

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



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In the Matter of )  
)  
Tronox Limited, )  
a corporation, )  
)  
National Industrialization Company )  
(TASNEE) )  
a corporation, )  
)  
National Titanium Dioxide Company )  
Limited (Cristal) )  
a corporation, and )  
)  
Cristal USA Inc. )  
a corporation, )  
)  
Respondents. )

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DOCKET NO. 9377

**NON-PARTY ILUKA RESOURCES INCORPORATED'S MOTION FOR *IN CAMERA***  
**TREATMENT**

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party Iluka Resources Incorporated ("Iluka") respectfully moves this Court for *in camera* treatment of five competitively-sensitive, confidential documents (the "Confidential Documents"). Iluka produced four of these documents, among others, in response to a non-party subpoena issued by Federal Trade Commission counsel ("Complaint counsel") supporting the complaint in this Part III adjudication. The fifth document was provided to counsel for Respondents in lieu of live testimony. The Complaint counsel and Respondents' counsel have now notified Iluka that they intend to introduce six Iluka documents, including the five

Confidential Documents, into evidence at the administrative hearing in this matter.<sup>1</sup> See Letter from Complaint counsel dated April 19, 2018 (attached as Exhibit A); Letter from Kirkland & Ellis LLP, Counsel to Tronox Limited, dated April 19, 2018 (attached as Exhibit B).<sup>2</sup>

All of the materials for which Iluka is seeking *in camera* treatment are confidential business documents and/or contain confidential commercial or financial information protected by section 6(f) of the Federal Trade Commission Act, such that if they were to become part of the public record, Iluka would be significantly harmed in its ability to compete in the mineral sands and mining industries. For the reasons discussed in this motion, Iluka requests that this Court afford its confidential business documents *in camera* treatment indefinitely. In support of this motion, Iluka relies on the Declaration of Robert Gibney (the “Second Gibney Declaration”), attached as Exhibit C, which provides additional details on the documents for which Iluka is seeking *in camera* treatment.

#### **I. The Documents for Which Iluka Seeks Protection**

Iluka seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibit D.

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>	<b>Scope of <i>In Camera</i> Treatment</b>
PX4216	Board Paper re: Cataby Project	October 2017	IRI-9377-000092	IRI-9377-000116	Entire document
PX4219	RE: 170210 Cristal-Tronox Board Paper RG and attachment	February 16, 2017	IRI-9377-000001	IRI-9377-000014	Entire document
PX4221 <sup>3</sup>	FW: Tronox Meeting Note 18 May 2017 and	May 23, 2017	IRI-9377-000029	IRI-9377-000030	Redacted portions

<sup>1</sup> Complaint counsel identified one additional document, PX4224 (originally produced by Iluka as IRI-9377-000039), as a potential exhibit in the hearing in this matter. Iluka does not request *in camera* treatment for PX4224.

<sup>2</sup> Tronox counsel addressed the letter to Hunton & Williams LLP. Effective April 2, 2018, Hunton & Williams LLP combined with Andrews Kurth Kenyon LLP to form Hunton Andrews Kurth LLP.

<sup>3</sup> Because Iluka is only requesting *in camera* treatment for a portion of this document, redacted and non-redacted versions of this document have been included in Exhibit D.

	attachment				only
PX4222	RE: Tronox's 3Q 2017 Results	November 17, 2017	IRI-9377-000046	IRI-9377-000052	Entire document
	Declaration of Robert Gibney (the "First Gibney Declaration")	March 2018			Entire document

## II. Iluka Documents Are Secret and Material Such that Disclosure Would Result in Serious Injury to Iluka

*In camera* treatment of material is appropriate when its "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, \*5 (1999). In this context, courts generally attempt "to protect confidential business information from unnecessary airing." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

In considering both secrecy and materiality, the Administrative Law Judge may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *See In re BristolMyers Co.*, 90 F.T.C. 455, 456-457 (1977).

