

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

_____)		
In the Matter of))	
)	
CHICAGO BRIDGE & IRON COMPANY N.V.))	Corrected Public Version
a foreign corporation,))	
)	
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 February 11, 2005, Complaint Counsel in this action filed an Opposition to Respondents' Petition to Reconsider (the "Opposition"). Complaint Counsel's Opposition included material that CB&I submitted to the FTC in another matter, and which it had previously designated as highly confidential (attached hereto at Exhibit A). The Opposition also included a discussion of that material. *See* Opposition, p. 12. Complaint Counsel requested that their Opposition be placed temporarily under seal pursuant to

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

Commission Rule 4.10(g), 16 C.F.R. §4.10(g), 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 [] See
Exhibit A. [

] *See* Affidavit of Richard E. Goodrich, attached
hereto at Exhibit B ("Goodrich Affidavit"). [

] *See id.* [

] *See* Exhibit A. [

] *See* Goodrich Affidavit. As noted by CB&I at
the time, the material CB&I submitted to the FTC contained highly confidential business
information, the release or publication of which would substantially harm CB&I's
business. *See* Exhibit A. As such, CB&I requested that the material be treated as highly
confidential and destroyed or returned [

] *See id.*

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

Attachment A to Complaint Counsel's Opposition (Exhibit A hereto) should be placed *in camera*. Additionally, those portions of the instant motion, Exhibit B hereto,

and Complaint Counsel's Opposition that have been redacted in the public record 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 [

] will have a competitive advantage over CB&I, who will not have the benefit of similar information concerning its competitors. 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* Goodrich Affidavit. [

] *See*

id. 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 asking the FTC to destroy or return such information. *See id.* Fourth, this information is of great value to CB&I, as it represents [

] *See id.* [

] *See id.* Fifth, CB&I expended a significant amount of money and effort [] *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.* In sum, the public disclosure of information [] would cause CB&I a loss of business advantage because it would expose [] to its competitors, who would otherwise have no way to know this information.

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). Due to the highly sensitive nature of the material at issue here, CB&I requests that the material be granted *in camera* treatment for a period of 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' Renewed Motion for In Camera Treatment of Certain Exhibits*, December 3, 2002 (granting corporate strategy documents *in camera* treatment for a period of ten years); *Order on Non-Parties' Renewed Motions for In Camera Treatment of Documents Listed on Parties' Exhibit Lists*, November 14, 2002 (granting certain non-party testimony *in camera* treatment for a period of 5 years).

WHEREFORE, CB&I respectfully requests that the Commission enter an Order granting *in camera* treatment for Attachment A to Complaint Counsel's Opposition (attached hereto as Exhibit A), as well as those portions of the instant motion, Exhibit B

hereto and Complaint Counsel's Opposition that have been redacted in the public record,
for a period of five years.

Dated: February 22, 2005

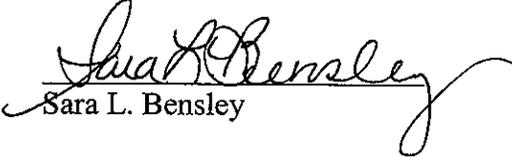
Clifford H. Aronson
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
4 Times Square
New York, NY 10036-6522
Telephone No.: 212-735-2644
Facsimile No.: 917-777-2644

Charles W. Schwartz
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1600 Smith, Suite 4400
Houston, TX 77002-7348
Telephone No.: 713-655-5160
Facsimile No.: 888-329-2286

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

Certificate for Electronic Filing

I, Sara L. Bensley, hereby certify that the electronically appended Corrected Public Version of *Respondents' Motion for In Camera Treatment of Material Previously Designated as Confidential*, its two exhibits, and its Certificate of Service, are true and correct versions of the documents filed today, February 28, 2005, by hand delivery with the Secretary of the Commission, Room H-159, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Certificate of Service filed with the Secretary of the Commission today for these public documents was a signed original; the signed, original, confidential versions of the *Motion for In Camera Treatment of Material Previously Designated as Confidential* and its two exhibits were filed Tuesday, February 22, 2005, by hand delivery with the Secretary of the Commission.


Sara L. Bensley