

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



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

**RESPONDENTS' RESPONSE TO COMPLAINT
COUNSEL'S MOTION TO COMPEL**

On Friday, June 1, 2018, the Court instructed the parties to conduct considerably more of the expert testimony in this matter on the public record rather than *in camera* session. In accordance with the Court's instructions, the parties communicated over the weekend to compose a new version of Friday's trial transcript that redacted substantially less material than initially had been treated *in camera*. The parties corresponded over the weekend, agreed on the appropriate redactions, and submitted them to the Court on Monday, June 4, 2018.

On Monday June 4, 2018, Complaint Counsel raised a new request: that Respondents re-review 13 deposition transcripts, 5 investigative hearing transcripts, and 3 expert reports to provide new *in camera* designations in the middle of trial. This would require re-reviewing approximately 4,400 pages of transcripts and expert reports, and Complaint Counsel would require that the

Respondents complete this review before calling any witnesses in its case—including witnesses Respondents intend to call during the next three days.

Complaint Counsel’s request would impose an unnecessary burden on Respondents at a time when they should be allowed to focus on presenting their case. Complaint Counsel argues that they are “put in the impossible position of trying to determine for [them]selves what is truly confidential” unless Respondents completely re-work the *in camera* designations that were approved by the Court without Complaint Counsel’s opposition. Mot. 4. But Complaint Counsel already understands very well what type of information is truly confidential to the parties. As counsel for Respondents explained in response to Complaint Counsel’s request: “we are seeking *in camera* treatment of information internal to the respective respondents or third parties, and we have no problem with public discussion of information that is public.” June 5, 2018 email exchange between D. Vote and M. Williams (Ex. A). That standard should resolve all or nearly all of the questions about *in camera* designations that Complaint Counsel may have.

Moreover, in the event of any genuine question about whether a part of an examination should be conducted *in camera*, Complaint Counsel has several available options that do not require Respondents to re-review and re-designate thousands of pages of transcripts. Namely, Complaint Counsel can simply ask Respondents for their position. In the alternative, Complaint Counsel may proceed with their examination in public session subject to objection from Respondents. This was accomplished with little difficulty even with no advance planning during Complaint Counsel’s direct examination of Nicholas Hill.

The Court has recognized that the parties should already have a clear enough awareness of what is public and non-public to conduct an examination. With respect to *in camera* treatment of expert reports, for example, the Court noted that “a lot of that is an accommodation so that *the*

parties aren't going to have to perform surgery on expert reports and submit redacted versions, but those orders are issued thinking that the parties know what's public and what's not and that we don't have this much testimony in camera." Trial Tr. 1746:6-12 (emphasis added). Now Complaint Counsel is asking the Court to impose a one-sided rule that Respondents undertake just that obligation, even though the Court was correct that the parties are familiar enough with the case to know what information is public or non-public. *See also id.* at 1746:17-20 (noting that public earnings calls are "obviously public"). The end result would be to waste Respondents' time and resources, and risk a potential delay of trial, for no good reason.

For the foregoing reasons, Respondents ask the Court to deny Complaint Counsel's motion to compel. Complaint Counsel and Respondents can and will continue to work together to follow the Court's instructions about presentation of evidence in open court. But the order Complaint Counsel requests is unnecessary and unfairly burdensome to Respondents.

Dated: June 5, 2018

Respectfully Submitted By: /s/ Michael F. Williams, P.C.
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(TASNEE), THE NATIONAL
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LIMITED (CRISTAL), AND CRISTAL
USA INC.**

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2018, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
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The Honorable D. Michael Chappell
Administrative Law Judge
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I also certify that I caused the foregoing document to be served via email to:

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Counsel supporting Complaint

/s/ Michael F. Williams
Michael F. Williams

Counsel for Respondents Tronox Limited

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

June 5, 2018

By: /s/ Michael F. Williams
Michael F. Williams

EXHIBIT A

From: "Williams, Michael F." <mwilliams@kirkland.com>

Date: June 5, 2018 at 9:27:49 AM EDT

To: "Vote, Dominic E." <dvote@ftc.gov>, "DeSantis, Karen McCartan" <kdesantis@kirkland.com>, "Cooper, James L. (James.Cooper@arnoldporter.com)" <James.Cooper@arnoldporter.com>, "Levitas, Pete (Peter.Levitas@aporter.com)" <Peter.Levitas@aporter.com>