The Confidential Documents are both secret and material to Iluka's business as discussed in detail in the Second Gibney Declaration. In sum, the Confidential Documents at issue contain information of competitive significance to Iluka, such as proposals for major capital expenditures, competitive analyses of other participants in the titanium dioxide market, and

internal risk assessments of the proposed Tronox/Cristal combination. Second Gibney Declaration at 2-5. As a major producer of the high-grade titanium dioxide products rutile and synthetic rutile, Iluka must keep abreast of the competitive landscape for both production and sales of titanium dioxide products worldwide. *Id.* at 3-4. Thus, Iluka has developed internal processes to assess ongoing issues within the mining industry as it relates to Iluka's titanium dioxide business. *Id.* Such information, processes to gather and analyze said information, and the implications that information has on Iluka's business are proprietary to Iluka and are not publicly known outside of Iluka. *Id.* at 2-5. As described in more detail in the Second Gibney Declaration, Iluka took steps to safeguard from public disclosure the information for which it now seeks *in camera* treatment. In keeping with the proprietary nature of these materials, the Confidential Documents were distributed only to Iluka, its parent, Iluka Resources Limited, and outside legal counsel prior to production to Complaint counsel and Respondents' counsel. Moreover, Iluka requested confidential treatment for each of the Confidential Documents upon production. See Exhibit E (cover letter to Complaint counsel requesting confidential treatment upon initial production of PX4216, PX4219, PX4221 and PX4222); Exhibit F (cover email to Respondents' counsel requesting confidential treatment of the First Gibney Declaration). Because of the highly confidential and proprietary nature of the information and its materiality to Iluka's business, *in camera* treatment is appropriate.

Further, disclosure of the Confidential Documents will result in the loss of a business advantage to Iluka. See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at \*7 (Dec. 23, 1999) ("The likely loss of business advantages is a good example of a 'clearly defined, serious injury.'"). The Confidential Documents are material to the internal market and business assessments that Iluka applies in order to compete with other producers of rutile and synthetic

rutile. Second Gibney Declaration at 2-5. Making such documents public would result in a loss of business advantage that Iluka has built as the result of its own substantial investments in the development of its proprietary systems and processes.

Finally, Iluka's status as a non-party is relevant to the treatment of its documents. The Federal Trade Commission has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *H.P. Hood & Sons*, 58 F.T.C. at 1186. This is especially so in the case of a non-party, which deserves "special solicitude" in its request for *in camera* treatment for its confidential business information. See *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). Iluka's non-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

### **III. The Confidential Documents Contain Trade Secrets, Which Will Remain Sensitive Over Time; Permanent *In Camera* Treatment Is Justified**

Given the highly-sensitive nature of the information contained in the Confidential Documents, Iluka requests that they be given *in camera* treatment indefinitely.<sup>4</sup> The trade secret information contained in the Confidential Documents "is likely to remain sensitive or become more sensitive with the passage of time" such that the need for confidentiality is not likely to decrease over time. *In re Dura Lube Corp.*, 1999 FTC LEXIS at \*7-8. "Trade secrets"—such as secret formulas and secret technical information—are granted more protection than ordinary business documents. *Id.* at \*5. Here, as described in the Second Gibney Declaration, the Confidential Documents contain business and trade secrets in the form of internal Iluka

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<sup>4</sup> To the extent permanent treatment is not given, Iluka requests that the period of *in camera* treatment of the Confidential Documents be no less than 10 years.

whitepapers that analyze the need for major capital expenditures, that apply analysis of the global mining market to Iluka's position in said market, reveal Iluka's negotiating strategies, and assess risks in a manner critical to Iluka's ability to compete in the global mining market. Second Gibney Declaration at 2-5. The competitive significance of Iluka's analysis and methodology is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate. *Id.* at 5.

**IV. Conclusion**

For the reasons set forth above and in the accompanying Second Gibney Declaration, Iluka respectfully requests that this Court grant *in camera* treatment as discussed above and in the attached proposed order.

