

ORIGINAL

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



_____)
In the Matter of)
)
McWANE, INC.,)
a corporation, and)
)
STAR PIPE PRODUCTS, LTD.,)
a limited partnership,)
Respondents.)
_____)

DOCKET NO. 9351

ORDER ON NON-PARTIES' MOTIONS FOR *IN CAMERA* TREATMENT

I.

Pursuant to Rule 3.45(b) of the Commission's Rules of Practice and the Scheduling Order entered in this matter, several non-parties filed motions for *in camera* treatment for materials that the parties have listed on their exhibit lists as materials that might be introduced at trial in this matter. Neither Complaint Counsel nor Respondent have filed an opposition to any of the motions addressed below filed by the non-parties.

II.

Under Rule 3.45(b) of the Federal Trade Commission's Rules of Practice, the Administrative Law Judge may order that material offered into evidence "be placed *in camera* only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment or after finding that the material constitutes sensitive personal information." 16 C.F.R. § 3.45(b). 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." *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). "[R]equests for *in camera* treatment must show "that the public disclosure of the documentary evidence will result in a clearly defined, serious injury to the person or corporation whose records are involved." *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984), quoting *In re H. P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). If the applicants for *in camera* treatment make this showing, the importance of the information in explaining the rationale of decisions at the Commission is "the principal countervailing consideration weighing in favor of disclosure." *In re General Foods Corp.*, 95 F.T.C. at 355.

The Federal Trade Commission recognizes the “substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *Hood*, 58 F.T.C. at 1186. A full and open record of the adjudicative proceedings promotes public understanding of decisions at the Commission. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 458 (1977). A full and open record also provides guidance to persons affected by its actions and helps to deter potential violators of the laws the Commission enforces. *Hood*, 58 F.T.C. at 1186. The burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be placed *in camera*. *Id.* at 1188. Moreover, there is a presumption that *in camera* treatment will not be granted for information that is more than three years old. *Conference Interpreters*, 1996 FTC LEXIS 298, at *15 (citing *General Foods*, 95 F.T.C. at 353; *Crown Cork*, 71 F.T.C. at 1715). However, a request for *in camera* treatment by a non-party warrants “special solicitude.” *In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967).

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only “in unusual circumstances,” including circumstances in which “the need for confidentiality of the material . . . is not likely to decrease over time.” 16 C.F.R. § 3.45(b)(3). The Commission has nonetheless recognized that “in some unusual cases ‘the competitive sensitivity or the proprietary value of the information for which *in camera* treatment is requested will not necessarily diminish, and may actually increase, with the passage of time.’” *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at *7 (Oct. 17, 1990) (quoting Commission comments on amendments to the Rule). In determining the length of time for which *in camera* treatment is appropriate, the distinction between trade secrets and ordinary business records is important since ordinary business records are granted less protection than trade secrets. *See Hood*, 58 F.T.C. at 1189. “Trade secrets” are primarily limited to secret formulas, processes, and other secret technical information. *Id.*; *General Foods*, 95 F.T.C. at 352. “Ordinary business records” includes names of customers, prices to certain customers, and costs of doing business and profits. *Hood*, 58 F.T.C. at 1189.

The Commission has recognized that it may be appropriate to provide *in camera* treatment for certain business records. *In re Champion Spark Plug Co.*, 1982 FTC LEXIS 85, at *2 (April 5, 1982); *see Hood*, 58 F.T.C. at 1188-89; *Kaiser Aluminum*, 103 F.T.C. at 500. Where *in camera* treatment is granted for business records, such as business strategies, marketing plans, pricing policies, or sales documents, it is typically provided for two to five years. *E.g.*, *In re Union Oil Co. of Cal.*, 2004 FTC LEXIS 223, at *2 (Nov. 22, 2004); *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at *13-14 (June 26, 1996); *Champion Spark Plug*, 1982 FTC LEXIS 85 at *2 and 1982 FTC LEXIS 92, at *2 (March 4, 1982).

In order to sustain the burden for withholding documents from the public record, an affidavit or declaration is required demonstrating that a document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury. *See In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at *2-3 (Apr. 23, 2004). To overcome the presumption that *in camera* treatment will not be granted for information that is more than three years old, applicants seeking *in camera* treatment for

such documents must also demonstrate, by affidavit or declaration, that such material remains competitively sensitive. In addition, to properly evaluate requests for *in camera* treatment, applicants for *in camera* treatment must provide a copy of the documents for which they seek *in camera* treatment to the Administrative Law Judge for review.

