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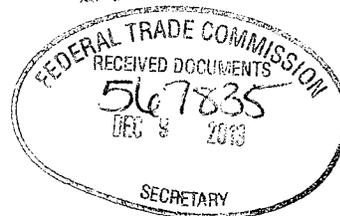
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December 9, 2013

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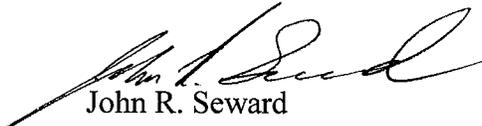
Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

RE: In the Matter of Ardagh Group S.A., Docket No. 9356

Dear Mr. Clark:

Enclosed for filing please find the original and two copies of non-party Anheuser-Busch Companies LLC's Motion for *In Camera* Treatment and supporting materials. Also enclosed are (i) three paper copies of the public version of the motion and supporting materials; (ii) a CD containing an *in camera* set of the motion and supporting materials; and (ii) a CD containing a public set of the motion and supporting materials.

Respectfully submitted,


John R. Seward

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



In the Matter of

Ardagh Group S.A.,
a public limited liability company, and

Saint-Gobain Containers, Inc.,
a corporation, and

Compagnie de Saint-Gobain,
a corporation.

PUBLIC

Docket No. 9356

NONPARTY ANHEUSER-BUSCH COMPANIES, LLC'S MOTION FOR *IN CAMERA*
TREATMENT OF TRIAL MATERIALS

Pursuant to Rule 3.45(b) of the Federal Trade Commission's (the "Commission") Rules of Practice, nonparty Anheuser-Busch Companies, LLC ("AB") hereby respectfully moves for an order requiring *in camera* treatment of documents designated for use at trial by the Commission and Respondents (collectively, the "Parties"), and certain portions of the declaration and transcript of the deposition of Lee Keathley (together the "Keathley Testimony"). This motion is supported by three concurrently-submitted declarations.

Nonparty AB is a leading global beer brewer whose products are sold to consumers in many different types of containers, including glass bottles, which AB sources from third-party suppliers (including Respondents) and its own facilities. (Ardagh Admin. Answer at 3-5.) On November 19, 2013, the Parties provided AB with formal notice of the documents and Keathley Testimony they intend to offer into evidence at the administrative trial. (Braden Decl. ¶ 6.) Altogether, the Parties identified 79 documents and portions of over 200 pages of deposition transcript. AB seeks *in camera* treatment for certain proposed trial exhibits and portions of the Keathley Testimony.

ARGUMENT

Rule 3.45(b) of the Commission's Rules of Practice provides that "[a] party or third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence [if] its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting in camera treatment." 16 C.F.R. § 3.45(b). "That showing can be made by establishing that the documentary evidence is 'sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury,' and then balancing that factor against the importance of the information in explaining the rationale of Commission decisions." *In re Union Oil Co. of Cal.*, Dkt. No. 9305, 2004 FTC LEXIS 197, *1-*2 (Oct. 7, 2004) (Chappell, J.) (citations omitted).

Factors the Commission considers when determining materiality and secrecy include:

(1) the extent to which the information is known outside of the applicant's business; (2) the extent to which the information is known by employees and others involved in the applicant's business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

In re Hoeschst Marion Roussel, Inc., Dkt. No. 9293, 2000 FTC LEXIS 138, *6 (Sep. 19, 2000) (Chappell, J.) (citations omitted).

Since nonparties have no interest in the underlying litigation, yet stand to suffer harm if their confidential information is disclosed, "[a] request for in camera treatment by a non-party warrants "special solicitude." *In re ProMedica Health Sys.*, Dkt. No. 9346, 2011 FTC LEXIS 101, *4 (May 25, 2011) (Chappell, J.) (quotations and citations omitted). "[A]s a policy matter, extensions of confidential or in camera treatment in appropriate cases involving third

party bystanders encourages cooperation with future adjudicative discovery requests.” *In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984).

I. **IN CAMERA TREATMENT IS WARRANTED FOR PROPOSED TRIAL MATERIALS**

AB requests *in camera* treatment for the documents and Keathley Testimony attached hereto as Exhibits 1-70, containing the following categories of information:

- Category A – Packaging Procurement Information;
- Category B – Packaging Research and Innovation Information;
- Category C – Internal Packaging Production Information; and
- Category D – Strategic Marketing and Product Development Plans for Beer Business.¹

Appendix A lists the documents and Keathley Testimony for which AB requests *in camera* treatment and identifies each by the above categories. The information in these categories is highly confidential, and AB does not disclose such information publicly or disseminate it widely internally. (Braden Decl. ¶¶ 7, 11, 18; McGauley Decl. ¶¶ 4-5, 8; Gavorik Decl. ¶¶ 7, 9.) Indeed, AB personnel are given specific training on confidentiality to ensure its sensitive information remains protected. (Braden Decl. ¶¶ 11, 18; McGauley Decl. ¶¶ 4, 8; Gavorik Decl. ¶ 9.) The information in the above categories was designated confidential during the course of the Commission’s investigation, this proceeding, and the related preliminary injunction proceeding in federal court. (Braden Decl. ¶ 5.) As explained below, public disclosure of the attached exhibits would cause significant harm to AB. AB accordingly requests that disclosure of these materials continue to be limited to persons identified in Paragraph 7 of the July 1, 2013 Protective Order for the time periods set forth in Appendix A.

¹ The supporting declarations categorize the individual documents for which AB seeks *in camera* treatment.

a. **Category A – Packaging Procurement Information**

AB requests *in camera* treatment for documents and Keathley Testimony containing information about AB's procurement strategy for beer containers, the terms of AB's glass bottle supply agreements, AB's relationships with its glass suppliers, AB's prior, current and projected container volumes, and the profitability of beer sold in different container types. (Braden Decl. ¶¶ 8-14.) AB currently is negotiating new contracts with all of its U.S. glass suppliers, including Respondents. (*Id.* at ¶ 10.)

The disclosure of the above information would severely disadvantage AB in current and future negotiations with beer-container suppliers. *See In re Polypore Int'l, Inc.*, Dkt. No. 9327, 2009 FTC LEXIS 100, *11 (May 6, 2009) (granting *in camera* treatment for documents containing information regarding ongoing contract negotiations). Respondents and other suppliers could use this information as leverage in negotiations with AB, seeking to secure better terms at AB's expense. (Braden Decl. ¶¶ 9-10.) In addition, AB's competitors could use this information as leverage in negotiations with their own container suppliers, using AB's own information to gain a competitive advantage against it. (*Id.* at ¶ 9.)

AB requests *in camera* treatment for 12 years for certain documents and Keathley Testimony in Category A as set forth in Appendix A. The materials for which AB seeks 12 years of protection contain sensitive information about AB's existing contract terms, contract terms under negotiation and strategies for negotiating with Respondents and other suppliers. Extended *in camera* treatment is warranted for this type of information where necessary to protect the moving party from competitive harm. *See In re General Motors Corp.*, Dkt. No. 9114, 1984 FTC LEXIS 89, *2-*3 (Dec. 22, 1982) (granting extended *in camera* treatment for information about negotiating strategies). Here, maintaining the confidentiality of AB's existing supply contract terms, contract terms under negotiation and negotiation strategies for 12 years is

warranted because this information will remain competitively sensitive through the next period of negotiations, which will occur five to ten years from now. The contracts currently being negotiated with Respondents and other glass suppliers will commence next year, last five to ten years, and will incorporate many of the terms from the existing contracts, which served as the starting point for the current negotiations. (Braden Decl. ¶¶ 10, 12.) In turn, the contracts currently under negotiation will serve as the starting point for the next round of negotiations, and many of the terms will again carry over into new contracts. (*Id.* at ¶ 12.) Further, AB expects its current negotiation strategies and analyses to remain applicable for the next round of negotiations. (*Id.*) Keeping AB's supply terms and negotiation strategies confidential for 12 years will prevent Respondents and others from using this information to AB's disadvantage during those future negotiations.

One of the documents for which AB seeks to protect for 12 years (ABI-LIT-0002008) is a spreadsheet containing AB's beer sales margins by package type. Extended *in camera* treatment is warranted for margin information where necessary to protect the moving party from competitive harm. *See In re Champion Spark Plug Co.*, Dkt. No. 9141, 1982 FTC LEXIS 92, *6-*7 (Mar. 4, 1982) (granting extended *in camera* treatment for information about gross profit margins, among other financial information). The margin information AB seeks to protect does not vary significantly from year to year, and thus will remain competitively sensitive for a prolonged period. (Braden Decl. ¶ 13.) AB's business partners and suppliers, including Respondents, could use AB's margins by package as leverage against it in current and future negotiations if not protected. (*Id.*) Accordingly, *in camera* treatment for a period of 12 years is warranted to protect AB from being disadvantaged in future negotiations.

For the remaining materials in Category A—which includes correspondence between AB and its suppliers and information about AB’s spend, volumes and packaging mix—AB requests *in camera* treatment for a period of five years. Under Commission precedent, *in camera* treatment for up to five years is appropriate for these types of business records. *See, e.g., In re ProMedica Health Sys.*, 2011 FTC LEXIS 101 at *5; *In re Polypore Int’l, Inc.*, 2009 FTC LEXIS 100 at *4.

b. Category B – Packaging Research and Innovation Information

AB requests *in camera* treatment for proposed trial exhibits and Keathley Testimony containing information about AB’s plans for packaging innovations. (McGauley Decl. ¶¶ 4-6.) These materials also contain research conducted by AB about consumer packaging preferences and AB’s analysis of those preferences, which forms the basis of its innovation plans. (*Id.* at ¶ 4.)

Disclosure of AB’s packaging research and innovation information would result in significant competitive harm. *See In re Rambus, Inc.*, Dkt. No. 9302, 2003 FTC LEXIS 68, *9 (Apr. 23, 2003) (granting *in camera* treatment for documents containing information that if disclosed “could adversely affect [a nonparty’s] strategies and decisions regarding future products it intends to build [and] its plans to innovate”). AB spends significant time and resources on its packaging research and innovation, which could not be recreated by AB’s competitors without substantial effort and expense, if at all. (McGauley Decl. ¶ 5.) If disclosed, AB’s competitors could use this information to preempt AB’s innovation strategies and its introduction of new packaging. (*Id.* at ¶ 4.) Further, AB’s competitors would have access to confidential industry and consumer research prepared by AB, which they could use to AB’s competitive disadvantage. (*Id.*) Because these innovation plans cover several years, AB requests that materials identified in Appendix A as containing information from Category B be

granted *in camera* treatment for five years. *See In re Polypore Int'l, Inc.*, 2009 FTC LEXIS 100 at *4.

c. Category C – Internal Packaging Production Information

AB requests *in camera* treatment for the proposed trial exhibits and Keathley Testimony containing information about AB's internal packaging production capabilities. (Braden Decl. at ¶¶ 15-19; Gavorik Decl. ¶¶ 7-10.) These materials include information about capacity, strategic plans, production costs and potential capital improvements for AB's internal glass bottle production and metal container facilities (Braden Decl. ¶ 15; Gavorik Decl. ¶ 6.)

Disclosure of AB's packaging production information would significantly disadvantage AB in present and future negotiations with beer container suppliers. *See, e.g., In re Rambus*, 2003 FTC LEXIS 68 at *5 (granting *in camera* protections to documents that contain, in part, a third party's "manufacturing costs and capital investments"). AB's suppliers could use the information—which took substantial time and resources to develop (Braden Decl. ¶ 18; Gavorik Decl. ¶ 9)—as leverage to gain concessions from AB on contract terms. (Braden Decl. ¶ 15; Gavorik Decl. ¶ 7.) Similarly, companies that supply input products (*e.g.*, aluminum, cullet, limestone) to AB for its internal packaging production, could use this information to AB's disadvantage during their contract negotiations. (Braden Decl. ¶ 16; Gavorik Decl. ¶ 8.) Finally, disclosure of AB's internal production information would harm AB's competitive position by providing competitors with insight into AB's cost structure and future plans for packaging production. (Braden Decl. ¶ 16.)

