

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. )  
\_\_\_\_\_)

DOCKET NO. 9377

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, many non-parties filed motions for *in camera* treatment for materials that Federal Trade Commission ("FTC") Complaint Counsel and/or Respondents Tronox Limited, National Industrialization Company, National Titanium Dioxide Company, and Cristal USA Inc. ("Respondents") have listed on their exhibit lists as materials that might be introduced into evidence at the trial in this matter. Neither Complaint Counsel nor Respondents have filed an opposition to any of these motions.

II.

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.” 16 C.F.R. § 3.45(b).

#### A. Clearly defined, serious injury

“[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, 1961 FTC LEXIS 368 (Mar. 14, 1961). Applicants 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, 1980 FTC LEXIS 99, at \*10 (Mar. 10, 1980). If the applicants for *in camera* treatment make this showing, the importance of the information in explaining the rationale of FTC decisions is “the principal countervailing consideration weighing in favor of disclosure.” *Id.*

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*, 1961 FTC LEXIS 368, at \*5-6. 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 accorded to information that is more than three years old. *In re 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).

In order to sustain the burden for withholding documents from the public record, an affidavit or declaration is always 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.

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). “Applicants seeking indefinite *in camera* treatment must further demonstrate

‘at the outset that the need for confidentiality of the material is not likely to decrease over time’ 54 Fed. Reg. 49,279 (1989) . . . [and] that the circumstances which presently give rise to this injury are likely to be forever present so as to warrant the issuance of an indefinite *in camera* order rather than one of more limited duration.” *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at \*2-3 (April 25, 1990). In *DuPont*, the Commission rejected the respondent’s request for indefinite *in camera* treatment, but noting “the highly unusual level of detailed cost data contained in these specific trial exhibit pages, the existence of extrapolation techniques of known precision in an environment of relative economic stability, and the limited amount of technological innovation occurring in the . . . industry,” the Commission extended the duration of the *in camera* treatment for a period of ten years. *Id.* at \*5-6.

In determining the length of time for which *in camera* treatment is appropriate, the distinction between trade secrets and ordinary business records is important because ordinary business records are granted less protection than trade secrets. *Hood*, 58 F.T.C. at 1189. Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged. *Hood*, 58 F.T.C. at 1189; *General Foods*, 95 F.T.C. at 352; *In re Textron, Inc.*, 1991 FTC LEXIS 135, at \*1 (Apr. 26, 1991).

In contrast to trade secrets, ordinary business records include information such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents. *See Hood*, 1961 FTC LEXIS 368, at \*13; *In re McWane, Inc.*, 2012 FTC LEXIS 143 (Aug. 17, 2012); *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at \*13-14 (June 26, 1996). When *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years. *E.g.*, *McWane, Inc.*, 2012 FTC LEXIS 143; *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101 (May 25, 2011).

## **B. Sensitive personal information**

Under Rule 3.45(b) of the Rules of Practice, after finding that material constitutes “sensitive personal information,” the Administrative Law Judge shall order that such material be placed *in camera*. 16 C.F.R. § 3.45(b). “Sensitive personal information” is defined as including, but not limited to, “an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” 16 C.F.R. § 3.45(b). In addition to these listed categories of information, in some circumstances, individuals’ names and addresses, and witness telephone numbers have been found to be “sensitive personal information” and accorded *in camera* treatment. *In re LabMD, Inc.*, 2014 FTC LEXIS 127 (May 6, 2014); *In re McWane, Inc.*, 2012 FTC LEXIS 156 (September 17, 2012). *See also In re Basic Research, LLC*, 2006 FTC LEXIS 14, at \*5-6 (Jan. 25, 2006) (permitting the redaction of information concerning particular consumers’ names or other personal data when it was not relevant). “[S]ensitive personal information . . . shall be accorded permanent *in*

*camera* treatment unless disclosure or an expiration date is required or provided by law.” 16 C.F.R. § 3.45(b)(3).

### III.

The non-parties listed below filed separate motions for *in camera* treatment. Each motion included the documents for which *in camera* treatment is sought and was properly supported by a declaration of an individual within the company who had reviewed the documents at issue. These 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 FTC decisions. The specific motions of each of the non-parties are analyzed using the standards set forth above.

#### **A. Schulman, Inc. (“A. Schulman”)**

Non-party A. Schulman seeks *in camera* treatment for two documents for a period of five years. A. Schulman supports its motion with a declaration from its Global Procurement Senior Director. The declaration describes in detail the confidential nature of the documents and the competitive harm that A. Schulman would suffer if these documents were made publicly available and the measures that A. Schulman takes to ensure that they remain confidential. The declaration explains that the documents contain competitively sensitive information revealing estimated manufacturing capacity, volume and values of titanium dioxide purchases, and business operations and strategies for the purchase of titanium dioxide.