III.

As set forth below, each of the non-parties filed separate motions for *in camera* treatment. Each motion was supported by an affidavit or declaration of an individual within the company who had reviewed the documents. These affidavits and declarations supported the applicants' claims that the documents are sufficiently secret and sufficiently material to their businesses that disclosure would result in serious competitive injury. That showing was then balanced against the importance of the information in explaining the rationale of decisions at the Commission. The motions attached the documents or deposition testimony for which *in camera* treatment was sought. Where *in camera* treatment for deposition testimony was sought, non-parties narrowed their requests to specific page and line numbers. The specific motions of each of the non-parties are analyzed using the standards set forth above and are addressed below in alphabetical order.

A.

American Cast Iron Pipe Company ("ACIPCO"):

Non-party ACIPCO seeks *in camera* treatment for several documents that Complaint Counsel intends to introduce into evidence. ACIPCO seeks *in camera* treatment for documents in the following categories: 1) documents showing sales data including types of customers, total sales figures, and total tonnage sold; 2) emails and attachments regarding business strategies, pricing negotiations, purchase data; and 3) voluminous spreadsheets containing information relating to ACIPCO's fittings sales. ACIPCO seeks *in camera* treatment for a period of five years for all but two of these proposed exhibits and indefinite *in camera* treatment for CX2295 and CX2296 because such exhibits contain lists of ACIPCO's customers.

ACIPCO supports its motion with an affidavit from its Vice President of Sales and Secretary. The affidavit describes in detail the confidential nature of the documents, which contain customer data, pricing and cost information, business strategies, and negotiating strategies. The affidavit also describes in detail the measures that ACIPCO has taken to protect the confidentiality of the documents for which ACIPCO seeks *in camera* treatment and explains the competitive harm ACIPCO would suffer if such documents were made publicly available. Accordingly, ACIPCO has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection. However, ACIPCO has not met its burden of demonstrating that CX2295 and CX2296, which consist of ordinary business records, are entitled to indefinite *in camera* treatment.

In camera treatment, for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified as: CX1894, CX1895, CX1902, CX1907, CX1924, CX2295, and CX2296.

B.

Electrosteel USA, LLC (“Electrosteel”):

Non-party Electrosteel seeks *in camera* treatment for several documents and deposition excerpts that Complaint Counsel and Respondent have designated for possible introduction into evidence. The materials for which Electrosteel seeks *in camera* treatment contain detailed customer sales data and emails regarding business plan strategies. Electrosteel seeks *in camera* treatment for a period of five years.

Electrosteel supports its motion with a declaration from its Business Development Manager. The declaration describes in detail the confidential nature of the documents, which contain customer data, pricing and cost information, business and negotiating strategies, and proprietary information relating to Electrosteel’s financial status. The declaration also describes in detail the measures that Electrosteel has taken to protect the confidentiality of the documents for which Electrosteel seeks *in camera* treatment and explains the competitive harm Electrosteel would suffer if such documents were made publicly available. With respect to the deposition testimony for which Electrosteel seeks *in camera* treatment, Electrosteel has narrowed its request to selected excerpts. Accordingly, Electrosteel has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

In camera treatment, for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified as: CX1546, CX1549, CX1553, and RX0384 (ESMCW0000002). In addition, *in camera* treatment for a period of five years is granted to the following excerpts from the deposition of Danny Swalley (CX2500): 252:13-252:22; 74:24-78:19; 185:19-23; 221:25-232:15; 71:6-19; 183:19-185:19.

C.

Ferguson Enterprises, Inc. (“Ferguson”):

Non-party Ferguson seeks *in camera* treatment for several business documents and emails that Complaint Counsel and Respondent have designated for possible introduction into evidence. The materials for which Ferguson seeks *in camera* treatment contain information on pricing and negotiation strategies. Ferguson seeks *in camera* treatment for a period of five years.