For nearly all materials identified in Appendix A as containing information from Category C, AB requests *in camera* treatment for a period of five years because its packaging production plans may take a considerable amount of time to complete or even initiate. For two Category C documents containing information on AB's internal glass bottle production capacity,

AB seeks *in camera* treatment for 12 years. Extended *in camera* treatment of operational information is warranted where necessary to protect the moving party from competitive harm. See *In re Union Oil Co. of Cal.*, 2004 FTC LEXIS 197 at *14-*15 (granting extended *in camera* treatment for production information). Information about AB's internal glass bottle production capacity is particularly sensitive due to its relevance to AB's ongoing and future negotiations with its glass bottle suppliers. This capacity information is unlikely to change significantly over time due to the significant capital expenditure required for expansion. (Braden Decl. ¶ 17.) Since capacity is unlikely to change, it will remain competitively sensitive at least through AB's next round of glass bottle supply negotiations, which will be up to 10 years away, and *in camera* treatment for 12 years is warranted to prevent AB from being disadvantaged in those negotiations.

d. Category D – Strategic Marketing and Product Development Plans for Beer Business

AB requests *in camera* treatment for the proposed trial exhibits containing competitively sensitive information about AB's sales and marketing plans for beer. (McGauley Decl. ¶¶ 7-9.) The designated documents include detailed information about AB's business operations, the performance of its beer brands, strategic planning, product positioning and marketing strategies for the next several years. (*Id.* at ¶ 7.) They also include information about brand extensions and product innovations that AB is evaluating. (*Id.*)

These materials, which are the result of intensive work and analysis by AB, are vitally important to AB's beer business (*id.* at ¶ 8), and AB would suffer serious competitive harm if they were made public. (*Id.* at ¶ 7.) Competitors could use AB's operational and strategic planning information to gain an unfair competitive advantage. (*Id.*) Further, they could adjust their own strategies based on AB's brand plans to better position their products against

AB. (*Id.*) Because AB's business strategies and plans will remain competitively sensitive for at least several years, AB requests that materials identified in Appendix A as containing information from Category D be granted *in camera* treatment for a period of five years.

II. AB'S MOTION SHOULD RECEIVE "SPECIAL SOLICITUDE"

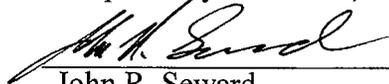
Finally, as a nonparty who has cooperated with the discovery requests made by the Parties, AB's request for *in camera* treatment warrants "special solicitude." *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101 at *4. Disclosure of the highly confidential and competitively sensitive information contained in the proposed trial exhibits and Keathley Testimony identified herein undoubtedly will cause serious competitive injury to AB. Conversely, public disclosure of this information will not progress resolution of the litigation, nor will it substantially assist the Commission in explaining the rationale for its decision. Indeed, much of the information AB seeks to protect does not even relate to its container supply and is not relevant to this litigation.

CONCLUSION

For the foregoing reasons, AB's motion requesting *in camera* treatment as set forth above for the proposed trial exhibits and Keathley Testimony identified in Appendix A should be granted.

DATED: December 9, 2013

Respectfully submitted,



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Attorney for Nonparty ANHEUSER-BUSCH
COMPANIES, LLC

**Appendix A
PUBLIC**

Documents for which *In Camera* Treatment is Sought

Decl. Exhibit Number	Trial Exhibit Number	Begin Bates	End Bates	Duration	Category
1	PX4019	4/26/2013 Skadden Letter to FTC re: CID to ABI	N/A	Twelve Years	C
2	PX4028 DX465	ABI-FTC-0002313	ABI-FTC-0002345	Twelve Years	A
3	PX4030 DX513	ABI-FTC-0002875	ABI-FTC-0002933	Twelve Years	A
4	PX4031 DX168	ABI-FTC-0002844	ABI-FTC-0002874	Twelve Years	A
5	PX4032 DX151	ABI-FTC-0002591	ABI-FTC-0002607	Twelve Years	A
6	PX4493	ABI-FTC-0002347	ABI-FTC-0002355	Twelve Years	A
7	PX4507	ABI-LIT-0000267	ABI-LIT-0000270	Twelve Years	A
8	PX4508	ABI-FTC-0001301	ABI-FTC-0001321	Twelve Years	A
9	PX4512	ABI-FTC-0001169	ABI-FTC-0001300	Twelve Years	A
10	PX4513	ABI-FTC-0001158	ABI-FTC-0001168	Twelve Years	A
11	PX4525 DX700	ABI-LIT-0000331	ABI-LIT-0000331	Twelve Years	A
12	PX4549	ABI-LIT-0002069	ABI-LIT-0002070	Twelve Years	A
13	PX4551 DX169	ABI-LIT-0000318	ABI-LIT-0000318	Twelve Years	A
14	PX4553	ABI-LIT-0000262	ABI-LIT-0000262	Twelve Years	A
15	PX4554	ABI-LIT-0000263	ABI-LIT-0000263	Twelve Years	A
16	PX4555	ABI-LIT-0002056	ABI-LIT-0002056	Twelve Years	A
17	PX4576	ABI-FTC-0002609	ABI-FTC-0002609	Twelve Years	A
18	PX4598	ABI-LIT-0000271	ABI-LIT-0000271	Twelve Years	A
19	DX167	ABI-FTC-0000001	ABI-FTC-0000038	Twelve Years	A
20	DX077	ABI-FTC-0002689	ABI-FTC-0002837	Twelve Years	A
21	DX152	ABI-FTC-0003457	ABI-FTC-0003609	Twelve Years	A
22	DX438	ABI-LIT-0001955	ABI-LIT-0001955	Twelve Years	A
23	DX440	ABI-LIT-0001986	ABI-LIT-0001987	Twelve Years	A
24	PX4082	ABI-FTC-0005164	ABI-FTC-0005165	Five Years	A
25	PX4502	ABI-LIT-0001963	ABI-LIT-0001966	Five Years	A
26	PX4509	ABI-FTC-0002286	ABI-FTC-0002293	Five Years	A
27	PX4511	ABI-LIT-0000291	ABI-LIT-0000291	Five Years	A
28	PX4514	ABI-LIT-0002008	ABI-LIT-0002008	Twelve Years	A
29	PX4524	ABI-FTC-0005616	ABI-FTC-0005620	Five Years	A

Decl. Exhibit Number	Trial Exhibit Number	Begin Bates	End Bates	Duration	Category
30	PX4526	ABI-LIT-0000266	ABI-LIT-0000266	Twelve Years	A
31	PX4531	ABI-LIT-0000315	ABI-LIT-0000315	Five Years	A
32	PX4542 DX472	ABI-FTC-0002937	ABI-FTC-0002939	Twelve Years	A
33	PX4543	ABI-LIT-0002142	ABI-LIT-0002143	Five Years	A
34	PX4545	ABI-LIT-0002144	ABI-LIT-0002145	Five Years	A
35	PX4546	ABI-LIT-0002139	ABI-LIT-0002141	Five Years	A
36	PX4547 DX506	ABI-LIT-0002137	ABI-LIT-0002138	Five Years	A
37	DX508	ABI-FTC-0002219	ABI-FTC-0002228	Five Years	A
38	DX506	ABI-LIT-0000255	ABI-LIT-0000256	Five Years	A
39	PX4084	ABI-FTC-0004431	ABI-FTC-0004432	Five Years	A
40	DX698	ABI-FTC-0002629	ABI-FTC-0002630	Five Years	A
41	DX713	ABI Document accompanying Respondents' Notice Letter	N/A	Five Years	A
42	PX4494	ABI-LIT-0000342	ABI-LIT-0000342	Five Years	B
43	PX4497	ABI-LIT-0002092	ABI-LIT-0002092	Five Years	B
44	PX4516	ABI-LIT-0001811	ABI-LIT-0001811	Five Years	B
45	PX4517	ABI-LIT-0000345	ABI-LIT-0000345	Five Years	B
46	PX4530 DX435	ABI-FTC-0000926	ABI-FTC-0000939	Five Years	B
47	DX389	ABI-FTC-0000940	ABI-FTC-0001022	Five Years	B
48	DX402	ABI-FTC-0001061	ABI-FTC-0001112	Five Years	B
49	DX427	ABI-LIT-0000344	ABI-LIT-0000344	Five Years	B
50	DX639	ABI-LIT-0001832	ABI-LIT-0001833	Five Years	B
51	DX575	ABI-LIT-0002115	ABI-LIT-0002115	Five Years	B
52	DX699	ABI-FTC-0003058	ABI-FTC-0003072	Five Years	B
53	DX458	ABI-LIT-0002090	ABI-LIT-0002090	Five Years	B
54	DX696	ABI-FTC-0002545	ABI-FTC-0002556	Twelve Years	C
55	PX4510 DX484	ABI-LIT-0001837	ABI-LIT-0001837	Five Years	C
56	DX441	ABI-FTC-0003036	ABI-FTC-0003057	Five Years	C
57	DX562	ABI-LIT-0002013	ABI-LIT-0002015	Five Years	C
58	DX170	ABI-LIT-0002016	ABI-LIT-0002017	Five Years	C
59	PX4533	ABI-LIT-0000403	ABI-LIT-0000536	Five Years	C
60	DX697	ABI-FTC-0002628	ABI-FTC-0002628	Five Years	D
61	PX4492	ABI-FTC-0001674	ABI-FTC-0001771	Five Years	D
62	DX565	ABI-FTC-0001439	ABI-FTC-0001472	Five Years	D
63	DX380	ABI-FTC-0001772	ABI-FTC-0001918	Five Years	D

Decl. Exhibit Number	Trial Exhibit Number	Begin Bates	End Bates	Duration	Category
64	DX315	ABI-FTC-0002488	ABI-FTC-0002529	Five Years	D

Testimony for which *In Camera* Treatment is Sought

Decl. Exhibit Number	Trial Exhibit Number	Testimony	Pages/Line Numbers/Paragraphs	Duration	Category
65	PX5020	Lee Keathley Decl.	Redacted portions of 3, 4, 6, 7, 11, 15, 17, 22, 23, 26, 28, 29, 30, 31, 32, and 33	Twelve Years	A
66	PX6034	Lee Keathley Dep. Tr.	55:11-61:2; 62:4-64:3; 64:21-66:4; 66:24-67:24; 70:9-71:3; 72:5-76:18; 77:12-88:17; 90:14-93:3; 94:4-95:1; 98:13-100:24; 101:24-103:10; 105:16-109:7; 110:3-113:22; 114:7-14; 116:10-118:1; 120:18-123:13; 123:21-129:1; 129:13-22; 143:13-145:4; 145:16-146:12; 182:21-183:16; 184:17-194:13; 198:18-202:3; 202:21-210:25; 214:1-215:12; 216:1-217:10; 220:10-223:17; 224:5-25; 229:2-236:2; 237:9-19; 241:13-250:2; 251:10-254:12; 266:10-25; 270:17-271:20; 274:23-277:9; 283:5-285:12; 286:18; 287:1-8	Twelve Years	A

67	PX6034	Lee Keathley Dep. Tr.	27:19-29:15; 32:22-33:24; 34:25-35:5; 37:4-39:13; 47:1-50:23; 51:21-52:3; 97:8-18; 118:7-120:3; ; 130:2-135:15; 138:5- 139:25; 142:1-21; 155:8- 12; 171:20-23; 176:25- 179:2; 180:6-181:20; 182:8; 195:7-22; 197:13- 21; 225:11-228:7; 250:17- 23; 255:18-25; 258:1-25; 260:19-263:16; 264:4- 265:7; 268:7-269:2; 272:5-274:8; 277:22- 278:25	Five Years	A
68	PX6034	Lee Keathley Dep. Tr.	141:4-9; 148:11-25; 160:12-18; 162:19-163:1; 164:1-9; 164:23-165:20; 166:15-169:17; 174:16- 175:22; 239:2-240:7	Five Years	B
69	PX5020	Lee Keathley Decl.	Redacted portions of paragraphs 5 and 8	Twelve Years	C
70	PX6034	Lee Keathley Dep. Tr.	218:24-219:1; 219:20- 220:5; 279:20-282:22	Five Years	C

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2013, I caused to be delivered via hand delivery one paper original, two paper copies and a true and correct electronic copy of the *in camera* and public, redacted versions of the foregoing Motion for *In Camera* Treatment and supporting declarations to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I caused to be delivered via hand delivery one paper copy and a true and correct electronic copy of the *in camera* and public, redacted versions of the foregoing Motion for *In Camera* Treatment and supporting declarations to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I caused to be delivered via hand delivery one paper copy and a true and correct electronic copy of the *in camera* and public, redacted versions of foregoing Motion for *In Camera* Treatment and supporting declarations to:

Edward D. Hassi
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Counsel Supporting the Complaint

I further certify that I caused to be delivered via Federal Express one paper copy and a true and correct electronic copy of the *in camera* and public, redacted versions of foregoing Motion for *In Camera* Treatment and supporting declarations to:

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Counsel for Respondent Ardagh Group S.A.

