  
MOTION FOR LEAVE TO ADD UNIDENTIFIED EXPERT WITNESS**

Pursuant to Section 3.22 (c) of the Federal Trade Commission’s Rules of Practice (“FTC Rules”), 16 C.F.R. 3.22(c), Complaint Counsel file this opposition to Respondents’ Motion to add, five months after the date set by this Court for disclosure of Respondents’ expert witness, an unidentified expert witness to Respondents’ Final Witness List filed September 19, 2002. Respondents have failed to show good cause why a still unnamed expert witness should be added to Respondents’ witness list at

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<sup>1</sup> All text in bold and brackets is Confidential subject to the March 5, 2002 Protective Order entered in this case. Pursuant to FTC Rule of Practice 3.45(e), 16 C.F.R. § 3.45(e), a list of the names and addresses of persons who should be notified of the Commission’s intent to disclose in a final decision any of the confidential information contained in this motion is attached.

this time.

Respondents represent that they need to present a new expert witness in order to attempt to reconcile the budget price submitted by CB&I to [ ] in 2002 for a LIN/LOX tank with fixed price bids submitted by PDM in 1999. Respondents have been aware, since August 21, of their customer's assessment of the disparity between the prices submitted by PDM for LIN/LOX tanks prior to the acquisition and the price offered by CB&I subsequent to the acquisition. *See* Respondents' motion Exhibit B. Respondents offer no explanation why the proposed expert witness could not have been identified by September 19.

Respondents have, in their own files, the relevant budget price and bid documents, including any internal documents showing how they computed the price offers and the profit margin they included in each offer. Respondents are free to offer these as exhibits. Respondents have failed to offer any explanation why these documents, already in their possession at the time [ ] was deposited on August 21, would not be sufficient either to confirm or to refute testimony that CB&I had increased the price and to show how the respective prices were calculated. Further, Respondents have not explained why whatever documents are relevant to the issue are not included in Respondents' Final Exhibit List submitted on September 19, 2002.

Further, Respondents have included in their Final Witness List fifteen current and former employees and consultants to Respondents, including Mr. Knight who provided potential PDM customers with pricing for LIN/LOX tanks and currently continues to assume this function for CB&I (*see, generally*, CX 442). Respondents have failed to show why Respondents are unable to present, through these witnesses, testimony regarding the computation of respondents' price offers and the

circumstances under which such offers were prepared and presented. Respondents do not need to add an unidentified expert witness in order to inform the Court regarding the relative profit margins in PDM's 1999 bids and in CB&I's 2002 price for LIN/LOX tanks.

### **CONCLUSION**

For the reasons stated herein, Respondents have failed to show good cause why they should be permitted to add an unidentified expert witness at this time. Accordingly, Complaint Counsel request that Respondents' motion be denied.

Respectfully submitted,

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Cecelia M. Waldeck  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington D.C. 20580  
(202) 326-3669

Counsel Supporting the Complaint

Dated: October 7, 2002

UNITED STATES OF AMERICA  
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PITT-DES MOINES, INC.	)	
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a corporation.	)	
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**ORDER**

On October 4, 2002, Respondents filed a motion to add an unidentified expert witness to attempt to explain alleged differences between prices offered by Pitt-Des Moines for LIN/LOX tanks prior to the acquisition and Chicago Bridge & Iron's price following the acquisition. Complaint Counsel filed an Opposition thereto on October 7, 2002. The Court having considered the arguments advanced in Respondents' motion and in Complaint Counsel's response thereto,

IT IS HEREBY ORDERED that Respondents' motion for leave to add an unidentified expert witness is denied.

IT IS FURTHER ORDERED that, to the extent not already covered by the statement of expected testimony of Respondents' witnesses, Respondents may, within three days of the date of this Order, supplement their Final Witness List by adding to the statement of expected testimony of any of the witnesses identified therein testimony relating to the computation of the respective bids and budget prices that are the subject of Respondents' motion.

IT IS FURTHER ORDERED that Respondents may, within ten days of the date of this Order, supplement their Final Exhibit List by adding, and providing to Complaint Counsel, contemporaneous documents relating to the computation of the respective bids and budget prices that are the subject of Respondents' motion. Within five days of receipt of such supplemental exhibits, Complaint Counsel may supplement their Final Exhibit List by adding, and providing to Respondents, rebuttal exhibits.

ORDERED

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D. Michael Chappell  
Administrative Law Judge

Date: October \_\_\_\_, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of Complaint Counsel's Opposition to Respondents' Motion for Leave to Add Unidentified Expert Witness to be delivered by hand to

The Honorable D. Michael Chappell  
Federal Trade Commission  
H-104  
6<sup>th</sup> and Pennsylvania Ave. N.W.  
Washington D.C. 20580

Administrative Law Judge

and by facsimile and by first-class mail to:

Jeffrey A. Leon  
Duane M. Kelley  
Winston & Strawn  
315 W. Wacker Drive  
Chicago, IL 60601-9703  
(312) 558-5600

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

Dated: October 7, 2002

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The following persons should be notified of the Federal Trade Commission's intent to disclose, in a final decision, the confidential material contained in Complaint Counsel's Opposition to Respondents' Motion for Leave to Modify Their Witness List:

[

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