Ferguson supports its motion with an affidavit from its Vice President of Waterworks Division. The affidavit describes in detail the confidential nature of the documents, which contain rebate terms with its suppliers and the share of each supplier’s product sold by Ferguson. The affidavit also describes in detail the measures that Ferguson has taken to

protect the confidentiality of the documents for which Ferguson seeks *in camera* treatment and explains the competitive harm Ferguson would suffer if such documents were made publicly available. Accordingly, Ferguson has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

In camera treatment, for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified as: CX0500, CX0502, CX0504, CX0509, CX0510, CX2276, and CX2277.

D.

Griffin Pipe Products (“GPP”)

Non-party GPP seeks *in camera* treatment for two documents and a deposition transcript that Complaint Counsel and Respondent intend to introduce into evidence. The materials for which GPP seeks *in camera* treatment contain competitively sensitive information. GPP is seeking *in camera* treatment for an indefinite period for all documents listed in its motion.

GPP supports its motion with a declaration from its Controller. The declaration describes in detail the confidential nature of the documents which contain detailed information regarding GPP’s purchases and sales, including names and locations of GPP’s customers and the nature and specifics of payments made by GPP’s customers to GPP. The declaration also describes in detail the measures that GPP has taken to protect the confidentiality of the documents for which GPP seeks *in camera* treatment and explains the competitive harm GPP would suffer if such documents were made publicly available. Accordingly, with respect to the two documents, GPP has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection. With respect to the transcript of the deposition testimony of Douglas Kuhrts, designated as CX2508, although GPP requested *in camera* treatment for the entire transcript, in the alternative, GPP requested *in camera* treatment for selected excerpts of the deposition transcript. GPP has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

However, GPP has not met its burden of demonstrating that its materials, which consist of ordinary business records, are entitled to indefinite *in camera* treatment. Accordingly, *in camera* treatment, for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified as: CX2258 and CX2259. With respect to the deposition testimony, GPP’s alternative request is GRANTED and the following excerpts from CX2508 will be given *in camera* treatment for a period of five years, to expire on September 1, 2017: 19:17-21:17; 22:5-27:7; 30:15-31:16; 31:20; 32:2-10; 40:16-41:17; 42:13-45:5; 48:23-50:3; 50:5-21; 54:5-10; 54:12-55:15; 73:21-74:7; 83:13-85:17; 21:18-22; 27:8-30:13; 33:2-36:14; 38:12-16; 38:23-39:11; 45:6-48:22; 51:17-53:22; 55:16-65:5; 72:5-73:20; 74:12-81:11; and 85:18-86:22.

E.

Illinois Meter, Inc. (“Illinois Meter”)

Non-party Illinois Meter seeks *in camera* treatment for excerpts from the transcripts of the deposition of Dennis Sheley, taken on January 11, 2012 and April 24, 2012, which Complaint Counsel and Respondent have designated for possible introduction into evidence. Illinois Meter is seeking *in camera* treatment for a period of ten years.

Illinois Meter supports its motion with a declaration from its President and Chief Operating Officer. The information Illinois Meter seeks to protect from disclosure is proprietary information regarding gross sales, percentage of mark-up or profit, inventory levels, volume of sales of particular inventory items, and other financial and sales information that would be of benefit to competitors of Illinois Meter. The declaration states that the material sought to be withheld from the public record reveals current operating data and that the data is only known to a select few and trusted employees.

The information for which Illinois Meter seeks *in camera* treatment consists of ordinary business records, which are typically given *in camera* protection for a period of two to five years. Illinois Meter has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given *in camera* protection, but has not demonstrated a sufficient basis for extending such protection for a period of ten years. Accordingly, *in camera* treatment, for a period of five years, to expire on September 1, 2017, is GRANTED for these selected excerpts of the deposition transcripts of Dennis Sheley: CX2515 (10:9-15; 11:8-15; 25:5-17, 18-25; 26:1-25; 27:1-10; 33:4-7, 13-14; 34:23; 35:3; 41:20-22; 52:1-4; 53:10; 69:8-9, 13, 16, 19-23; 70:1-4,14-16, 23; 73:1-11; 74:4; 101:1-7; 102:17; 129:24-25; 130:1-9); and CX2516 (9:7-9; 12:19-24; 13:1-12; 14:9-12, 17; 16:1; 18:19-20; 26:22; 27:6-7, 10-11, 13; 33:2-16; 37:7; 39:7-8; 43:13; 58:12; 62:11-13; 72:7-8, 13; 73:4,8; 85:19-21; 86:11-13, 21; 87:13-14, 18-20; 89:4-9, 14, 16; 90:15; 121:12-13; 122:9-11; 124:21-23; 126:20; 154:23; 158:17-19; 163:7, 12, 20; 164:13,18,23-24; 165:1).