Dated: May 8, 2018

Respectfully submitted,

/s/ Amanda L. Wait

Amanda L. Wait  
Hunton Andrews Kurth LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
Ph. 202-955-1500/Fx. 202-778-2201  
[await@huntonAK.com](mailto:await@huntonAK.com)

Counsel for Non-Party, Iluka Resources  
Incorporated

**STATEMENT REGARDING MEET AND CONFER**

The undersigned certifies that counsel for non-party Iluka Resources Incorporated (“Iluka”) notified counsel for the parties via telephone on or about April 25, 2018, that Iluka would be seeking *in camera* treatment of the Confidential Documents. Both counsel supporting the complaint and for Respondents indicated that they would not object to Iluka’s motion.

Dated: April 30, 2018

Respectfully submitted,

/s/ Amanda L. Wait

Amanda L. Wait  
Hunton Andrews Kurth LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
Ph. 202-955-1500/Fx. 202-778-2201  
await@HuntonAK.com

Counsel for Non-Party, Iluka Resources  
Incorporated

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

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 a corporation, )  
 )  
 Respondents. )  
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DOCKET NO. 9377

**[PROPOSED] ORDER**

Upon consideration of Non-Party Iluka Resources Incorporated’s (“Iluka’s”) Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order to the extent provided for in the below chart.

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>	<b>Scope of <i>In Camera</i> Treatment</b>
PX4216	Board Paper re: Cataby Project	October 2017	IRI-9377-000092	IRI-9377-000116	Entire document
PX4219	RE: 170210 Cristal-Tronox Board Paper RG and attachment	February 16, 2017	IRI-9377-000001	IRI-9377-000014	Entire document
PX4221	FW: Tronox Meeting Note 18 May 2017 and	May 23, 2017	IRI-9377-000029	IRI-9377-000030	Redacted portions

	attachment				only
PX4222	RE: Tronox's 3Q 2017 Results	November 17, 2017	IRI-9377-000046	IRI-9377-000052	Entire document
	Declaration of Robert Gibney (the "First Gibney Declaration")	March 2018			Entire document

**ORDERED:**

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

Date: \_\_\_\_\_

**CERTIFICATION OF SERVICE**

I HEREBY CERTIFY that on this 8th day of May 2018, I electronically filed the foregoing public versions of documents previously filed on April 30, 2018 using the FTC's E-Filing System, which will send notification of such filings to:

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Rm. H-113  
Washington, DC 20580  
secretary@ftc.gov

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

I also hereby certify that I caused a true and correct copy of the foregoing public documents to be served upon the following via electronic mail:

Bruce Hoffman  
Haidee Schwartz  
Chuck Loughlin  
Thomas Brock  
Benjamin Gris

Dominic Vote  
Jon Nathan  
Krisha Cerilli  
Robert Tovsky  
April Tabor

Federal Trade Commission  
Bureau of Competition  
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Andrew Pruitt  
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Michael DeRita

James Cooper  
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*Counsel for Tronox Limited*

Dated: May 8, 2018

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*Counsel for National Industrialization  
Company (TASNEE), National Titanium  
Dioxide Company Limited, and Cristal USA  
Inc.*

/s/ Amanda L. Wait  
Amanda L. Wait  
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Washington, DC 20037  
(202) 955-1500  
await@HuntonAK.com

**EXHIBIT A**

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Bureau of Competition  
Mergers II Division

April 19, 2018

**VIA EMAIL TRANSMISSION**

Iluka Resources Inc.  
c/o Amanda Wait  
Hunton Andrews Kurth LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
[await@HuntonAK.com](mailto:await@HuntonAK.com)

RE: *In the Matter of Tronox Limited et al.*, Docket No. 9377

Dear Amanda:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on May 18, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or

affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Second Revised Scheduling Order (revised on February 23, 2018), **the deadline for filing motions seeking *in camera* treatment is May 1, 2018**. A copy of the February 23, 2018 Second Revised Scheduling Order and the December 20, 2017 original Scheduling Order, which contains Additional Provisions, can be found at <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcrystal-usa>.