Christine Varney
Yonatan Even
Athena Cheng
Cravath, Swaine & Moore LLP

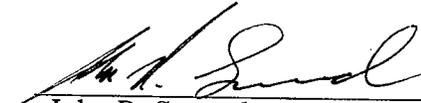
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Counsel for Respondent Saint-Gobain Containers, Inc.

CERTIFICATE OF ELECTRONIC FILING

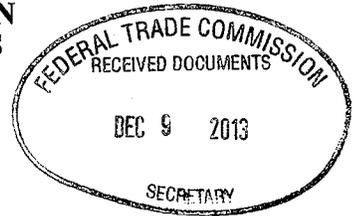
I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original being filed this same day, December 9, 2013 via hand delivery with the Office of the Secretary, Room H-113, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

DATED: December 9, 2013



John R. Seward

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



In the Matter of
Ardagh Group S.A.,
a public limited liability company, and
Saint-Gobain Containers, Inc.,
a corporation, and
Compagnie de Saint-Gobain,
a corporation.

PUBLIC

Docket No. 9356

[PROPOSED] ORDER GRANTING NONPARTY ANHEUSER-BUSCH COMPANIES, LLC'S MOTION FOR *IN CAMERA* TREATMENT

Presently before the Court is nonparty Anheuser-Busch Companies, LLC's ("AB") Motion for *In Camera* Treatment of Trial Materials pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice. "A party or third party may obtain *in camera* treatment for material, or portions thereof, offered into evidence . . . [if] its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment." 16 C.F.R. § 3.45(b). Disclosure of the information contained in the documents and declaration and transcript excerpts identified in AB's Motion for *In Camera* Treatment, either to the public or to Respondents, would result in significant competitive harm to AB.

For the foregoing reasons, AB's motion is hereby **GRANTED**. The documents and declaration and transcript excerpts identified by AB will be afforded *in camera* treatment for the time periods set forth in the chart below and disclosed only to: 1) the Administrative Law Judge presiding over this proceeding and personnel assisting the Administrative Law Judge; 2) Respondents' outside counsel, experts or trial consultants retained for this proceeding; 3) the

Federal Trade Commission and its experts and trial consultants retained for this proceeding; 4) court personnel of any court having jurisdiction over any appellate proceedings involving this matter; and 5) any witness who may have authored or received the information in questions.

Documents

Decl. Exhibit Number	Trial Exhibit Number	Begin Dates	End Dates	Duration
1	PX4019	4/26/2013 Skadden Letter to FTC re: CID to ABI	N/A	Twelve Years
2	PX4028 DX465	ABI-FTC-0002313	ABI-FTC-0002345	Twelve Years
3	PX4030 DX513	ABI-FTC-0002875	ABI-FTC-0002933	Twelve Years
4	PX4031 DX168	ABI-FTC-0002844	ABI-FTC-0002874	Twelve Years
5	PX4032 DX151	ABI-FTC-0002591	ABI-FTC-0002607	Twelve Years
6	PX4493	ABI-FTC-0002347	ABI-FTC-0002355	Twelve Years
7	PX4507	ABI-LIT-0000267	ABI-LIT-0000270	Twelve Years
8	PX4508	ABI-FTC-0001301	ABI-FTC-0001321	Twelve Years
9	PX4512	ABI-FTC-0001169	ABI-FTC-0001300	Twelve Years
10	PX4513	ABI-FTC-0001158	ABI-FTC-0001168	Twelve Years
11	PX4525 DX700	ABI-LIT-0000331	ABI-LIT-0000331	Twelve Years
12	PX4549	ABI-LIT-0002069	ABI-LIT-0002070	Twelve Years
13	PX4551 DX169	ABI-LIT-0000318	ABI-LIT-0000318	Twelve Years
14	PX4553	ABI-LIT-0000262	ABI-LIT-0000262	Twelve Years
15	PX4554	ABI-LIT-0000263	ABI-LIT-0000263	Twelve Years
16	PX4555	ABI-LIT-0002056	ABI-LIT-0002056	Twelve Years
17	PX4576	ABI-FTC-0002609	ABI-FTC-0002609	Twelve Years
18	PX4598	ABI-LIT-0000271	ABI-LIT-0000271	Twelve Years
19	DX167	ABI-FTC-0000001	ABI-FTC-0000038	Twelve Years
20	DX077	ABI-FTC-0002689	ABI-FTC-0002837	Twelve Years
21	DX152	ABI-FTC-0003457	ABI-FTC-0003609	Twelve Years
22	DX438	ABI-LIT-0001955	ABI-LIT-0001955	Twelve Years
23	DX440	ABI-LIT-0001986	ABI-LIT-0001987	Twelve Years
24	PX4082	ABI-FTC-0005164	ABI-FTC-0005165	Five Years
25	PX4502	ABI-LIT-0001963	ABI-LIT-0001966	Five Years
26	PX4509	ABI-FTC-0002286	ABI-FTC-0002293	Five Years

Decl. Exhibit Number	Trial Exhibit Number	Begin Dates	End Dates	Duration
27	PX4511	ABI-LIT-0000291	ABI-LIT-0000291	Five Years
28	PX4514	ABI-LIT-0002008	ABI-LIT-0002008	Twelve Years
29	PX4524	ABI-FTC-0005616	ABI-FTC-0005620	Five Years
30	PX4526	ABI-LIT-0000266	ABI-LIT-0000266	Twelve Years
31	PX4531	ABI-LIT-0000315	ABI-LIT-0000315	Five Years
32	PX4542 DX472	ABI-FTC-0002937	ABI-FTC-0002939	Twelve Years
33	PX4543	ABI-LIT-0002142	ABI-LIT-0002143	Five Years
34	PX4545	ABI-LIT-0002144	ABI-LIT-0002145	Five Years
35	PX4546	ABI-LIT-0002139	ABI-LIT-0002141	Five Years
36	PX4547 DX506	ABI-LIT-0002137	ABI-LIT-0002138	Five Years
37	DX508	ABI-FTC-0002219	ABI-FTC-0002228	Five Years
38	DX506	ABI-LIT-0000255	ABI-LIT-0000256	Five Years
39	PX4084	ABI-FTC-0004431	ABI-FTC-0004432	Five Years
40	DX698	ABI-FTC-0002629	ABI-FTC-0002630	Five Years
41	DX713	ABI Document Accompanying Respondents' Notice Letter	N/A	Five Years
42	PX4494	ABI-LIT-0000342	ABI-LIT-0000342	Five Years
43	PX4497	ABI-LIT-0002092	ABI-LIT-0002092	Five Years
44	PX4516	ABI-LIT-0001811	ABI-LIT-0001811	Five Years
45	PX4517	ABI-LIT-0000345	ABI-LIT-0000345	Five Years
46	PX4530 DX435	ABI-FTC-0000926	ABI-FTC-0000939	Five Years
47	DX389	ABI-FTC-0000940	ABI-FTC-0001022	Five Years
48	DX402	ABI-FTC-0001061	ABI-FTC-0001112	Five Years
49	DX427	ABI-LIT-0000344	ABI-LIT-0000344	Five Years
50	DX639	ABI-LIT-0001832	ABI-LIT-0001833	Five Years
51	DX575	ABI-LIT-0002115	ABI-LIT-0002115	Five Years
52	DX699	ABI-FTC-0003058	ABI-FTC-0003072	Five Years
53	DX458	ABI-LIT-0002090	ABI-LIT-0002090	Five Years
54	DX696	ABI-FTC-0002545	ABI-FTC-0002556	Twelve Years
55	PX4510 DX484	ABI-LIT-0001837	ABI-LIT-0001837	Five Years
56	DX441	ABI-FTC-0003036	ABI-FTC-0003057	Five Years
57	DX562	ABI-LIT-0002013	ABI-LIT-0002015	Five Years
58	DX170	ABI-LIT-0002016	ABI-LIT-0002017	Five Years
59	PX4533	ABI-LIT-0000403	ABI-LIT-0000536	Five Years
60	DX697	ABI-FTC-0002628	ABI-FTC-0002628	Five Years

Decl. Exhibit Number	Trial Exhibit Number	Begin Bates	End Bates	Duration
61	PX4492	ABI-FTC-0001674	ABI-FTC-0001771	Five Years
62	DX565	ABI-FTC-0001439	ABI-FTC-0001472	Five Years
63	DX380	ABI-FTC-0001772	ABI-FTC-0001918	Five Years
64	DX315	ABI-FTC-0002488	ABI-FTC-0002529	Five Years

Declaration and Transcript Excerpts

Decl. Exhibit Number	Trial Exhibit Number	Testimony	Pages/Line Number/Paragraphs	Duration
65	PX5020	Lee Keathley Decl.	Redacted portions of 3, 4, 6, 7, 11, 15, 17, 22, 23, 26, 28, 29, 30, 31, 32, and 33	Twelve Years
66	PX6034	Lee Keathley Dep. Tr.	55:11-61:2; 62:4-64:3; 64:21-66:4; 66:24-67:24; 70:9-71:3; 72:5-76:18; 77:12-88:17; 90:14-93:3; 94:4-95:1; 98:13-100:24; 101:24-103:10; 105:16-109:7; 110:3-113:22; 114:7-14; 116:10-118:1; 120:18-123:13; 123:21-129:1; 129:13-22; 143:13-145:4; 145:16-146:12; 182:21-183:16; 184:17-194:13; 198:18-202:3; 202:21-210:25; 214:1-215:12; 216:1-217:10; 220:10-223:17; 224:5-25; 229:2-236:2; 237:9-19; 241:13-250:2; 251:10-254:12; 266:10-25; 270:17-271:20; 274:23-277:9; 283:5-285:12; 286:18; 287:1-8	Twelve Years
67	PX6034	Lee Keathley Dep. Tr.	27:19-29:15; 32:22-33:24; 34:25-35:5; 37:4-39:13; 47:1-50:23; 51:21-52:3; 97:8-18; 118:7-120:3; ; 130:2-135:15; 138:5-139:25; 142:1-21; 155:8-12; 171:20-23; 176:25-179:2; 180:6-181:20; 182:8; 195:7-22; 197:13-21; 225:11-228:7; 250:17-23; 255:18-25; 258:1-25; 260:19-263:16; 264:4-265:7; 268:7-269:2; 272:5-274:8; 277:22-278:25	Five Years

Decl. Exhibit Number	Trial Exhibit Number	Testimony	Pages/Line Numbers/Paragraphs	Duration
68	PX6034	Lee Keathley Dep. Tr.	141:4-9; 148:11-25; 160:12-18; 162:19-163:1; 164:1-9; 164:23- 165:20; 166:15-169:17; 174:16-175:22; 239:2-240:7	Five Years
69	PX5020	Lee Keathley Decl.	Redacted portions of paragraphs 5 and 8	Twelve Years
70	PX6034	Lee Keathley Dep. Tr.	218:24-219:1; 219:20-220:5; 279:20-282:22	Five Years

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

DATE: _____

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

In the Matter of

Ardagh Group S.A.,
a public limited liability company, and

Saint-Gobain Containers, Inc.,
a corporation, and

Compagnie de Saint-Gobain,
a corporation.