A. Schulman has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for the documents identified as PX4237 and PX4238.

#### **Ampacet Corporation (“Ampacet”)**

Non-party Ampacet seeks *in camera* treatment for 13 documents for varying lengths of time. Ampacet supports its motion with a declaration from its Vice President of Global Procurement. The declaration describes in detail the confidential nature of the documents and the competitive harm that Ampacet would suffer if these documents were made publicly available and the measures that Ampacet takes to ensure that they remain confidential. The declaration explains that the documents contain competitively sensitive information, as addressed below.

Ampacet has met its burden of demonstrating that these documents are entitled to *in camera* treatment. The length of time each document shall be afforded *in camera* treatment depends on the type of document.

The documents identified by Ampacet as Numbers 10, 11, and 13 contain trade secrets, including information relating to Ampacet's testing methods to qualify grades and suppliers and secret product formulas and qualification processes. Indefinite *in camera* treatment is GRANTED for the documents identified as Numbers 10, 11, and 13.

The documents identified by Ampacet as Numbers 6, 7, 8, 9, and certain portions of the deposition identified as Number 12 contain information relating to Ampacet's use and purchase of certain grades of titanium dioxide and relationships with suppliers. The information contained in these documents consists of ordinary business records, not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified as Numbers 6, 7, 8, 9, and the following portions of the deposition of Mr. Santoro: 11:2-28:7, 30:6-35:7, 51:21-53:19, 74:16-82:22, 83:15-22, 85:23-88:21, 93:1-100:25, 102:21-104:21, 120:4-123:19, 132:8-137:3, 162:2-169:5, 174:2-185:13 and 191:25-193:15.

The documents identified by Ampacet as Numbers 1, 2, 3, 4, 5 and certain portions of the deposition identified as Number 12 contain pricing data, information relating to purchases and dealings with suppliers, and internal assessments of the market. *In camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for the documents identified as Numbers 1, 2, 3, 4, 5 and the following portions of the deposition of Mr. Santoro: 28:8-30:5, 35:8-51:20, 57:9-58:1, 84:20-85:22, 115:2-118:1, 123:20-132:7, 137:4-150:12 and 190:8-191:2.

#### **Axalta Coating Systems, LTD. ("Axalta")**

Non-party Axalta seeks indefinite *in camera* treatment for one exhibit. Axalta supports its motion with a declaration from its Assistant General Counsel. The declaration describes in detail the confidential nature of the document and the competitive harm that Axalta would suffer if this document was made publicly available and the measures that Axalta takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains competitively sensitive information regarding its relationship with suppliers, price information, and business operations and strategies for the purchase of titanium dioxide.

Axalta has met its burden of demonstrating that this document is entitled to *in camera* treatment. However, the information contained in PX4229 consists of ordinary business records, not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for PX4229.

#### **BASF Corporation ("BASF")**

Non-party BASF seeks indefinite *in camera* treatment for 16 documents and the deposition transcript of its 30(b)(6) witness. BASF supports its motion with a declaration from its Global Category Buyer. The declaration describes in detail the confidential nature of the documents and the competitive harm that BASF would suffer if these documents

were made publicly available and the measures that BASF takes to ensure that they remain confidential. The declaration explains that the documents contain competitively sensitive information revealing its business plans, views on the efficacy of substitutes for products, analyses of prices, capacity, supply and demand, along with market forecasts.

BASF has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the documents for which BASF seeks *in camera* treatment are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents listed in BASF's motion and to the following excerpts of the deposition transcript of its 30(b)(6) witness: 16:22-107:5, 110:10-111:16 and 115:23-205:11.

### **Benjamin Moore & Co. ("BM")**

Non-party BM seeks indefinite *in camera* treatment for one exhibit. BM supports its motion with a declaration from its Vice President of Global Procurement. The declaration describes in detail the confidential nature of the document and the competitive harm that BM would suffer if this document was made publicly available and the measures that BM takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains competitively sensitive information revealing volumes and forms of titanium dioxide BM acquires, the suppliers from whom BM acquires it, and the prices at which BM does so.

BM has met its burden of demonstrating that this document is entitled to *in camera* treatment. However, the information contained in PX4231 consists of ordinary business records, not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for PX4231.