F.

Metalfit, Inc. (“Metalfit”)

Non-party Metalfit seeks *in camera* treatment for two documents that have been designated by Complaint Counsel for possible introduction into evidence. The documents for which Metalfit seeks *in camera* treatment contain competitively sensitive information. Metalfit is seeking *in camera* treatment for an indefinite period for both documents.

Metalfit supports its motion with a declaration from its Vice President and Co-Owner. The documents for which it seeks *in camera* treatment contain information regarding gross sales, pricing practices, and sales to specific customers. The declaration describes the measures that Metalfit has taken to protect the confidentiality of the documents for which Metalfit seeks *in camera* treatment and explains the competitive harm Metalfit would suffer if

such documents were made publicly available. Metalfit has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

However, Metalfit has not met its burden of demonstrating that its materials, which consist of ordinary business records, are entitled to indefinite *in camera* treatment. Accordingly, *in camera* treatment, for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified as: CX1776 and CX1777.

G.

Serrampore Industries Private (“SIP Industries”)

Non-party SIP Industries seeks *in camera* treatment for several documents and deposition excerpts that Complaint Counsel and Respondent have designated for possible introduction into evidence. SIP Industries seeks *in camera* treatment for documents that contain sales data, negotiations on business dealings, business costs, meetings with potential customers, and pricing procedures. SIP Industries seeks *in camera* treatment for periods of three to five years.

SIP Industries supports its motion with a declaration from its Vice President-Business Development. The declaration describes the documents for which SIP Industries seeks *in camera* treatment as containing proprietary business information regarding SIP Industries’ business, which if disclosed could be misused by SIP Industries’ competitors and customers. The declaration also describes in detail the measures that SIP Industries has taken to protect the confidentiality of the documents for which SIP Industries seeks *in camera* treatment and explains the competitive harm SIP Industries would suffer if such documents were made publicly available. Accordingly, SIP Industries has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

Although SIP Industries requests *in camera* treatment for a period of three to five years, in order to make the expiration date of *in camera* treatment consistent across exhibits provided by non-parties, which establishes consistency and furthers administrative efficiency,¹ *in camera* treatment for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified as: CX0003, CX0004, CX0005, CX0007, and RX0369 (SIP Industries Fitting Sales 2008-2011). In addition, *in camera* treatment for a period of five years, to expire on September 1, 2017, is GRANTED for the following excerpts of deposition testimony in CX2521 (61:14-62:15; 62:16-18; 62:19-63:5; 63:17-64:1; 122:22-123:14; 123:15-124:21; 215:25-216:8; 167:8-169:15; 182:3-183:19; 192:23-193:4; 193:5-18; 206:25-207:24; 207:25-208:5; 208:6-25; 209:1-209:13; 210:3-211:20; 11:21-14:3; 18:10-21:23; 23:12-24:18; 24:25-25:25; 27:5-23; 30:5-31:5; 31:11-18; 32:20-33:12; 34:20-22; 37:9-14; 65:25-66:18; 74:25-75:16; 75:17-75:23; 75:24-80:3; 80:4-80:6; 80:7-82:4; 84:19-85:17; 97:15-99:4; 99:5-99:10; 106:15-107:3; 126:10-128:7; 129:2-130:23; 131:7-9; 132:2-135:5; 136:7-138:22; 138:23-139:17; 141:19-143:4; 143:11-21; 144:1-9; 144:10-145:3; 145:4-146:17; 146:18-147:3; 148:2-150:5; 150:6-8; 150:9-151:2; 151:3-152:19; 152:20-153:16; 154:23-157:7; 158:9-162:23; 162:24-163:12; 163:13-165:10; 165:11-166:20; 166:24-167:7;

¹ See *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, *20 n.1 (May 25, 2011).