PUBLIC

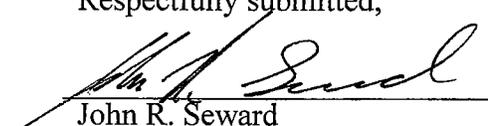
Docket No. 9356

Statement Regarding Meet and Confer

Pursuant to Paragraph 4 of the Scheduling Order, Counsel for Anheuser-Busch Companies, LLC (“AB”) met and conferred in good faith with Respondents’ counsel and the Federal Trade Commission (the “Commission”) regarding AB’s Motion for *In Camera* Treatment. Respondents’ counsel and the Commission have indicated to AB that they do not intend to oppose AB’s motion.

DATED: December 9, 2013

Respectfully submitted,



John R. Seward

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Attorney for Nonparty ANHEUSER-BUSCH
COMPANIES, LLC

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

In the Matter of

Ardagh Group S.A.,
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a corporation.

PUBLIC

Docket No. 9356

**DECLARATION OF TIMOTHY W. BRADEN IN SUPPORT OF NONPARTY
ANHEUSER-BUSCH COMPANIES, LLC'S MOTION FOR *IN CAMERA* TREATMENT
OF TRIAL MATERIALS**

I, Timothy W. Braden, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am Senior Director, Procurement for the North America Zone at Anheuser-Busch Companies, LLC ("AB"). I make this declaration in support of Nonparty Anheuser-Busch Companies, LLC's Motion for *In Camera* Treatment of Trial Materials. Unless otherwise indicated, I have personal knowledge of the matters set forth herein and, if called upon to do so, could competently testify thereto.
2. I have held the position of Senior Director, Procurement for the North America Zone since January 2012. In that position, I am responsible for procurement of primary packaging, including glass bottles, cans, lids, aluminum bottles and PET bottles for the North America Zone. Therefore, I am familiar with the information contained in the materials discussed in this declaration.
3. During the course of the Federal Trade Commission's (the "Commission") investigation of Ardagh Group, S.A.'s ("Ardagh") proposed acquisition of Saint-Gobain Containers, Inc., AB provided materials in response to two subpoenas, issued on March 11 and March 21, 2013, and

one Civil Investigative Demand (“CID”) calling for information about AB’s glass bottle manufacturing entity, Longhorn Glass Corporation (“Longhorn”), issued on March 11, 2013. AB’s Vice President of Procurement for the North America Zone, Lee Keathley, also submitted a declaration on June 14, 2013 in response to Subpoenas Ad Testificandum issued by the Commission on March 11 and 21, 2013 and was deposed pursuant to a subpoena from Ardagh issued on July 29, 2013 (collectively, the “Keathley Testimony”).

4. I understand that on July 2, 2013, the Commission filed a lawsuit in the U.S. District Court for the District of Columbia (the “Preliminary Injunction Action”) seeking to preliminarily enjoin the proposed transaction pending resolution of this litigation. In the Preliminary Injunction Action, AB responded to two additional nonparty subpoenas, one issued by the Commission dated July 26, 2013 and one from Ardagh dated July 24, 2013.

5. AB designated all materials produced during the investigation stage as confidential under the applicable Commission statutes, including 15 U.S.C. §§ 46(f), 57b-2(b), 57(b)-2(c), 16 C.F.R. § 4.10(d) and 15 U.S.C. § 18a(h). Further, AB designated all materials produced during the litigation stage as “Confidential” pursuant to the Protective Order entered in this matter, which protects AB’s competitively sensitive information from disclosure to the public or Respondents.

6. By letter dated November 19, 2013, the Commission informed AB that it intended to introduce 44 documents AB produced in response to the various subpoenas and CID, as well as portions of the Keathley Testimony, as evidence at the administrative trial set to begin on December 19, 2013. On November 19, Respondents informed AB by letter that they intended to introduce at the administrative trial 35 documents AB produced in response to the various

subpoenas and CID, as well as portions of the Keathley Testimony. AB seeks *in camera* treatment for select documents and portions of the Keathley Testimony.

7. I have reviewed the documents and Keathley Testimony for which AB seeks *in camera* treatment related to its container sourcing and internal container production. As detailed further below, these materials contain highly confidential, sensitive information that AB maintains in strict confidentiality. The disclosure of these materials would result in serious competitive injury to AB by disadvantaging AB relative to its competitors and impairing AB's ability to negotiate with customers, suppliers or other business partners.

8. As detailed in paragraph 14, the Commission and Respondents have identified a variety of documents and testimony related to AB's procurement of beer containers. These materials include: (i) information about AB's procurement strategies, plans and objectives; (ii) AB's analysis of current bids from Ardagh, Saint-Gobain and other glass bottle suppliers that contain proposals for terms related to price, volume and payment; (iii) the terms of existing agreements between AB and its suppliers that are subject to confidentiality provisions included in those agreements; (iv) confidential correspondence between AB and its glass bottle suppliers; and (v) financial information (such as sales volumes, margins and profitability by container type), which AB uses to determine its goals for supply terms and its negotiation strategies.

9. Disclosure of materials containing this information would severely impair AB's ability to negotiate with its container suppliers. Suppliers could use this information as leverage to extract more favorable terms (*e.g.*, higher prices, lower quality of products or lower standards of service) to AB's detriment. Further, AB's competitors could use information about AB's supply terms to extract better terms for themselves, resulting in injury to AB's competitive position.

10. The harm AB would suffer from disclosure of its supply strategy and negotiation information is heightened at present because it is currently negotiating renewed contracts with several glass bottle suppliers, including Respondents, to go into effect January 1, 2014. Disclosure of this information to either the public or Respondents would seriously weaken AB's negotiation position, which, in turn, would negatively affect AB's glass bottle supply, a crucial component of AB's ability to compete effectively.
11. AB has spent significant time and resources developing its supply strategy and attempting to successfully negotiate its container supply agreements. AB's efforts even have included retaining a strategic consulting firm, Mars & Co., to assist with developing procurement and negotiation strategies. Because of the importance glass bottle supply plays in AB's business, maintaining confidentiality is key to AB preserving its negotiating position. Therefore, AB employees undergo internal confidentiality training to help ensure this information is not disclosed publicly or distributed broadly within AB.
12. AB's packaging supply agreements typically run from three to ten years, and those currently under negotiation will last from five to ten years. When AB negotiates new terms for glass bottle supply, it does not completely replace existing agreements. Instead, AB uses the terms of the existing contracts as a starting point and renegotiates only certain terms. Many of the terms remain exactly the same from contract to contract. As a result, many of the terms from AB's contracts remain in effect for a prolonged period of time. Similarly, because many terms remain so similar from contract to contract, AB's negotiation strategies often remain the same, and build off existing strategies and related analysis.
13. From year to year, AB's margins by package type do not change significantly. As a result, information about AB's margins remains competitively sensitive for an extended period

of time and could be used as leverage against AB in current and future negotiations with suppliers and other business partners.

14. Materials that, if disclosed, would reveal confidential information about AB's procurement of beer containers include:

a. The following notes, presentations, spreadsheets and emails prepared by AB containing current and future sourcing strategies, plans and objectives, supplier evaluations and ongoing negotiation information (including proposed pricing and volume terms) – Exhibit 2 (ABI-FTC-0002313-0002345);¹ Exhibit 6 (ABI-FTC-0002347-0002355); Exhibit 8 (ABI-FTC-0001301-0001321); Exhibit 12 (ABI-LIT-0002069-0002070); Exhibit 21 (ABI-FTC-0003457-0003609); Exhibit 22 (ABI-LIT-0001955-0001955); Exhibit 23 (ABI-LIT-0001986-0001987); Exhibit 30 (ABI-LIT-0000266-0000266); Exhibit 32 (ABI-FTC-0002937-0002939);

b. The following presentations by AB's strategic consultant, Mars & Co., containing analysis and proposals for sourcing strategies, supplier negotiation strategies generally and by supplier, analysis of ongoing negotiations and proposed terms and analysis of the proposed transaction's potential impact on AB's glass supply options – Exhibit 3 (ABI-FTC-0002875-0002933); Exhibit 4 (ABI-FTC-0002844-0002874); Exhibit 5 (ABI-FTC-0002591-0002607); Exhibit 7 (ABI-LIT-0000267-0000270); Exhibit 18 (ABI-LIT-0000271-0000271); Exhibit 20 (ABI-FTC-0002689-0002837);

c. The following emails discussing information about AB's glass bottle supply arrangements and communications with suppliers – Exhibit 24 (ABI-FTC-0005164-0005165); Exhibit 25 (ABI-LIT-0001963-0001966); Exhibit 29 (ABI-FTC-0005616-0005620); Exhibit 39 (ABI-FTC-0004431-0004432);

d. The following handwritten notes from AB employees containing information about AB's ongoing negotiations with glass bottle suppliers – Exhibit 33 (ABI-FTC-0002142-0002143); Exhibit 34 (ABI-FTC-0002144-0002145); Exhibit 35 (ABI-LIT-0002139-0002141); Exhibit 36 (ABI-LIT-0002137-0002138); Exhibit 38 (ABI-LIT-0000255-0000256);

e. The following materials prepared by AB containing existing terms of AB's packaging agreements and those currently under negotiation – Exhibit 9 (ABI-FTC-0001169-0001300); Exhibit 10 (ABI-FTC-0001158-0001168); Exhibit 11 (ABI-LIT-0000331-0000331); Exhibit 13 (ABI-LIT-0000318-0000318); Exhibit 14 (ABI-LIT-0000262-0000262); Exhibit 15 (ABI-LIT-0000263-

¹ Exhibit numbers herein refer to the exhibits to AB's Motion for *In Camera* Treatment.

0000263); Exhibit 16 (ABI-LIT-0002056-0002056); Exhibit 17 (ABI-FTC-0002609-0002609); Exhibit 19 (ABI-FTC-0000001-0000038);

f. The following materials prepared by AB containing information regarding AB's prior, current and projected container spend and volumes, packaging mix, margins by packaging type and current request for proposal regarding the supply of glass bottles – Exhibit 26 (ABI-FTC-0002286-0002293); Exhibit 27 (ABI-LIT-0000291-0000291); Exhibit 28 (ABI-LIT-0002008-0002008); Exhibit 31 (ABI-LIT-0000315-0000315); Exhibit 37 (ABI-FTC-0002219-0002228); Exhibit 40 (ABI-FTC-0002629-0002630); Exhibit 41 (ABI spreadsheet that contains AB's container volume figures which accompanied Respondents' notice letter of November 19, 2013);

g. The following excerpts of the Keathley declaration of June 14, 2013 containing information about current and future supply and packaging strategies, supply sources, supply negotiation strategies and ongoing negotiation details – Redacted portions of paragraphs 3, 4, 6, 7, 11, 15, 17, 22, 23, 26, 28, 29, 30, 31, 32, and 33;

h. The following excerpts of the Keathley deposition transcript containing, negotiation strategy and supply options – 55:11-61:2; 62:4-64:3; 64:21-66:4; 66:24-67:24; 70:9-71:3; 72:5-76:18; 77:12-88:17; 90:14-93:3; 94:4-95:1; 98:13-100:24; 101:24-103:10; 105:16-109:7; 110:3-113:22; 114:7-14; 116:10-118:1; 120:18-123:13; 123:21-129:1; 129:13-22; 143:13-145:4; 145:16-146:12; 182:21-183:16; 184:17-194:13; 198:18-202:3; 202:21-210:25; 214:1-215:12; 216:1-217:10; 220:10-223:17; 224:5-25; 229:2-236:2; 237:9-19; 241:13-250:2; 251:10-254:12; 266:10-25; 270:17-271:20; 274:23-277:9; 283:5-285:12; 286:18; 287:1-8;

i. The following excerpts of the Keathley deposition transcript containing information about the status of the negotiations, conversations with Saint-Gobain and Ardagh about the proposed transaction, information about AB's packaging mix and costs and viability of switching between different types of packaging – 27:19-29:15; 32:22-33:24; 34:25-35:5; 37:4-39:13; 47:1-50:23; 51:21-52:3; 97:8-18; 118:7-120:3; ; 130:2-135:15; 138:5-139:25; 142:1-21; 155:8-12; 171:20-23; 176:25-179:2; 180:6-181:20; 182:8; 195:7-22; 197:13-21; 225:11-228:7; 250:17-23; 255:18-25; 258:1-25; 260:19-263:16; 264:4-265:7; 268:7-269:2; 272:5-274:8; 277:22-278:25.