### **The Chemours Company ("Chemours")**

Non-party Chemours seeks indefinite *in camera* treatment for 22 documents. Chemours supports its motion with a declaration from its Vice President Associate General Counsel. The declaration describes in detail the confidential nature of the documents and the competitive harm that Chemours would suffer if these documents were made publicly available and the measures that Chemours takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain sensitive and confidential business information, including information relating to volumes of titanium dioxide product that have and will originate from each production facility, the transportation network used to move product from facilities to customers, marketing practices, strategies, and customer acquisition methods. In addition, many of the documents for which Chemours seeks *in camera* treatment were filed under seal in another proceeding.

Chemours has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the documents for which Chemours seeks *in camera*

treatment are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified in Chemours' motion.

#### **Clariant Plastics 8 Coatings USA Inc. (“Clariant”)**

Non-party Clariant seeks *in camera* treatment until December 2022 for one exhibit. Clariant supports its motion with a declaration from its Procurement Manager of the Masterbatches Business Unit. The declaration describes in detail the confidential nature of the document and the competitive harm that Clariant would suffer if this document was made publicly available and the measures that Clariant takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains competitively sensitive purchasing data reflecting identity of suppliers, quantities purchased, and the amounts paid by Clariant to the suppliers.

Clariant has met its burden of demonstrating that this document is entitled to *in camera* treatment. 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,<sup>1</sup> *in camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for the document identified as PX4239.

#### **Dunn-Edwards (“Dunn-Edwards”)**

Non-party Dunn-Edwards seeks indefinite *in camera* treatment for one exhibit. Dunn-Edwards supports its motion with a declaration from its President and CEO. The declaration describes in detail the confidential nature of the document and the competitive harm that Dunn-Edwards would suffer if this document was made publicly available and the measures that Dunn-Edwards takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains internal calculations of sales information by product quoted in dollars and pounds and discloses the identity of Dunn-Edwards' suppliers.

Dunn-Edwards has met its burden of demonstrating that this document is entitled to *in camera* treatment. However, the information contained in PX4333 consists of ordinary business records, not trade secrets, and is not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for PX4333.

#### **Formosa Plastics Corporation, U.S.A (“Formosa”)**

Non-party Formosa seeks *in camera* treatment for one exhibit for a period of seven years. Formosa supports its motion with a declaration from its Purchasing Director. The declaration describes in detail the confidential nature of the document and the competitive harm that Formosa would suffer if this document was made publicly available and the

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<sup>1</sup> See *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101, at \*20 n.1 (May 25, 2011).

measures that Formosa takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains confidential pricing and quantity data.

Formosa has met its burden of demonstrating that this document is entitled to *in camera* treatment. 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 ten years, to expire on June 1, 2028, is GRANTED for the document identified as PX4234.

### **Iluka Resources Incorporated (“Iluka”)**

Non-party Iluka seeks indefinite *in camera* treatment for four documents and for selected portions of one document. Iluka supports its motion with a declaration from its General Manager of Titanium Dioxide Sales. The declaration describes in detail the confidential nature of the documents and the competitive harm that Iluka would suffer if these documents were made publicly available and the measures that Iluka takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain proposals for major capital expenditures, competitive analyses of participants in the titanium dioxide market, and internal risk assessments of the proposed Tronox/Cristal combination.

Iluka has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the documents for which Iluka seeks *in camera* treatment are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified as PX4216, PX4219, PX4222, the requested portions of PX4221, and the Declaration of Robert Gibney.

### **Ishihara Corporation, U.S.A. (“ICUSA”)**

Non-party ICUSA seeks *in camera* treatment for a period of five years for three documents and for selected portions of one document. ICUSA supports its motion with a declaration from its President and CEO. The declaration describes in detail the confidential nature of the documents and the competitive harm that ICUSA would suffer if these documents were made publicly available and the measures that ICUSA takes to ensure that the information contained in these documents remains confidential. The declaration explains that the documents contain information identifying customers with whom ICUSA has arrangements for the sale of titanium dioxide, as well as information about ICUSA’s sales, costs, supply, and outlook on the marketplace.

ICUSA has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for the documents identified as PX3049, PX3050, PX3051, and the requested portions of PX7028.

### **K-Bin, Inc. (“K-Bin”)**

Non-party K-Bin seeks indefinite *in camera* treatment for one document. K-Bin supports its motion with a declaration from its President. The declaration describes in detail the confidential nature of the document and the competitive harm that K-Bin would suffer if this document was made publicly available and the measures that K-Bin takes to ensure that the information contained therein remains confidential. The declaration explains that the document contains confidential information regarding K-Bin’s costing, procurement spending, supply of raw material or inputs, purchasing trends, frequency and outcome of negotiating efforts, and product technical detail.