169:16-170:8; 170:19-176:16; 176:17-22; 176:23-177:6; 177:7-178:8; 178:9-180:25; 181:1-16; 183:20-185:3; 185:4-186:22; 186:23-187:4; 187:5-12; 188:2-6; 188:7-189:10; 189:16-190:4; 190:5-11; 190:15-191:2; 194:24-197:18; 199:21-201:12; 201:16-203:11; 212:2-15; 212:16-213:12; 213:13-20; 213:21-214:4) and in CX2522 (12:6-13:13; 43:16-18; 43:19-44:21; 45:8-46:6; 49:24-50:7; 81:14-82:19; 89:1-6; 14:23-15:16; 7:1-18:6; 23:24-24:7; 38:15-23; 39:24-40:23; 73:17-25; 111:15-23; 112:6-20; 20:10-21:2; 21:3-15; 21:16-22:16; 29:8-30:2; 30:4-31:6; 55:23-56:5; 56:17-21; 57:12-58:6; 58:19-59:19; 59:22-61:15; 62:22-64:20; 66:21-68:10; 68:11-69:5; 75:18-77:2; 77:3-78:5; 78:13-22; 80:7-81:3; 82:24- 83:6; 85:5-10; 89:13-25; 90:1-12; 90:15-91:18; 92:9-93:11; 93:15-24; 93:25-94:17; 95:5-96:25; 97:1-22; 97:23-98:18; 98:19-23; 100:17-104:16; 104:25-105:1; 106:25-107:22; 108:3-109:14; 109:15-110:5; 110:11-111:3; 111:6-111:14; 114:5-115:8; 115:9-117:6).

H.

SIGMA Corporation (“SIGMA”)

Non-party SIGMA seeks *in camera* treatment for numerous documents that Complaint Counsel and Respondent have identified for possible introduction into evidence. SIGMA seeks *in camera* treatment for documents in the following categories: 1) documents that contain strategic planning and market share information; and 2) documents that contain sensitive financial information of SIGMA. SIGMA seeks *in camera* treatment for a period of two years.

SIGMA supports its motion with a declaration from its Chairman and Chief Executive Officer. The declaration describes in detail the highly sensitive nature of the information related to SIGMA’s financial information and SIGMA’s strategic planning initiatives for the future of the company. The declaration also describes in detail the measures that SIGMA has taken to protect the confidentiality of the documents for which SIGMA seeks *in camera* treatment and explains the competitive harm SIGMA would suffer if such documents were made publicly available. SIGMA narrowed its request for *in camera* treatment from the almost 500 documents provided by SIGMA and designated for use as potential hearing exhibits, to a select group of just over 30 documents. Accordingly, SIGMA has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

Although SIGMA requests *in camera* treatment for a period of only two years, in order to make the expiration date of *in camera* treatment consistent across exhibits provided by non-parties, which establishes consistency and furthers administrative efficiency, *in camera* treatment for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified as: CX0938, CX1748, CX1749, CX1750, CX2026, CX2407, CX2408, CX2409, CX2410, CX2411, CX2412, CX2413, CX2414, CX2420, CX2421, CX2422, CX2423, CX2424, CX2425, CX2426, CX2427, CX2460, CX2461, CX2462, CX2463, CX2464, CX2465, CX2466, CX2467, RX0126, RX0163, RX0242, and RX0383. In addition, *in camera* treatment, for a period of five years, to expire on September 1, 2017, is

GRANTED for parts of the following documents: CX0086; CX1022; CX1651; and CX1997.²

I.

Star Pipe Products, Ltd. (“Star”)

Non-party Star³ seeks *in camera* treatment for numerous documents and deposition excerpts that have been designated by Complaint Counsel and Respondent for possible introduction into evidence. Star seeks *in camera* treatment for documents in the following categories: 1) internal communications, analyses, and other sensitive internal financial profitability and sales information, including specific customer information and rebating practices; 2) internal correspondence and analyses, agreement and costing documents, and marketing strategies; and 3) excerpts from deposition testimony that reveal internal business strategies and principles and policies for dealing with customers and competing in the marketplace. For each of the documents in these categories, Star seeks *in camera* treatment for a period of five years.