If you have any questions, please feel free to contact me at (202) 326-2634.

Sincerely,

/s/ Robert Tovsky  
Robert Tovsky  
Counsel Supporting the Complaint

Attachment

# Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
PX4216	Iluka Document: Board Paper	10/??/17	IRI-9377-000092	IRI-9377-000116
PX4219	Email from Barry Murphy to Doug Warden, Matthew Blackwell, Robert Gibney, et al. re: RE: 170210 Cristal-Tronox Board Paper RG.docx w/Attach: 170210_Cristal-Tronox_Board_Paper_-_Markup.docx; 170216_Cristal-Tronox_Board_Paper_-_Clean.docx	2/16/2017	IRI-9377-000001	IRI-9377-000014
PX4221	Email from Robert Gibnet to Matthew Blackwell re: FW: Tronox Meeting Note 18 May 2017.docx w/Attach: Tronox_Meeting_Note_18_May_2017.docx	5/23/2017	IRI-9377-000029	IRI-9377-000030
PX4222	Email from Robert Gibnet to Matthew Blackwell and Tom O'Leary re: RE: Tronox's 3Q 2017 Results	11/17/2017	IRI-9377-000046	IRI-9377-000052
PX4224	Email from Robert Gibney to Matthew Blackwell re: Re: Tronox	9/20/2017	IRI-9377-000039	IRI-9377-000039

**EXHIBIT B**

## KIRKLAND &amp; ELLIS LLP

AND AFFILIATED PARTNERSHIPS

Michael DeRita  
To Call Writer Directly:  
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michael.derita@kirkland.com

655 Fifteenth Street, N.W.  
Washington, D.C. 20005

(202) 879-5000

www.kirkland.com

Facsimile:  
(202) 879-5200

April 19, 2018

**BY EMAIL AND FEDEX**

Amanda L. Wait  
Hunton & Williams LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037

Re: In re Tronox Limited (FTC Docket No. 9377)

Dear Amanda:

This letter services as notice, per footnote one of the Second Revised Scheduling Order, entered February 23, 2018, and paragraph ten of the Protective Order Governing Confidential Material, entered December 7, 2017, that Tronox Limited (“Tronox”), National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively “Respondents”) plan to introduce the following documents or transcripts containing confidential material produced by Iluka Resources Limited at the hearing before Judge Chappell:

- Declaration of Robert Gibney

Per paragraph seven of the Scheduling Order, entered December 20, 2017, I inform you “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 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).<sup>1</sup> Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS

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<sup>1</sup> “Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence ‘be placed *in camera* only (a) 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 (b) after finding that the material constitutes sensitive personal information.’” *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *see also In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015).

KIRKLAND & ELLIS LLP

Amanda L. Wait  
April 19, 2018  
Page 2

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.”

Sincerely,



Michael DeRita

## **EXHIBIT C**

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

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In the Matter of )  
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 a corporation, and )  
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 a corporation, )  
 )  
 Respondents. )

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DOCKET NO. 9377

**DECLARATION OF ROBERT GIBNEY IN SUPPORT OF NON-PARTY ILUKA  
RESOURCES INC.’S MOTION FOR *IN CAMERA* TREATMENT**

I, Robert Gibney, hereby declare as follows:

**I. The Documents for Which Protection Is Sought**

1. I am the general manager of titanium dioxide sales for Iluka Resources Incorporated (“Iluka”), a part of Iluka Resources Limited. I make this declaration (the “Second Gibney Declaration”) in support of Non-Party Iluka Resources Inc.’s Motion for *In Camera* Treatment (the “Motion”). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have reviewed and am familiar with the documents Iluka produced in the Commission’s investigation which led to this Part III adjudication and the First Gibney

Declaration. Given my position at Iluka, I am familiar with the type of information contained in the documents at issue and its competitive significance to Iluka. Based on my review of the documents, my knowledge of Iluka's business, and my familiarity with the confidentiality protection afforded this type of information by Iluka, I submit that public disclosure of the documents discussed below would cause Iluka serious competitive injury.