K-Bin has met its burden of demonstrating that this document is entitled to *in camera* treatment. Because it includes secret technical information about K-Bin’s product compounds, K-Bin has met its burden of demonstrating that it is entitled to indefinite *in camera* treatment. Indefinite *in camera* treatment is GRANTED for the document identified as PX4235.

### **KPMG, LLP. (“KPMG”)**

Non-party KPMG seeks indefinite *in camera* treatment for five documents. KPMG supports its motion with an affidavit from its Managing Director. The declaration describes in detail the confidential nature of the documents and the competitive harm that KPMG would suffer if these documents were made publicly available and the measures that KPMG takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain confidential, commercially sensitive information about Tronox, including detailed information about Tronox’s operations, capacity, production, inventory, and business plans.

KPMG has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, KPMG has not met its burden of demonstrating that these documents are trade secrets or entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified as PX4206, PX4207, PX4209, PX7045, and KPMG-FTC 0032526-654.

### **Kronos Worldwide, Inc. (“Kronos”)**

Non-party Kronos seeks indefinite *in camera* treatment for 60 documents. Kronos supports its motion with a declaration from its Vice President and General Counsel. The declaration describes in detail the confidential nature of the documents and the competitive harm that Kronos would suffer if these documents were made publicly available and the measures that Kronos takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain confidential, commercially sensitive information regarding transactional pricing data, customer call reports, price change requests, strategic planning documents, and financial projections. Kronos is also seeking *in camera* treatment for Kronos’ responses to the European

Commission's requests for information in connection with the Tronox and Cristal transaction, which include detailed information regarding customers, pricing, production capacity, and product grades, and for documents that were filed under seal in an unrelated proceeding.

Kronos has met its burden of demonstrating that the documents are entitled to *in camera* treatment, but has not met its burden of demonstrating that these documents are entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified by Kronos in its proposed order.

**Lomon Billions Group, Billions Europe Ltd., and Billions America Corporation, (“Billions”)**

Non-party Billions seeks indefinite *in camera* treatment for 15 documents. Billions supports its motion with a declaration from its Senior Vice President, Strategic Development. The declaration describes in detail the confidential nature of the documents and the competitive harm that Billions would suffer if these documents were made publicly available and the measures that Billions takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain confidential, commercially sensitive information regarding market share entry, sales data by customers and product grades, capital costs, and projected plant costs.

Billions has met its burden of demonstrating that the documents are entitled to *in camera* treatment. Most of the documents for which Billions seeks *in camera* treatment are ordinary business records, not trade secrets, and are not entitled to indefinite *in camera* treatment. However, the following documents contain information relating to pigment testing and thus qualify as a trade secret and are entitled to indefinite *in camera* treatment: Billions 00171, Billions 00819-820, and Billions 00831-832. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the remainder of the documents identified in Billions' motion.

**Masco Corporation (“Masco”)**

Non-party Masco seeks *in camera* treatment for 20 documents and excerpts from one deposition transcript. Masco supports its motion with a declaration from its Vice President of Procurement. The declaration describes in detail the confidential nature of the documents and the competitive harm that Masco would suffer if these documents were made publicly available and the measures that Masco takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain confidential, commercially sensitive information including strategic plans, R&D testing and qualification reviews, supplier-level purchasing data and pricing communications, supplier contracts, and pricing schedules.

Masco has met its burden of demonstrating that the documents are entitled to *in camera* treatment. Most of the documents for which Masco seeks *in camera* treatment are

ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for: PX4137 (RX0072-75), PX4141 (RX0079), RX0081, RX0082, RX0083, PX4146 (RX0084), RX0085, RX0086, PX4149 (RX0087), RX0088, RX0089, RX0090, PX4153 (RX0091), RX0092, PX8006, and for the following portions of PX7027 (RX0141): 27:21-29:14; 30:16-30:24; 31:02-34:24; 35:08; 35:14-39:04; 39:19-39:22; 52:25-53:08; 53:14-53:23; 54:14-55:02; 55:09-55:14; 55:17-57:11; 58:07; 58:21-58:22; 59:24-60:13; 62:21-64:09; 64:13-64:25; 65:19-65:25; 66:12-66:14; 67:12-67:13; 67:16-67:25; 80:25-85:13; 86:01-86:03; 86:11-86:14; 87:12-88:13; 88:20-89:25; 91:01-91:11; 91:18-91:24; 92:06-92:20; 93:03-95:11; 96:03-96:14; 97:13-97:20; 98:07-99:08; 100:06-100:09; 104:12-104:25; 105:17-106:12; 113:03-113:06; 113:17-113:18; 114:07-115:05; 115:09-115:11; 116:19-116:23; 117:01-119:05; 119:21-119:24; 120:04-121:15; 122:18-122:20; 123:18-132:11; 134:09-145:17; 146:14-146:17; 146:23 149:19 and 151:09-151:16