15. AB also seeks *in camera* treatment for documents and Keathley Testimony containing information about its internal packaging production, including information about capacity, production costs, capital improvements under consideration and strategic plans. This includes information about Longhorn, AB's glass bottle production subsidiary, DIFA, the Mexican glass producer acquired as part of the acquisition of Grupo Modelo and Metal Container Corporation

("MCC"), AB's metal container production subsidiary. Disclosure of this information would give AB's suppliers insight into AB's production costs, capacity, and operation strategy, which those suppliers could use to their advantage in negotiations with AB.

16. In addition, AB procures input products for its container manufacturing facilities, including sand, limestone and cullet, among other products. Disclosure of materials containing information about AB's packaging production would provide suppliers of these input products with insight into AB's sourcing requirements, which would disadvantage AB in negotiations with those suppliers. Similarly, AB's competitors would gain insight into AB's cost structure and strategy for internal production, which would result in competitive harm to AB.

17. Information about AB's internal glass bottle production capacity is particularly important in negotiations with AB's glass bottle suppliers. This information plays a significant role in AB's development of its negotiation strategies. Any change to AB's internal glass bottle production capacity would have to result from expansion of existing facilities or construction of new facilities, which would require substantial capital expenditure by AB. AB expects its internal glass bottle production capacity to remain the same for an extended period of time.

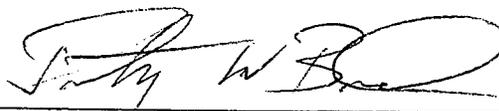
18. AB's container production and sourcing strategies are developed through extensive research and analysis performed internally and with the help of consultants. Maintaining confidentiality of this information is a key component of AB maintaining its competitive position, as well as its negotiating position with suppliers. Therefore, AB employees undergo internal training regarding confidentiality that helps ensure this information is not made public or widely disseminated within AB.

19. Materials that, if disclosed, would reveal information about AB's internal packaging production include:

- a. The following presentations prepared by AB and its consultants containing strategic plans for MCC and DIFA, including capital expenditures and supply projections – Exhibit 55 (ABI-LIT-0001837-0001837); Exhibit 59 (ABI-LIT-0000403-0000536);
- b. The following documents prepared by AB containing information about Longhorn's and MCC's production capacities – Exhibit 1 (Trial Exhibit PX4019); Exhibit 54 (ABI-FTC-0002545-0002556);
- c. The following emails discussing information about the potential opening of an additional glass bottle production facility, including estimated costs, timeline and permitting information – Exhibit 57 (ABI-LIT-0002013-0002015); Exhibit 58 (ABI-LIT-0002016-0002017);
- d. The following excerpts of the Keathley declaration of June 14, 2013 containing information about Longhorn and DIFA operations (including capacity and supply feasibility) and expansion plans – Redacted portions of paragraphs 5 and 8;
- e. The following excerpts of the Keathley deposition transcript containing information about AB's internal supply options and the viability of expanding its of internal glass bottle production capacity – 218:24-219:1; 219:20-220:5; 279:20-282:22.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this Sixth day of December, 2013 in St. Louis, Missouri.

A handwritten signature in black ink, appearing to read "Timothy W. Braden", written over a horizontal line.

Timothy Braden

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

In the Matter of

Ardagh Group S.A.,
a public limited liability company, and

Saint-Gobain Containers, Inc.,
a corporation, and

Compagnie de Saint-Gobain,
a corporation.

PUBLIC

Docket No. 9356

**DECLARATION OF MICHAEL D. GAVORNIK IN SUPPORT OF NONPARTY
ANHEUSER-BUSCH COMPANIES, LLC'S MOTION FOR *IN CAMERA* TREATMENT
OF TRIAL MATERIALS**

I, Michael D. Gavornik, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am Director of Financial Accounting of Metal Container Corporation ("MCC"). I make this declaration in support of Nonparty Anheuser-Busch Companies, LLC's Motion for *In Camera* Treatment of Trial Materials. Unless otherwise indicated, I have personal knowledge of the matters set forth herein and, if called upon to do so, could competently testify thereto.
2. I have held the position of Director of Financial Accounting since December 2011. In that position, I am responsible for strategic planning, performance measurement and budgeting for MCC. Therefore, I am familiar with the information contained in the documents discussed in this declaration.
3. MCC is a subsidiary of Anheuser-Busch Companies, LLC ("ABC," together with MCC, "AB") that manufactures metal beverage containers, including cans and lids. MCC supplies ABC with beer cans and lids in the United States. MCC also produces cans and lids for major U.S. soft drink companies including PepsiCo and Hansen Natural Corp.

4. Although MCC is a subsidiary of ABC, the two companies operate independently because MCC supplies companies other than ABC with metal containers.
5. AB produced MCC materials in response to discovery requests issued by the Federal Trade Commission (the "Commission") and Ardagh Group, S.A. ("Ardagh") in connection with the Commission's investigation of, and litigation challenging, Ardagh's proposed acquisition of Saint-Gobain Containers, Inc.
6. It is my understanding that the Commission and Respondents intend to offer into evidence at trial documents containing information regarding MCC.
7. AB seeks *in camera* treatment for certain of these documents, which I have reviewed. These documents contain highly confidential, sensitive information about MCC's operations (including capacity, production costs, and capital improvements under consideration) and strategic plans. Disclosure of this information would give ABC's packaging suppliers insight into AB's internal production costs, capacity, and supply options, which those suppliers could use to their advantage in negotiations with AB. Similarly, these packaging suppliers are MCC's competitors who could use information about MCC's operations to compete more effectively against it. Further, MCC's customers could use information about its operations, and its costs in particular, as leverage during negotiations to extract better terms from MCC.
8. In addition, AB procures input products for its container manufacturing facilities, including aluminum. Disclosure of documents containing information about AB's packaging production would provide suppliers of these input products with insight into AB's sourcing requirements, which would disadvantage AB in negotiations with those suppliers.
9. MCC's strategic and operational plans are developed through extensive internal analysis and are not publicly available. In addition, these materials are not shared broadly with AB

personnel. MCC employees are required to participate in training that stresses the confidential nature of these materials and helps ensure that they are not disclosed publicly or disseminated broadly within AB.

10. Materials that, if disclosed, would reveal information about AB's operations and strategic plans include:

- a. Exhibit 56 (ABI-FTC-0003036-0003057):¹ April 13, 2012 AB presentation entitled "Metal Container Corporation 3YP" that contains plans for MCC, including performance targets and details about strengths and weaknesses of MCC.

¹ The exhibit numbers herein refer to the exhibits to AB's Motion for *In Camera* Treatment.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this Fifth day of December, 2013 in St. Louis, Missouri.



Michael D. Gavornik

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

In the Matter of

Ardagh Group S.A.,
a public limited liability company, and

Saint-Gobain Containers, Inc.,
a corporation, and

Compagnie de Saint-Gobain,
a corporation.

PUBLIC

Docket No. 9356

**DECLARATION OF PATRICK J. MCGAULEY IN SUPPORT OF NONPARTY
ANHEUSER-BUSCH COMPANIES, LLC'S MOTION FOR *IN CAMERA* TREATMENT
OF TRIAL MATERIALS**

I, Patrick J. McGauley, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am Vice President, Innovation at Anheuser-Busch, LLC. I make this declaration in support of Nonparty Anheuser-Busch Companies, LLC's ("AB") Motion for *In Camera* Treatment of Trial Materials. Unless otherwise indicated, I have personal knowledge of the matters set forth herein and, if called upon to do so, could competently testify thereto.
2. I have held the position of Vice President, Innovation since 2005. In that position, I am responsible for the initial strategic development and execution of all new products and packaging for Anheuser-Busch, LLC's U.S. portfolio of brands. Therefore, I am familiar with the information contained in the materials discussed in this declaration.
3. It is my understanding that, in connection with the Federal Trade Commission's (the "Commission") lawsuit challenging Ardagh Group S.A.'s proposed acquisition of Saint-Gobain Containers, Inc., the Commission and Respondents intend to offer into evidence documents and excerpts from the deposition of AB's Vice President of Procurement for the North America

Zone, Lee Keathley, that contain information regarding AB's strategic packaging plans and strategic marketing and product development plans.

4. AB seeks *in camera* treatment for certain materials that contain information about its strategic marketing and packaging plans, which I have reviewed. These materials contain highly confidential, sensitive information about AB's packaging innovations, research conducted by AB about consumer packaging preferences and AB's analysis of that research. Disclosure of materials containing this information would result in significant competitive harm to AB because it would provide AB's competitors with insight into its packaging innovations plans. AB's competitors could use AB's own research and analysis to take advantage of marketplace opportunities they failed to identify themselves and to thwart successful introduction of new products planned by AB.

5. Innovation is vitally important to AB's continued success. Offering new products and packaging that will entice new and existing consumers alike is a cornerstone of AB's competitive strategy, and confidentiality is key to AB maintaining its competitive advantage in the marketplace. As a result, AB spends considerable time and resources developing its product and packaging innovations and maintains its related research, analysis and strategies in strict confidence, including limiting dissemination within AB itself. Employees authorized to review product and packaging innovation materials participate in internal training that helps ensure confidentiality both inside and outside of AB.

6. Materials that, if disclosed, would reveal information about AB's strategic packaging plans include:

a. The following presentations and spreadsheets prepared by AB or its consultants containing information about new packaging product performance, packaging innovation plans and strategies (including timelines), and consumer research regarding packaging preferences and analysis of that research – Exhibit

42 (ABI-LIT-0000342-0000342);¹ Exhibit 43 (ABI-LIT-0002092-0002092); Exhibit 44 (ABI-LIT-0001811-0001811); Exhibit 45 (ABI-LIT-0000345-0000345); Exhibit 46 (ABI-FTC-0000926-0000939); Exhibit 47 (ABI-FTC-0000940-0001022); Exhibit 48 (ABI-FTC-0001061-0001112); Exhibit 49 (ABI-LIT-0000344-0000344); Exhibit 51 (ABI-LIT-0002115-0002115); Exhibit 52 (ABI-FTC-0003058-0003072); Exhibit 53 (ABI-LIT-0002090-ABI-LIT-0002090);

b. The following email discussing details about sourcing for a planned bottle innovation – Exhibit 50 (ABI-LIT-0001832-0001833);

c. The following excerpts of the Keathley deposition transcript containing information about AB's research and analysis into customer packaging preferences – 141:4-9; 148:11-25; 160:12-18; 162:19-163:1; 164:1-9; 164:23-165:20; 166:15-169:17; 174:16-175:22; 239:2-240:7.