3. Iluka is involved in the exploration, project development, operation, and marketing of mineral sands products. Iluka is a major producer of zircon globally, and a large producer of high-grade rutile and synthetic rutile feedstocks used to produce titanium dioxide pigments. To stay competitive in the production and sales of titanium dioxide products, Iluka uses internal processes and analyses, such as those in our internal Board Papers and the other documents discussed below (collectively the "Confidential Documents"), to document potential competitive risks to the company, as well as to request significant capital expenditures for the company's benefit. The information and requests in these Confidential Documents for which Iluka seeks *in camera* treatment are unique to Iluka and are critical to Iluka's business development and competition strategies.

4. Federal Trade Commission counsel supporting the complaint ("Complaint Counsel") informed Iluka that they intend to use five of the documents that Iluka produced in response to a subpoena at the administrative hearing of this matter. Of these documents, PX4216, PX4219, PX4221, and PX4222 are particularly sensitive and contain confidential business information and trade secrets.<sup>1</sup> Tronox Limited, National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal Inc. (collectively, "Respondents") have indicated an intent to introduce the March 2018 Declaration

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<sup>1</sup> Complaint Counsel identified one additional document, PX4224 (originally produced by Iluka as IRI-9377-000039), as a potential exhibit in the hearing in this matter. Iluka does not request *in camera* treatment for PX4224.

of Robert Gibney (the “First Gibney Declaration”) into evidence. The First Gibney Declaration contains internal Iluka analyses of certain business opportunities for Iluka. As described in the Motion, Iluka seeks permanent *in camera* protection the following documents:

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>	<b>Scope of <i>In Camera</i> Treatment</b>
PX4216	Board Paper re: Cataby Project	October 2017	IRI-9377-000092	IRI-9377-000116	Entire document
PX4219	RE: 170210 Cristal-Tronox Board Paper RG and attachment	February 16, 2017	IRI-9377-000001	IRI-9377-000014	Entire document
PX4221	FW: Tronox Meeting Note 18 May 2017 and attachment	May 23, 2017	IRI-9377-000029	IRI-9377-000030	Redacted portions only
PX4222	RE: Tronox’s 3Q 2017 Results	November 17, 2017	IRI-9377-000046	IRI-9377-000052	Entire document
	Declaration of Robert Gibney (“First Gibney Declaration”)	March 2018			Entire document

5. PX4216 is an internal Iluka Board Paper from October 2017 prepared in support of a request for a capital expenditure project in excess of \$220 million. Among other issues, the document discusses the need for the proposed expenditure, detailed financial projections related to the expenditure, historic spending by Iluka, other alternatives to the expenditure that Iluka considered, risks associated with the expenditure, deal terms with customers, negotiating positions and strategies for customers and potential customers, and potential marketing strategies the expenditure would provide to Iluka. Iluka’s ability to compete would be significantly harmed if these analyses and methodologies were disclosed. Specifically, public release of the Board Paper would significantly harm Iluka in the following ways, among others:

- Release of detailed, non-public information about project costs and margins would harm Iluka’s ability to compete for future projects or to successfully negotiate with its customers and suppliers;

- Release of non-public information regarding alternative projects would impede Iluka's ability to pursue those projects in the future;
- Release of non-public information about Iluka's internal and proprietary market supply and demand analyses would impede Iluka's ability to compete for sales of feedstocks sold to high-grade chloride customers;
- Release of non-public information regarding Iluka's negotiations with customers would reveal Iluka's internal and proprietary analyses and methodologies which would impede its ability to negotiate future deals with those and other customers; and
- Release of non-public information about expected future cash flows would harm Iluka's ability to negotiate with its customers.

This is particularly true given the recent nature of the information contained in this Board Paper. The paper discusses a project that was approved in December 2017—less than 5 months ago—and details customer negotiations that are less than a year old.