Some of the documents for which Masco seeks *in camera* treatment contain detailed analysis of manufacturing processes and evaluations of grades of titanium dioxide, proprietary R&D test results across numerous proprietary formulations, as well as information about internal manufacturing processes, and thus are trade secrets and are entitled to indefinite *in camera* treatment. Indefinite *in camera* treatment is GRANTED for RX0076, RX0077, RX0078 (PX4140), and RX0080 (PX4142).

#### **Mississippi Polymers, Inc. (“Mississippi Polymers”)**

Non-party Mississippi Polymers seeks *in camera* treatment for excerpts from one deposition transcript and exhibits thereto and the declaration provided by its Chief Executive Officer on October 10, 2017. Mississippi Polymers supports its motion with a declaration from its Chief Executive Officer. The declaration describes in detail the confidential nature of the documents and the competitive harm that Mississippi Polymers would suffer if these documents were made publicly available and the measures that Mississippi Polymers takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain confidential, commercially sensitive information regarding comparisons of grades of materials, relations with suppliers, customer information, and business strategies.

Mississippi Polymers has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for the documents identified in Mississippi Polymer’s motion and for the following portions of the deposition of its Chief Executive Officer: 23:14-28:8, 29:2-41:18, 42:11-56:19, 57:8-62:3, 64:2-69:25, 71:21-73:4, 78:14-78:20, 80:21-81:24, 96:7-98:5, 99:24-103:8, 104:17-148:1, 151:24-156:1 and 159:24-161:2.

#### **PPG Industries, Inc. (“PPG”)**

Non-party PPG seeks *in camera* treatment for 24 documents and for portions of 9 documents for varying lengths of time. PPG supports its motion with a declaration from its Director of Raw Material Purchasing. The declaration describes in detail the

confidential nature of the documents and the competitive harm that PPG would suffer if these documents were made publicly available and the measures that PPG takes to ensure that the information contained therein remains confidential. The declaration explains that the documents for which it seeks *in camera* treatment for a period of five years contain competitively sensitive information about PPG's pricing, volume, payterms, or supply negotiations, and supply strategies. The declaration explains that the documents for which it seeks indefinite *in camera* treatment contain proprietary and trade secret information about PPG's product formulas, testing, and development of new commercial products of applications.

PPG has met its burden of demonstrating that these documents are entitled to *in camera* treatment. The length of the time each document shall be afforded *in camera* treatment depends on the type of document.

The documents and the redacted portions of documents for which PPG seeks *in camera* treatment for five years, as identified by PPG in its proposed order, shall be GRANTED *in camera* treatment for a period of five years, to expire on June 1, 2023.

The documents for which PPG seeks indefinite *in camera* treatment, as identified by PPG in its proposed order, constitute trade secrets and shall be GRANTED indefinite *in camera* treatment.

#### **RPM International, Inc. ("RPM")**

Non-party RPM seeks indefinite *in camera* treatment for 16 documents and select portions of an investigational hearing transcript and a deposition transcript. RPM supports its motion with a declaration from its Vice President of Purchasing for Rust-Oleum. The declaration describes in detail the confidential nature of the documents and the competitive harm that RPM would suffer if these documents were made publicly available and the measures that RPM takes to ensure that the information contained therein remains confidential. The declaration explains that the documents refer or relate to pricing, contracts with manufacturers, volumes of titanium dioxide, purchasing methods, marketing goals, and forecasts.