7. AB also seeks *in camera* treatment for documents that contain information about its strategic marketing and product development plans. These materials contain highly confidential, sensitive information about AB's sales and marketing plans for its beer business. Most importantly, these documents contain competitively sensitive information related to AB's brand strategies, such as product positioning, brand performance and profitability, pricing, marketing plans, and plans for new products and innovations under consideration. Disclosure of documents containing this information would result in significant competitive harm to AB. AB's competitors could use this information to better compete against AB by repositioning products, matching AB's innovation and taking advantage of marketplace opportunities identified by AB.

8. AB's brand strategies, and its innovations in particular, represent the core of AB's business and are vital to AB's ability to compete. A substantial portion of AB's resources are devoted to developing its brand strategies and innovation plans, and AB engages numerous strategic consultants to help develop these strategies and plans. Maintaining confidentiality of this information is a key component of AB maintaining its competitive advantage in the

¹ Exhibit numbers herein refer to the exhibits to AB's Motion for *In Camera* Treatment.

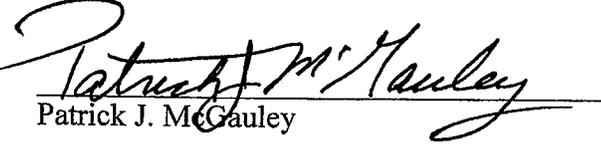
marketplace. Therefore, employees authorized to review AB's strategic marketing and product development plans undergo internal training regarding confidentiality that helps ensure this information is not made public or widely disseminated within AB.

9. Documents that, if disclosed, would reveal information about AB's strategic marketing and product development plans include:

a. The following presentations and spreadsheets prepared by AB containing information about market shares, profitability, pricing, economic and share targets, competitive overviews, brand marketing plans and initiatives, long-range brand strategies, and innovation ideas – Exhibit 60 (ABI-FTC-0002628-0002628); Exhibit 61 (ABI-FTC-0001674-0001771); Exhibit 62 (ABI-FTC-0001439-0001472); Exhibit 63 (ABI-FTC-0001772-0001918); Exhibit 64 (ABI-FTC-0002488-0002529).

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this Fifth day of December, 2013 in St. Louis, Missouri.


Patrick J. McGauley

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Dale Collins (wcollins@shearman.com)
Richard Schwed (rschwed@shearman.com)
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Cavath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
(212) 474-1140

Counsel for Respondent Saint-Gobain Containers, Inc.

CERTIFICATE OF 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.

DATED: December 9, 2013

/s/ John R. Seward

John R. Seward

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

In the Matter of)

Ardagh Group S.A.,)
a public limited liability company, and)

Saint-Gobain Containers, Inc.,)
a corporation, and)

Compagnie de Saint-Gobain,)
a corporation.)

PUBLIC

Docket No. 9356

NOTICE OF APPEARANCE

Please note my appearance as counsel for non-party Anheuser-Busch Companies LLC in the above referenced matter. In accordance with Rule 4.1(d) of the Federal Trade Commission's Rules of Practice, I certify that I am a member of the Bar of the District of Columbia (ID No. 469820), and am in good standing within the legal profession.

DATED: December 9, 2013

Respectfully submitted,

/s/ John R. Seward

John R. Seward

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
1440 New York Avenue, N.W.
Washington, DC 20005-2111

Telephone: (202) 371-7065

Facsimile: (202) 661-0505

Email: John.Seward@skadden.com

Attorney for Non-Party ANHEUSER-BUSCH
COMPANIES LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2013, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Edward D. Hassi (ehassi@ftc.gov)
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600 Pennsylvania Avenue, NW
Washington, DC 20580

Counsel Supporting the Complaint

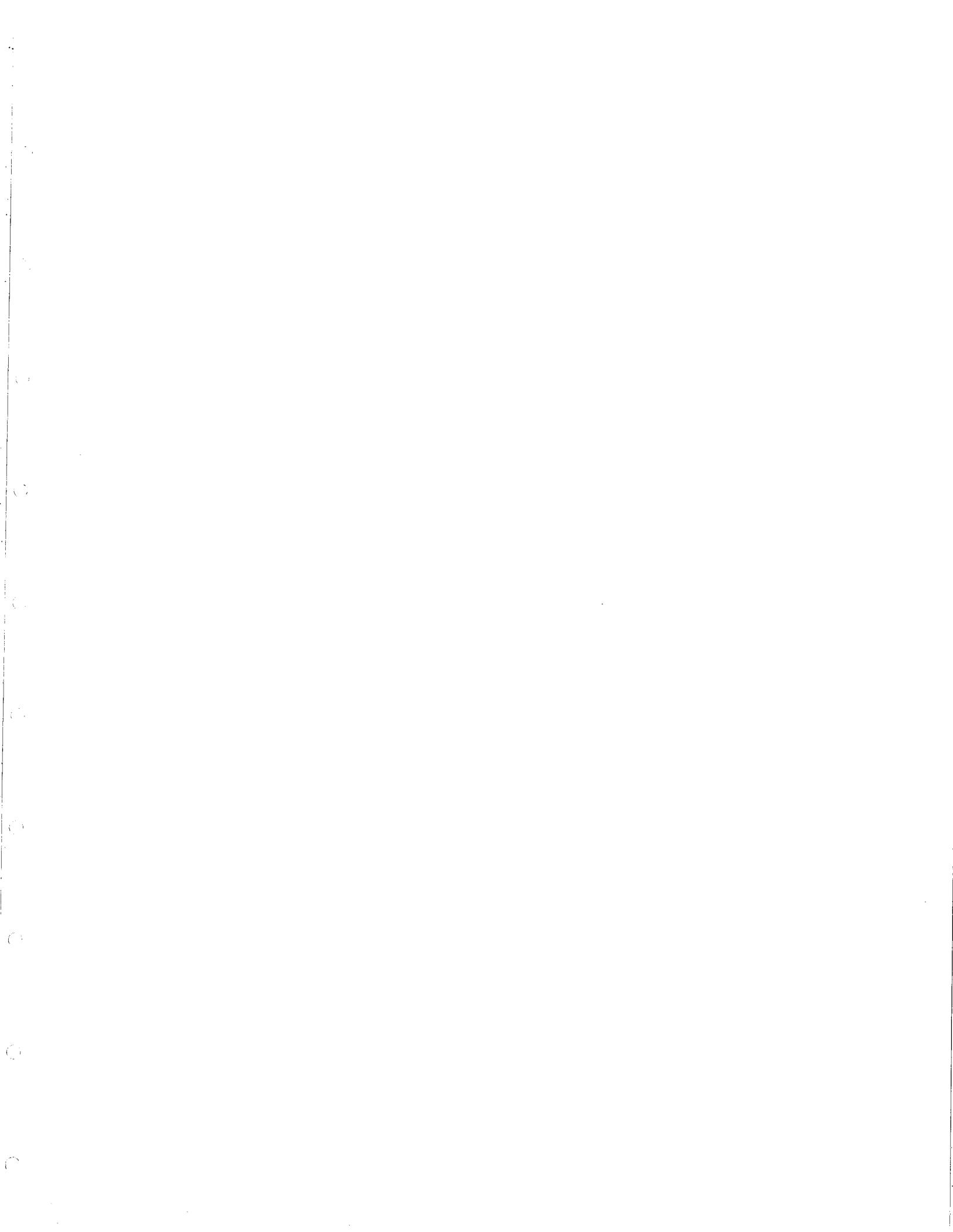
**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)	
In the Matter of)	
)	
Ardagh Group S.A.,)	PUBLIC
a public limited liability company, and)	
)	
Saint-Gobain Containers, Inc.,)	Docket No. 9356
a corporation, and)	
)	
Compagnie de Saint-Gobain,)	
a corporation.)	
_____)	

**MATERIALS IN SUPPORT OF NONPARTY ANHEUSER-BUSCH
COMPANIES, LLC'S MOTION FOR *IN CAMERA* TREATMENT OF
TRIAL MATERIALS**

EXHIBITS 1-70

REDACTED



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TOKYO
TORONTO
VIENNA

CONFIDENTIAL

April 26, 2013

Sean Hughto, Esq.
Federal Trade Commission
Bureau of Competition
601 New Jersey Avenue, N.W.
Washington, DC 20580

RE: Civil Investigative Demand Issued to Anheuser-Busch
InBev SA/NV on March 11, 2013

Dear Sean:

Anheuser-Busch InBev SA/NV ("ABI") responds to the Civil Investigative Demand issued on March 11, 2013 in connection with the Federal Trade Commission's investigation in File No. 131-0087 as follows:

1. List each relevant product manufactured or sold by the Company, and (a) provide a detailed description of the product including its end uses; (b) state the division, subsidiary, or affiliate of the Company that manufactures or sells or has manufactured or sold the product; (c) state the Company's sales to all customers in each relevant area, stated separately in pounds, units and dollars, monthly since January 1, 2008; (d) state the Company's sales of each relevant product into each end-use market for which the product is sold (e.g., beer, spaghetti sauce) since January 1, 2008; and (e) indicate each relevant facility at which the relevant product is manufactured. If a relevant product is manufactured at more than one relevant facility, please indicate in the response to items 1 (c) and 1 (d) the portion of sales that correspond to each relevant facility.

Response:

ABI manufactures one relevant product – 12oz amber bottles used for bottling beer. The relevant product is manufactured by ABI's subsidiary Longhorn Glass Corp. located in Jacinto City, Texas. Longhorn sells 100% of its production to ABI's Houston and other breweries priced at Longhorn's cost of sales. Sales data is included with ABI's response to the March 11, 2013 and March 21, 2013 subpoenas duces tecum at ABI-FTC-0002530-2544.

2. State the location of each relevant facility for the Company, and for each such facility state:

(a) the current nameplate capacity and practical capacity and the annual capacity utilization rate for production of each relevant product manufactured at the facility, specifying all other factors used to calculate capacity, the number of shifts normally used at the facility, and the feasibility of increasing capacity, including the costs and time required; and

Response:

Facility: Longhorn Glass Corp., Jacinto City, Texas

The Longhorn facility operates at a current nameplate full holding capacity of [REDACTED] tons. Based upon melting time, the furnace should be capable of a daily pull of [REDACTED] tons. The facility's actual pull is approximately [REDACTED] tons per day. The annual capacity utilization rate is approximately [REDACTED]. Longhorn employs four crews who work [REDACTED] hour shifts. There are [REDACTED] hour shifts per day. See ABI-FTC-0002582.

Information regarding the feasibility of increasing capacity at the Longhorn facility can be found in the following documents: ABI-FTC-0002612, ABI-FTC-0002591, and ABI-FTC-0002689.

(b) whether the facility has converted production from one type of glass container to another (e.g., beer bottles to wine bottles), and describe the length of time and cost in dollars required for each such conversion that has occurred since January 1, 2008. If more than five such conversions have occurred in that time period, please provide information for the five most recent conversions.

Response:

The Longhorn facility has not converted production from one type of glass container to another during the applicable period.

3. For each month and year (starting January 1, 2008 through present), provide, in pounds, units, and dollars, that portion of the Company's production of relevant product that was sold or transferred after production to the Company

itself (including affiliates or joint venture partners) for use in an end-product also produced by the Company (including affiliates or joint venture partners), and identify any such end-product. For example, if the Company produced beer bottles that were then used to bottle beer also produced by the Company (including by affiliates or joint venture partners), please indicate as directed what portion of the Company's total production of beer bottles was sold or transferred within the Company for bottling the Company's beer.

Response:

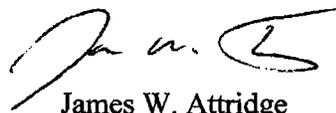
See response to Specification 1 above.