Moreover, Iluka has carefully guarded the information in PX4216 from public disclosure. Prior to production to Complaint Counsel through outside legal counsel, PX4216 was distributed only to members of the board of Iluka Resources Limited, the parent company of Iluka Resources, Inc., and employees within Iluka Resources Limited and Iluka Resources Inc. who were working on the project at issue. Subsequent to the board approval of the project at issue in PX4216, Iluka made general information about the project available on its public website. The information in PX4216, however, contains much more detailed, competitively-sensitive information about the project which Iluka has not made public and for which Iluka has taken efforts to protect its confidentiality. At the time of its initial production to Complaint Counsel, Iluka requested confidential treatment of this document in both the cover letter accompanying the production and

by marking the document itself as indicated for Confidential Treatment in the Protective Order in this matter. Further, Iluka does not make its internal Board Papers, nor the information they contain, available to its competitors in the ordinary course of its business.

6. PX4219 is an internal Iluka Board Paper from February 2017 that analyzes the proposed Tronox/Cristal transaction at issue in this administrative proceeding. Although the factual background of the document is based on publicly-available information, the analysis contained in PX4219 reveals Iluka's assumptions about what a combined Tronox-Cristal would mean for the global market, issues that the combined entity may face, and the implications that these changes could have on Iluka's business. PX4219 contains both a "clean" and "track changes" version of the document, further revealing the thought process of the authors of the document. Public release of this document could significantly harm Iluka by, among other things, disclosing its internal views on the titanium dioxide market. The document discusses specific customer needs and how Iluka may be positioned to supply those customers in light of the proposed Tronox/Cristal merger. Disclosure of this non-public analysis publicly could significantly harm Iluka's ability to negotiate contracts with other participants in the industry, in particular with its customers.

Moreover, Iluka has carefully guarded the information in PX4219 from public disclosure. PX4219 was distributed only within Iluka Resources, Inc. and its parent Iluka Resources Limited prior to production to Complaint Counsel through outside legal counsel. At the time of its initial production to Complaint Counsel, Iluka requested confidential treatment of this document in both the cover letter accompanying the production and by marking the document itself as indicated for Confidential Treatment in the Protective Order in this matter. As with other Board

Papers, Iluka does not make its internal analyses, nor the information they contain, available to its competitors in the ordinary course of its business.

7. PX4221 is an internal email summary of a meeting between representatives of Tronox and Iluka. Iluka is requesting *in camera* treatment for only three sentences in this document that reflect a confidential supply negotiation between Tronox and Iluka. Iluka has included a redacted *in camera* version of this document in Exhibit D to Non-Party Iluka Resources Inc.'s Motion for *In Camera* Treatment. Public release of this redacted summary could significantly harm Iluka by, among other things, disclosing information regarding its future supply position which could affect its negotiating position with its customers.

Moreover, Iluka has carefully guarded the information in PX4219 from public disclosure. The meeting described in PX4219 was held behind closed doors, out of the public ear. PX4221 was distributed only within Iluka Resources, Inc. and its parent Iluka Resources Limited prior to production to Complaint Counsel through outside legal counsel. At the time of its initial production to Complaint Counsel, Iluka requested confidential treatment of this document in both the cover letter accompanying the production and by marking the document itself as indicated for Confidential Treatment in the Protective Order in this matter. Iluka does not make its meeting summaries/minutes available to its competitors in the ordinary course of its business.

8. PX4222 is an internal analysis of Tronox's FY2017 Third Quarter financial results earnings call. Tronox is a customer of Iluka for feedstocks to produce titanium dioxide products, and as such, Iluka monitors Tronox's public announcements. The document contains excerpts of the earnings call that were most important to Iluka's analysis, as well as commentary evaluating statements made in the earnings call, for the purpose of developing its internal strategic plans on sales of feedstocks to Tronox and others in the industry. Disclosure of

PX4222 would significantly harm Iluka by allowing Iluka's competitors to gain insights into Iluka's thought process and areas of concern, potentially inhibiting Iluka's ability to compete. Moreover, Iluka has carefully guarded the information in PX4222 from public disclosure. PX4222 was distributed only within Iluka Resources, Inc. and its parent Iluka Resources Limited prior to production to Complaint Counsel through outside legal counsel. At the time of its initial production to Complaint Counsel, Iluka requested confidential treatment of this document in both the cover letter accompanying the production and by marking the document itself as indicated for Confidential Treatment in the Protective Order in this matter. Additionally, Iluka does not make its internal analyses of market participants available to its competitors in the ordinary course of business.