Star supports its motion with a declaration from its Vice President of Finance. The declaration describes in detail the highly sensitive nature of the information relating to Star’s margins and other profitability information and information relating to Star’s plans and business strategies for entering the market as a supplier of domestic ductile iron pipe fittings. The declaration also demonstrates that the documents and testimony for which Star seeks *in camera* treatment contain secret, competitively sensitive information, the disclosure of which could cause serious competitive injury to Star, and describes in detail the measures that Star has taken to protect the confidentiality of such documents. Star narrowed its request for *in camera* treatment from the almost 500 documents provided by Star and designated for use as potential hearing exhibits, to a more limited group of 86 documents. Accordingly, Star has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

In camera treatment, for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified in Star’s motion. Because the number of exhibits to which *in camera* treatment has been granted is somewhat lengthy and because it is not clear from Star’s motion the RX numbers that have been assigned to the documents listed in Star’s motion, Complaint Counsel is hereby instructed to prepare a proposed order, with a signature line for the Administrative Law Judge, that lists by exhibit numbers the documents and deposition excerpts that, by this Order, have been granted *in camera* treatment. A subsequent order will issue to identify Star’s documents by exhibit number that have been granted *in camera* treatment by this Order.

² With respect to CX0086, CX1022, and CX1997, only the highlighted portions should be excluded from *in camera* treatment. With respect to CX1651, pages CX1651-010, 1651-020, and 1651-053, should be excluded from *in camera* treatment.

³ Although Star is named as a Respondent in the caption in this matter, by Order dated February 23, 2012, the Commission withdrew all claims against Star.

J.

The Distribution Group (“TDG”)

Non-party TDG seeks *in camera* treatment for several documents and deposition excerpts Complaint Counsel and Respondent intend to introduce into evidence. The documents contain quarterly reports, rebate information, payment terms, vendor and potential vendor identities and information, as well as other secret and material information. With respect to one document, TDG seeks *in camera* treatment for a period of five years. With respect to the remaining documents listed in its motion, TDG seek indefinite *in camera* treatment.

TDG supports its motion with a declaration from its President. The declaration describes the highly confidential nature of the documents for which TDG seeks *in camera* treatment, which, among other things, reveal TDG’s vendor program and rebate amounts and percentages. The declaration also describes in detail the measures that TDG has taken to protect the confidentiality of the documents for which TDG seeks *in camera* treatment and explains the competitive harm TDG would suffer if such documents were made publicly available. Accordingly, TDG has met its burden of demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

However, TDG has not met its burden of demonstrating that its materials, which consist of ordinary business records, are entitled to indefinite *in camera* treatment. Accordingly, *in camera* treatment, for a period of five years, to expire on September 1, 2017, is GRANTED for: CX1361, RX0132 (TDG000143-145), RX0220 (TDG000230-233), RX0288 (TDG000151-153), and to the following excerpts of deposition testimony in CX2493 (6:11-21; 7:9-17; 8:20-9:12; 10:13-17) and in CX2494 (8-24; 20:4; 21:7-16; 27:5-8; 29:19-30:9; 31:8-23; 31:24-32:25; 33:8-9; 37:9-25; 38:2-22; 46:15-25; 70:13-14; 73:15-22; 107:22-24; 110:20-112:15; 113:4-8; 115:21-24; 128:9-129:1; 129:19-24).

K.

United States Pipe and Foundry Company, LLC (“U.S. Pipe”)

Non-party U.S. Pipe seeks *in camera* treatment for two exhibits that have been designated by Complaint Counsel for possible introduction into evidence. The documents are spreadsheets that contain highly confidential and competitively sensitive purchase and sales data. For each of these documents, U.S. Pipe seeks *in camera* treatment for a period of two years.

U.S. Pipe supports its motion with a declaration from its Vice President of Purchasing. The declaration describes the documents as containing recent, detailed purchase and sales data that is competitively sensitive. The declaration also describes the measures U.S. Pipe takes to hold this information in strict confidence and the competitive injury U.S. Pipe would suffer if these documents were publicly disclosed. Accordingly, U.S. Pipe has met its burden of

demonstrating that the materials for which it seeks *in camera* treatment should be given such protection.

Although U.S. Pipe requests *in camera* treatment for a period of only two years, in order to make the expiration date of *in camera* treatment consistent across exhibits provided by non-parties, which establishes consistency and furthers administrative efficiency, *in camera* treatment for a period of five years, to expire on September 1, 2017, is GRANTED for the documents identified as CX1944 and CX1945.

IV.

Each non-party that has documents or information that has been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been provided for the material described in this Order. At the time that any documents that have been granted *in camera* treatment are offered into evidence or before any of the information contained therein is referred to in court, the parties shall identify such documents and the subject matter therein as *in camera*, inform the court reporter of the trial exhibit number(s) of such documents, and request that the hearing go into an *in camera* session.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: August 17, 2012