RPM has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the documents for which RPM seeks *in camera* treatment are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified as PX4000, PX4005, PX4006, PX4007, PX4008, PX4016, RX0648, RX0649, RX0650, RX0651, RX0652, RX0654, RX0746, RX0747, RX0748, and for the following portions of PX7003 (RX0183): 8:24-8:25; 9:1-12:25; 13:1-13:9; 13:22-13:25; 14:1-15:25; 16:1-16:4; 16:17-29:25; 30:1-42:25, and for the following portions of PX7016 (RX0149): 15:22-15:24; 19:12-19:24; 21:1-25:25; 26:1-26:17; 27:1-27:17; 28:13-28:25; 29:1-49:25; 50:1-50:14; 51:19-51:25; 52:1-52:8; 53:8-53:25; 54:1-54:25; 55:1-55:19; 56:2-56:24; 57:1-57:25; 58:4-58:25; 59:1-60:25; 61:1-61:7; 62:7-72:25; 73:18-73:25; 83:1-83:17; 84:1-84:4; 84:18-85:25; 86:1-86:4; 86:22-89:25; 90:1-90:6;

90:15-94:25; 95:1-95:24; 97:18-102:25; 103:1-103:10; 104:9-111:25; 112:1-112:19; 113:2-126:25; 127:1-127:4; 128:12-130:25; 131:1-131:17 and 133:10-133:23.

### **True Value Company (“True Value”)**

Non-party True Value seeks *in camera* treatment for a period of five years for three documents and select portions of a deposition transcript. True Value supports its motion with a declaration from its Divisional President for Paint. The declaration describes in detail the confidential nature of the documents and the competitive harm that True Value would suffer if these documents were made publicly available and the measures that True Value takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain highly sensitive and confidential data consisting of pounds used in paint formulas, net spend, and volume levels, separated by individual supplier.

True Value has met its burden of demonstrating that these documents are entitled to *in camera* treatment. *In camera* treatment for a period of five years, to expire on June 1, 2023, is GRANTED for the documents identified as PX4197, PX4198, PX4205 and for the following portions of PX7044: 24:10-24:23; 32:9-32:17; 34:4-50:22; 54:16-54:21; 56:23-57:5; 71:9-71:23; 75:8-75:11; 81:10-84:9; 88:3-88:22; 92:7-97:6; 99:22-104:1, 104:18-107:19; 108:18-119:15; 121:71-121:20, 122:6-126:22; 130:8-136:5; 137:6-137:11 and 138:8-141:20.

### **Venator Materials PLC (“Venator”)**

Non-party Venator seeks indefinite *in camera* treatment for 20 documents and for portions of 10 documents.<sup>2</sup> Venator supports its motion with a declaration from its Senior Vice President. The declaration describes in detail the confidential nature of the documents and the competitive harm that Venator would suffer if these documents were made publicly available and the measures that Venator takes to ensure that the information contained therein remains confidential. The declaration explains that the documents contain sensitive and confidential business information, including sales data, pricing, profitability, shipping information, and strategic business plans.

Venator has met its burden of demonstrating that these documents are entitled to *in camera* treatment. However, the documents for which Venator seeks *in camera* treatment are ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. *In camera* treatment for a period of ten years, to expire on June 1, 2028, is GRANTED for the documents identified in Venator’s motion.

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<sup>2</sup> By letter dated May 8, 2018, Venator stated that it inadvertently included a reference to document number VEN\_S00007753 for which Venator does not wish to seek *in camera* treatment. Therefore, *in camera* treatment is not granted for that document.

#### IV.

Several of the non-parties requested that disclosure of their *in camera* documents be limited to only those persons enumerated in Paragraph 7 of the Protective Order issued in this case. All of the documents for which *in camera* treatment has been granted shall also be treated as confidential under the Protective Order and may only be disclosed to those entities covered by the Protective Order.<sup>3</sup>

Several of the non-parties did not identify the documents for which they seek *in camera* treatment by a PX or RX number. If either party seeks to introduce these documents as exhibits, counsel shall prepare a proposed order indicating that, by this Order, the document has been granted *in camera* treatment, the length of time *in camera* treatment has been extended, and identifying each document by its PX or RX number.

Each non-party whose documents or information 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 disclosed 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. Any testimony regarding documents that have been granted *in camera* treatment may be provided in an *in camera* session.

ORDERED:

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

Date: May 15, 2018

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<sup>3</sup> Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question. Protective Order ¶ 7.

Notice of Electronic Service

**I hereby certify that on May 15, 2018, I filed an electronic copy of the foregoing Order on Non-Parties Motion for In Camera Treatment, Order on Respondent Cristal's Motion for In Camera Treatment, Order on Respondent Tronox's Motion for In Camera Treatment, with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on May 15, 2018, I served via E-Service an electronic copy of the foregoing Order on Non-Parties Motion for In Camera Treatment, Order on Respondent Cristal's Motion for In Camera Treatment, Order on Respondent Tronox's Motion for In Camera Treatment, upon:**

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