9. The Declaration of Robert Gibney ("First Gibney Declaration") was provided to counsel for Respondents in lieu of live testimony. The First Gibney Declaration details the information that I analyzed in determining whether certain aspects of the proposed Tronox/Cristal transaction presented business opportunities for Iluka. Specifically, the declaration discusses the operational capabilities of Iluka with respect to certain types of smelting plants. The public release of the information described in the First Gibney Declaration could significantly harm Iluka's ability to expand its business operations into the areas discussed in the First Gibney Declaration.

Moreover, Iluka has carefully guarded the information in the First Gibney Declaration from public disclosure. The First Gibney Declaration was distributed only within Iluka Resources, Inc. and its parent Iluka Resources Limited prior to production to Tronox's counsel through Iluka's outside legal counsel. At the time of its initial production to Tronox's counsel, Iluka requested confidential treatment of this document in both the cover email accompanying the

production and by marking the document itself as indicated for Confidential Treatment in the Protective Order in this matter. This analysis is confidential to Iluka, as Iluka does not make its analysis of potential business opportunities available to the public in the ordinary course of business.

10. PX4216, PX4219, PX4221, PX4222, and the First Gibney Declaration contain business and trade secrets in the form of Iluka's internal business processes, analyses, and methodologies. Iluka uses this information to successfully compete in the market for titanium dioxide products. The competitive significance of Iluka's analyses and methodologies is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate.<sup>2</sup>

I declare under penalty of perjury that the forgoing is true and correct. Executed April 28, 2018 at Rome, Italy.

  
\_\_\_\_\_  
Robert C. Gibney  
GM TiO2 Sales  
Iluka Resources Inc.

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<sup>2</sup> To the extent permanent treatment is not given, Iluka requests that the period of *in camera* treatment of the Confidential Documents be no less than 10 years.

**EXHIBIT D**

**PX4216**

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>	<b>Scope of <i>In Camera</i> Treatment</b>
PX4216	Board Paper re: Cataby Project	October 2017	IRI-9377-000092	IRI-9377-000116	Entire document

**PX4219**

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>	<b>Scope of <i>In Camera</i> Treatment</b>
PX4219	RE: 170210 Cristal-Tronox Board Paper RG and attachment	February 16, 2017	IRI-9377-000001	IRI-9377-000014	Entire document

**PX4221 – Redacted Version**

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>	<b>Scope of <i>In Camera</i> Treatment</b>
PX4221 <sup>3</sup>	FW: Tronox Meeting Note 18 May 2017 and attachment	May 23, 2017	IRI-9377-000029	IRI-9377-000030	Redacted portions only

**From:** Gibney, Robert </o=EXCHANGE/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Gibney, Robert146>  
**To:** Blackwell, Matthew <Matthew.Blackwell@iluka.com>  
**Cc:** Folmer, Derek <Derek.Folmer@iluka.com>  
**Subject:** FW: Tronox Meeting Note 18 May 2017.docx  
**Date:** Tue, 23 May 2017 15:34:45 +0000  
**Attachments:** Tronox Meeting Note 18 May 2017.docx

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Mat,

Derek met with Tronox last week at the Ti metals conference in Amsterdam. Attached are his notes from the meeting. Interesting their view on HGO requirements with and without Jazz - would be good to query Roland and Fern on their view as this is different from what they have communicated previously.