This letter and its enclosure are submitted pursuant to the confidentiality protections of Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 57b-2(f), and Rule 4.10 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 4.10, and contain confidential business information. ABI requests that this letter and its enclosure be treated as confidential to the full extent permitted by law. In the event that the Federal Trade Commission intends to disclose, in the course of any litigation or to third parties pursuant to discovery requests, any ABI information, documents or data relating to trade secrets, intellectual property rights, or commercial or financial information, ABI should be afforded reasonable written notice to seek an appropriate protective or in camera court order.

It is ABI's intention in providing you with this information not to waive any claim of privilege to which it is entitled. Accordingly, any inadvertent submission of privileged information does not preclude the subsequent assertion of a claim of attorney-client, work product, or any other applicable privilege in the future with respect to the information.

Please call me at (202) 371-7305 or John Seward at (202) 371-7065 if you have any questions.

Regards,

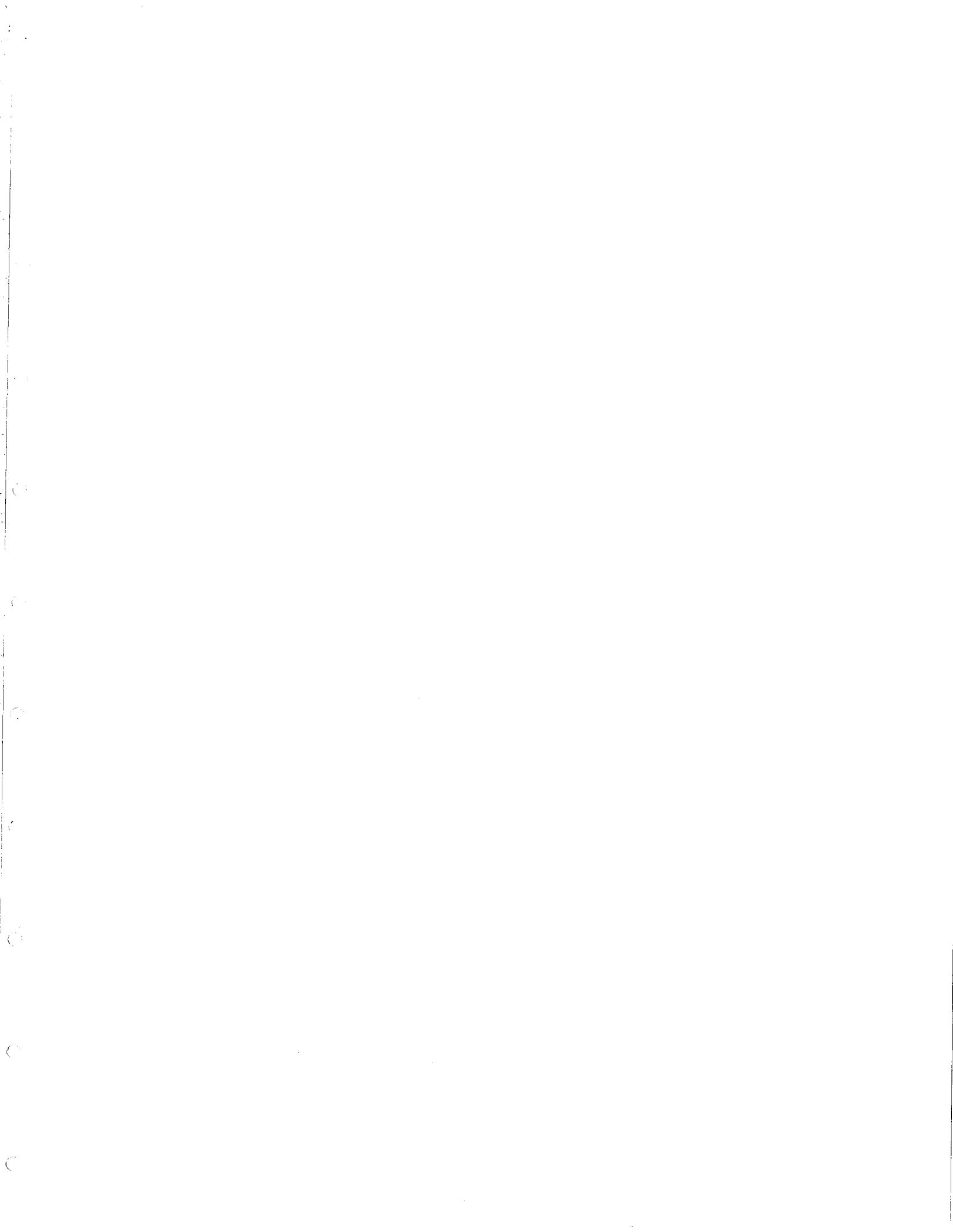


James W. Attridge

Enclosure

Sean Hughto, Esq.
April 26, 2013
Page 4

cc (w/o Encl): Jim Abell, Esq.
Josh Goodman, Esq.
Brendan McNamara, Esq.
John Seward, Esq.
Steve Sunshine, Esq.



Exhibits 2-64 Redacted for Public Version



DECLARATION OF LEE KEATHLEY

Pursuant to 28 U.S.C. § 1746, I, Lee Keathley, declare and state as follows:

1. I am the Vice President of Procurement for the North American Zone of Anheuser-Busch Companies, LLC, a subsidiary of Anheuser-Busch InBev ("ABI"). The North American Zone, as delineated by ABI, includes the United States and Canada. I am also Vice President of Procurement for Anheuser-Busch, LLC ("AB"), a subsidiary of Anheuser-Busch Companies, LLC and the U.S. beer manufacturer. I have been in my current position for approximately two years, and have been with the company for 23 years, during which time I have held a variety of procurement positions. I am presently responsible for all North American procurement activities, including the procurement of glass bottles for ABI's beverages brewed and filled in North America.
2. ABI is the world's largest brewing company. In 2012, AB produced approximately 119 million hectoliters of beer, the majority of which was made up of the Budweiser and Bud Light brands. This beer is produced in AB's 12 U.S. breweries located in St. Louis, Missouri; Newark, New Jersey; Los Angeles, California; Houston, Texas; Columbus, Ohio; Jacksonville, Florida; Merrimack, New Hampshire; Williamsburg, Virginia; Fairfield, California; Baldwinville, New York; Fort Collins, Colorado; and Cartersville, Georgia. In addition, in 2012 AB imported approximately 2.1 million hectoliters of beers from breweries located abroad. Altogether, AB sells over 115 brands of beer in the United States.
3. AB spends approximately [REDACTED] annually to purchase roughly [REDACTED] glass bottles ([REDACTED] gross) for our breweries in the United States. AB's glass bottle demand rose slightly in 2012 with the introduction and success of our Bud Light Platinum brand. Going forward, AB expects its glass bottle demand to [REDACTED]. Indeed, in our glass bottle Request for Proposal ("RFP") issued to our glass bottle suppliers earlier this year, AB provided guidance that it expects its bottle volumes to [REDACTED]. Over [REDACTED] of AB's glass container demand is for amber colored bottles. Our next biggest demand is for flint (i.e., clear) bottles, which represent about [REDACTED] of our demand. The remainder of our demand is for green bottles, as well as some specialty colors, such as blue and black. The vast majority of our bottles are 12 ounces in size, but we also use many other sizes, including, for example, smaller seven-ounce bottles and larger 18, 32, and 40-ounce bottles.
4. AB presently sources our bottles from five suppliers. Currently, our three main suppliers are Verallia North America ("VNA"), which supplies approximately [REDACTED] our needs, Ardagh Group S.A. ("Ardagh"), which supplies approximately [REDACTED] of our needs, and Owens-Illinois ("O-I"), which supplies around [REDACTED]. The remaining [REDACTED] or so is split roughly evenly between a Mexican supplier, Fevisa, and ABI's own dedicated glass bottle plant, Longhorn. Other than its present suppliers, ABI is unaware of any other viable options for sourcing beer bottles that could meet AB's U.S. needs. More distant beer bottle manufacturers would face significant freight disadvantages in supplying AB's U.S. operations.
5. Longhorn, located in Jacinto City, Texas, is the only glass container plant owned by AB. AB uses all of Longhorn's glass bottle output internally. For the most part, Longhorn's entire production is dedicated to serving AB's Houston brewery. Longhorn is able to meet approximately [REDACTED] of the Houston brewery's annual glass bottle needs. While operating glass bottle plants is not within AB's area of core competency, Longhorn's operation provides AB

with insights into glass production costs and potential efficiencies that are useful to AB in negotiating with third-party glass bottle suppliers. [REDACTED]

6. Fevisa's glass container plant is located in Mexicali, Mexico. Freight costs are a large fraction of the landed cost (i.e., total cost after delivery to a brewery) of bottles. [REDACTED]

7. Although the Mexican supplier, Fevisa, does supply our Los Angeles brewery, I believe all other Mexican glass bottle suppliers seeking to supply to any of AB's other U.S. breweries would carry freight costs that would render their delivered beer bottle cost significantly higher than the delivered costs available from AB's present domestic suppliers. The only other AB brewery close to Mexico is our Houston brewery, but it is primarily supplied by our Longhorn glass plant. [REDACTED]

Heineken/FEMSA, a large beer brewer in Mexico, also owns a Mexican glass plant. If Heineken/FEMSA supplied beer bottles to third-parties, it is highly likely that given its plant's location in Southern Mexico, it would face a large freight disadvantage in supplying breweries in the United States. AB would also be reluctant to source bottles from Heineken/FEMSA because it is a significant rival in the sale of beer.

8. On June 4, 2013, by purchasing the shares tendered in response to its offer, ABI successfully completed its combination with Grupo Modelo ("Modelo"). This transaction included acquiring three existing glass container plants in Mexico owned by DIFA, a Modelo subsidiary. [REDACTED]

[REDACTED] DIFA is also currently constructing a fourth glass container plant in Piedras Negras, Mexico, which is on the U.S. border roughly adjacent to San Antonio, Texas. When completed, the Piedras Negras facility may be able to supply bottles to ABI's Houston brewery, which is approximately 350 miles away, although [REDACTED] of that brewery's glass bottle demand is already supplied by the Longhorn plant described above. [REDACTED]

9. In the past, ABI has occasionally analyzed the viability of potential overseas imports of glass bottles from places like China, Europe, and the Middle East. In addition to freight expenses that make them uncompetitive compared to domestic supplies, overseas imports have other drawbacks as well. For example, most of AB's glass is supplied from glass plants that are within a few hundred miles of a given brewery and delivered within hours of when the bottles are going to be filled. Foreign supplies would impose significant additional logistical costs in the form of warehousing and managing a more complicated supply stream. In addition, AB requires quality

and service for its glass ranging from maintaining cleanliness in the glass production facility to using shipment methods that keep the bottles clean, unbroken, and free of insects and debris. Monitoring foreign production facilities would be difficult and costly, and the much longer transit time during ocean shipment increases risks of breakage and contamination. In short, overseas suppliers are not presently a viable alternative source of glass supply for ABI in the U.S.

10. ABI is aware generally that some smaller U.S. glass producers exist and make glass containers for various products like wine and liquor. During my tenure, AB has not received bids from any of these companies to make beer bottles for AB. To produce beer bottles efficiently for AB's needs, these small glass companies would likely need to invest huge amounts of capital in large-section forming machines that press and blow beer bottles at an extremely fast rate. For example, machines like those used by VNA, Ardagh, and O-I to make AB's bottles, such as ten-section triple-gob machines, each produce approximately 1.2 million bottles per year.

11. The U.S. glass supply market for beer bottles is dominated by three suppliers: O-I, VNA, and Ardagh. In recent years, ABI has seen these three suppliers take excess capacity out of the market and increase their profit margins. For the past several years, O-I has been the exclusive supplier to ABI's biggest rival in the U.S., MillerCoors. As such, O-I lacks the production capacity to provide more than [REDACTED] or so of AB's annual glass needs. With Fevisa and Longhorn together able to provide only about [REDACTED] of AB's glass bottle needs, AB currently relies on only two suppliers, VNA and Ardagh, to meet roughly [REDACTED] of its bottle requirements.