Cc: "Loughlin, Chuck" <cloughlin@ftc.gov>, "Lee, Joonsuk" <jlee4@ftc.gov>, "Oberschmied, Simone" <soberschmied@ftc.gov>, "Durand, Caitlin" <cdurand@ftc.gov>

Subject: Re: Tronox/Cristal, Docket No. 9377

Dominic — Following up further on your email of yesterday morning. We have reviewed the transcripts and expert reports that you asked us yesterday to re-designate — all of the deposition transcripts, investigative hearing transcripts, and expert reports that you might decide to use in cross-examination. To have us re-review the documents that are currently in camera would be extremely burdensome during the middle of trial. I expect Complaint Counsel is familiar enough with this case at this point to understand that we are seeking in camera treatment of information that is internal to the respective respondents or third parties, and we have no problem with public discussion of information that is public. If you have any questions about whether we consider a particular matter to deserve in camera treatment, I am happy to answer them.

Could you please answer my question of yesterday afternoon regarding expedited post-trial briefing? Thank you.

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On Jun 4, 2018, at 11:11 AM, Williams, Michael F. <mwilliams@kirkland.com> wrote:

Dom -- Thank you for your email of a few minutes ago. As I understand your message, you are requesting that we redact certain transcripts no later than tomorrow for Wednesday's testimony and that we review and revisit the deposition transcripts for all of the witnesses we intend to call to trial. This strikes me as burdensome and unnecessary. Moreover, given that we had corresponded over the weekend about Judge Chappell's instructions, it is unclear why you did not raise this request sooner. We will need to review your request and get back to you.

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From: Vote, Dominic E. <dvote@ftc.gov>

Sent: Monday, June 4, 2018 11:00 AM

To: Williams, Michael F. <mwilliams@kirkland.com>; DeSantis, Karen McCartan <kdesantis@kirkland.com>; Cooper, James L. (James.Cooper@arnoldporter.com) <James.Cooper@arnoldporter.com>; Levitas, Pete (Peter.Levitas@aporter.com) <Peter.Levitas@aporter.com>

Cc: Loughlin, Chuck <cloughlin@ftc.gov>; Lee, Joonsuk <jlee4@ftc.gov>; Oberschmied, Simone

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Subject: Tronox/Cristal, Docket No. 9377

Counsel –

I am writing to address Judge Chappell's statement last week that significantly more of the trial should be held in public session going forward. In order to comply with Judge Chappell's directive, Complaint Counsel will need to know what materials the parties will continue to claim *in camera* treatment for. In particular, we note that the entirety of the deposition and investigational hearing transcripts for Mr. Stoll, Mr. Romano, and all of the witnesses that appear on your witness list, are currently deemed *in camera* in their entirety. Moreover, we note that the expert reports of Dr. Shahadeh, Mr. Stern, and Mr. Imburgia are also currently designated *in camera* in their entirety. In order to appropriately prepare public direct and cross examinations, and in order to avoid the unintentional disclosure of any sensitive confidential material, we request that Respondents provide Complaint Counsel with appropriately redacted versions of the investigational hearing and deposition transcripts of Mr. Stoll and Mr. Romano as soon as possible, but no later than tomorrow. We further request that you provide appropriately redacted versions of each of Respondents' expert reports, as well as the transcripts of any witnesses Tronox and Cristal intend to call at trial, at least 72 hours before that witness is called. This information will allow Complaint Counsel to properly determine what information is appropriate for public session and what information must be dealt with *in camera*. Please let us know by 3pm today whether you agree to provide revised *in camera* designations for the transcripts of the remaining witnesses. If we cannot come to an agreement on this issue, we intend to file a motion with the Court. We are available if you would like to discuss. Thanks.

Dom

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Notice of Electronic Service

I hereby certify that on June 05, 2018, I filed an electronic copy of the foregoing Respondents' Response to Complaint Counsel's Motion to Compel, with:

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Chief Administrative Law Judge
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Washington, DC, 20580

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I hereby certify that on June 05, 2018, I served via E-Service an electronic copy of the foregoing Respondents' Response to Complaint Counsel's Motion to Compel, upon:

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I hereby certify that on June 05, 2018, I served via other means, as provided in 4.4(b) of the foregoing Respondents' Response to Complaint Counsel's Motion to Compel, upon:

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