Regards,

Robert

Robert Gibney | OMTIC, China  
Hera Resources Limited | 4808 Emperor Blvd, Suite 220 | Raleigh NC 27703  
Phone +1 919 472 4055 | Mobile +1 757 508 4354 | Fax +1 919 472 4056  
robert.gibney@iluka.com

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**From:** Folmer, Derek  
**Sent:** Tuesday, May 23, 2017 11:24 AM  
**To:** Gibney, Robert <Robert.Gibney@iluka.com>  
**Subject:** Tronox Meeting Note 18 May 2017.docx

Robert,

Corrected version for your files. Thanks for the comments.

Regards,  
Derek



ILUKA

# Agenda/Minutes of Meeting

<b>Meeting:</b>	Tronox - Iluka
<b>Date and Time:</b>	18 May 2017 – 17:00 to 18:30
<b>Venue:</b>	Europe Titanium conference, Amsterdam
<b>Minutes Recorded By:</b>	Derek Folmer
<b>Attendees</b>	Willem Van Niekerk and Machiel Keegel (Tronox) / Derek Folmer (Iluka)

## Topics for Discussion:

General catch up to take advantage of fortuitous meeting

## Notes:

1. Willem concerned that Cristal may not have arranged adequate feedstock supply for 2018. He was relieved to hear that Iluka is talking to David Sheldon about 2019 onwards. The investment market won't forgive New Tronox if plants cannot be run at their full potential.
2. Without Jazan, New Tronox is short 500,000 TiO<sub>2</sub> units. Tronox feel they could eventually get Jazan running, but recognise it would be a challenge. HGO, and ilmenite, are required even if Jazan were to be acquired. Supply from Iluka is viewed favourably.
3. Tronox do not have the ability to buy Cristal's share of the Saudi Arabian sponge JV with Toho. Tronox previously had not given much thought to the TiCl<sub>4</sub> or sponge markets. They were at Cristal France (Thann) earlier in the week and now have a different view of the margins being achieved in niche TiCl<sub>4</sub> applications. It seems that New Johnsonville is no longer supplying merchant TiCl<sub>4</sub>, as a result Ashtabula finds itself in a good position, although safe transport is a real concern.
4. **Redacted**
5. **Redacted**
6. Richards Bay port is a real mess. Rio Tinto has lost access to their chloride slag sheds. Tronox looking at using skips to load vessels, since coal is monopolizing the more efficient conveyor loading system. It will be difficult to sell RBM without working infrastructure and an economic ilmenite supply. Willem thought that Rio was asking US\$6 bn for the Iron & Titanium unit.
7. Peter Johnston has stepped up as interim CEO. Not clear how long he will be in the role. Expected to take until Q4 to find a suitable candidate.
8. Ten jurisdictions are performing anti-competition reviews, including: China, Saudia Arabia and Columbia. Keeping Machiel busy!
9. Willem still seeking other pigment acquisition targets. Huntsman IPO may provide an opportunity. "Mid double digits", so about 15 companies, interested in buying the Alkali unit. Next step is to narrow down the serious bidders.
10. Machiel is not sure how long current business conditions will last. Hoping for a few good years.

**PX4222**

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>	<b>Scope of <i>In Camera</i> Treatment</b>
PX4222	RE: Tronox's 3Q 2017 Results	November 17, 2017	IRI-9377-000046	IRI-9377-000052	Entire document

**Declaration of Robert Gibney (March 2018)  
("First Gibney Declaration")**

<b>Exhibit No.</b>	<b>Document Title/Description</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>	<b>Scope of <i>In Camera</i> Treatment</b>
	Declaration of Robert Gibney (the "First Gibney Declaration")	March 2018			Entire document

**EXHIBIT E**

**Feb. 16, 2018 Letter to Mr. Robert Tovsky Marked  
IN CAMERA**

***In Camera* Treatment Requested**

**EXHIBIT F**

**Mar. 16, 2018 Email to Mr. Michael Derita from Ms.  
Amanda Wait Marked IN CAMERA**

***In Camera* Treatment Requested**