12. The three main glass suppliers, VNA, O-I, and Ardagh, have very little excess capacity because the supply of glass containers in the U.S. is closely matched with demand. As a result, when customer demand spikes unexpectedly or a furnace or plant suffers a disruption, shortages have resulted. This lack of excess capacity is apparent to AB based upon our glass bottle suppliers' reports to us as well as ABI's observations from visiting or auditing supplier's plants. From time to time, AB experiences instances where its glass bottle suppliers cannot fulfill AB requested shipments. Having multiple suppliers allows AB to arrange substitute shipments from competing suppliers so that AB production is not disrupted.

13. Glass bottle suppliers compete to serve AB in many ways. In addition to competitive pricing and contract terms, AB wants our glass suppliers to be innovative, efficient, reliable, and responsive, and to provide high-quality and defect-free bottles, among other things. Meaningful competition from other glass bottle suppliers incentivizes individual glass suppliers to provide more value to AB on all these fronts. AB has changed suppliers or reallocated volumes on given products among its glass suppliers when one supplier failed to deliver on one or more performance metrics – for example, when a glass bottle company supplied too many defective bottles, could not produce a required new bottle design, or failed to address delivery or bottle-packaging problems.

14. ABI's glass supply contracts typically have terms of three to five years. Along with base prices for the bottles themselves and charges for packing the bottles on pallets or in various boxed configurations, the contracts include price adjustment formulas intended to capture fluctuations in the costs of the inputs required to make the glass bottles. Natural gas, which is used to fire the glass furnaces and is a large part of the bottle cost, has its own surcharge formula, and there is a separate formula to account for the other major input costs for producing glass bottles. The contracts also provide an opportunity for AB to receive effective discounts from suppliers in the form of rebates earned when certain volume targets are achieved. These complex contracts routinely include many other provisions as well, such as most favored nation clauses, meet

competition clauses (which relate solely to meeting competition from alternative glass bottle suppliers), cost saving initiatives, and so forth. ABI's glass supply contracts result from a lengthy RFP process, during which ABI negotiates with all available glass bottle suppliers to arrive at the best value in meeting ABI's needs. ABI has historically benefited from this competitive process by achieving better pricing and service from its glass suppliers.

15. Beer is distributed and sold in a variety of packages to meet consumer preferences. Glass bottles, aluminum cans, and kegs on tap (draft) are the main package formats. In 2012, AB sold approximately [REDACTED] of its volume in glass bottles, [REDACTED] in aluminum cans, and [REDACTED] in kegs for draft. The remaining one or two percent of our beer is sold in aluminum bottles and plastic bottles. These 2012 percentages are similar to recent prior years.

16. AB maintains a marketing department that routinely researches customer preferences that inform our new product introductions, branding, and our packaging mix across our product portfolio. For example, our marketing department has found that many customers prefer beer bottled in glass to cans or plastic containers. AB cannot afford to ignore these consumer preferences or we risk customers not accepting our offerings and the consequent loss of business.

17. Traditional aluminum cans have historically been approximately [REDACTED] expensive than glass bottles, based on comparing a 12-ounce can and a 12-ounce bottle. There are also related freight advantages for cans based on weight and dimension. [REDACTED]

[REDACTED] consumer preferences for beer in glass bottles and the premium image glass confers, among other things, are reasons why AB markets roughly [REDACTED] of its beer in glass. AB projects that its glass demand will [REDACTED] for the foreseeable future.

18. AB sells brands in all the major beer segments. Sales of lower-priced "value" brands, also known as "sub-premium" brands, tend to include a higher proportion of cans versus glass bottles than higher-priced premium and high-end beers, which tend to have a higher proportion of sales in glass bottles. Cans are often packaged in large groups, such as 30 or 36 packs, as a value or economy offering, and bottles tend to be sold in no larger group than packs of 24.

19. A key component of successful competition in the beer market is building a successful brand image, and glass conveys quality. Consumer preferences are the main drivers in our packaging mix decisions, and consumers consistently associate glass bottles with higher-quality beer. In addition, premium and high-end brands are consumed more frequently at venues that value the premium image that a glass bottle conveys, such as bars and restaurants. If AB were to ignore consumer preferences for glass bottles and try to substitute other packages, such as aluminum cans, it would run an unacceptably high risk of losing sales to its competitors.

20. Our need for glass bottles is increasing for the high-end beer segment, which has experienced the strongest growth rate in the beer industry for the past few years. Establishing a high-quality image with glass is critical to our strategy because consumers of high-end beers expect to receive a premium product in exchange for paying a higher price.

21. Cans are not ready substitutes for glass bottles at AB. For example, glass suppliers often are unable to supply shipments when AB's demand rises unexpected or when a glass supplier's plant experiences a production problem. In such cases, AB cannot simply use cans, but rather must seek alternative glass supplies from other glass bottle suppliers. We try to provide bottles to the distributors and retailers who request bottles because that is what their customers want to buy. We have had situations where our distributors have sufficient supplies of our brands in cans, but are short of the same brands in glass bottles and order more of the bottled versions from AB.

22. Many large venues, such as stadiums and arenas, prohibit beer from being sold in glass bottles or other types of containers for safety reasons. Plastic bottles of beer are sold almost exclusively at these venues. AB produces only a small amount of beer in plastic bottles – less than 1% of its annual output, and really does so only to meet demands of specialty venues like stadiums where products tend to be sold at a higher price. To keep beer fresh in plastic requires specialized plastic bottles that tend to cost approximately [REDACTED] more than a similar-sized glass bottle. While our largest competitor, MillerCoors, has announced an intention to use plastic bottles for the 32- and 40-ounce offerings of some of its sub-premium brands, [REDACTED]

[REDACTED] In addition, AB's present filling lines for cans and bottles would not accommodate plastic containers without significant modifications requiring large capital investments.

23. AB's package mix also includes a small fraction of non-traditional aluminum containers, such as our aluminum bottles and a new bowtie-shaped can. AB views aluminum bottles not as an alternative for glass bottles, but rather as a premium package that attracts consumers with its premium image, builds brand loyalty, and differentiates our brands in the market. [REDACTED]

[REDACTED] The bowtie cans are also used to provide a premium image for the Budweiser brand and are more expensive than traditional cans, but less expensive than glass. AB is hopeful that the bowtie can will be popular with customers, but we do not consider bowtie-shaped cans to be a viable substitute for glass bottles.

24. In 2012, ABI introduced a new product called Bud Light Platinum. This product's introduction and history provides a recent example of how AB depends on competition among glass suppliers to meet its needs and succeed in its business. AB conceived of Bud Light Platinum as a brand extension of its historically most popular brand, Bud Light. To set the new offering apart, AB's Marketing Department conceived of a unique and eye-catching bottle made of cobalt blue glass. AB felt glass was necessary to convey the high-quality, sophisticated image of the new product, and the cobalt blue provided differentiation from other – brown, green, and clear – bottled beers that, it was hoped, would attract consumers. AB solicited its main glass suppliers, VNA and Ardagh, to make sample versions of the bottle so that AB could assess the look and cost of the product each glass manufacturer could produce. Ultimately, VNA made the best-looking bottle and offered it at the lowest price. ABI and VNA reached an agreement for the supplies of the bottle during the first year of its introduction. Soon after its introduction, Bud Light Platinum demand far exceeded AB's projected volume expectations. The product was a hit. Throughout 2012, AB taxed VNA's available capacity for glass production to meet demand for Bud Light Platinum. During this time, AB was forced to seek replacement supplies for amber and flint (clear) bottles it had been receiving from VNA which were now displaced by the blue bottle

production. Ardagh was able to provide substitute amber and flint bottles to keep ABI supplied with the bottles it needed for its other products. By the end of 2012, with Bud Light Platinum a proven success in the marketplace, AB decided to seek bids to see if other glass suppliers might be able to make the brand's signature cobalt bottle for a lower price than that originally agreed between ABI and VNA when the volumes of the Bud Light Platinum were uncertain and expected to be lower. O-I and VNA competed for the blue glass business, which resulted in a lower price and a change to O-I as the supplier beginning in the second half of 2013.

25. Bud Light Platinum also provides an example of how AB typically proceeds with the introduction of a canned offering for new brands. As described above, AB offered Bud Light Platinum exclusively in glass bottles at first to establish the brand's premium image in the minds of consumers. AB expects Bud Light Platinum in glass bottles to continue to sell well. However, AB is now also offering Bud Light Platinum in cans for the convenience of our customers. Despite consumers' general preference for bottles in a brand like Bud Light Platinum, consumers at times prefer cans, such as for outdoor events like cookouts, camping, and boating. There are also certain venues, like sports stadiums and golf courses, that prohibit the use of glass containers or other containers for safety reasons.

26. ABI is presently in the midst of an RFP process to obtain new long-term supply agreements for effectively all of our glass bottle needs for at least the next three years. ABI issued the RFP at the end of January 2013 to VNA, Ardagh, O-I, Fevisa, and Vitro. ABI is aware of no other suppliers that would be capable or interested in offering competitive bids. [REDACTED]

[REDACTED] O-I is strongly aligned with AB's main U.S. beer rival, MillerCoors, and currently supplies one hundred percent of MillerCoors' glass bottle needs, which leaves O-I with limited available capacity to supply AB. As a result, AB will need to obtain the majority of its glass bottle supply from VNA and Ardagh in the United States.

27. As part of the intense effort to negotiate our crucial glass supply for the next few years, ABI retained a strategic consulting company, Mars & Co. ("Mars"). During the fall of 2012, as well as during the on-going negotiations, Mars has provided assistance to ABI in developing its overall strategic approach and responses to proposals.

28. While VNA and Ardagh have different manufacturing "footprints" in terms of plant locations, several of their glass bottle plants presently configured to make beer bottles are close enough to AB breweries that they can compete with each other to supply those breweries. For example, in connection with ABI's current glass bottle RFP process, our consultant, Mars, produced potential sourcing strategy assessments for AB's U.S. breweries. [REDACTED]

[REDACTED] The ability of VNA and Ardagh to supply significant overlapping portions of AB's glass bottle demand is also evident in the periodic instances where one firm covers for the other when there are shortages and substitute supplies are needed.

29. [REDACTED]

30. Recently, ABI has reached a tentative agreement with Ardagh that would span seven years. In each year, the prices would increase by set percentages over current levels in addition to price adjustment formulas intended to address inflation of costs for input materials and energy. While further changes to the agreement may yet take place, under the present proposal, from 2014 to 2020, [REDACTED]

31. ABI has not completed its negotiations with VNA. [REDACTED]

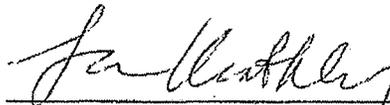
32. [REDACTED]

33. [REDACTED]

34. VNA and Ardagh currently supply approximately 48% of beer glass in the U.S., including approximately [REDACTED] of AB's U.S. beer glass requirements under agreements that ends in December 2013. O-I is the largest U.S. beer glass supplier, accounting for approximately 43% of the market, but given that a significant amount of its capacity is locked in with MillerCoors until 2015, ABI had limited options entering the 2013 RFP negotiation process. The merger would take away one of two alternative suppliers to O-I. And because the glass container industry has been contracting over several years and presently is in a flat to very low growth posture, ABI is unaware of any likely candidate for entering the U.S. glass container market.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct. I understand that by submitting this declaration to the Federal Trade Commission I have not waived my rights or my company's rights to confidentiality as protected by the FTC Act or other law. I hereby request that my identity and the content of this declaration be kept confidential and be exempt from public disclosure as provided by applicable law.

Executed on June 14, 2013



Lee Keathley
Vice President, Procurement - North American Zone
Anheuser-Busch Companies, LLC and
Anheuser-Busch, LLC



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[REDACTED]

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[REDACTED]

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A. So let me ask this question. Given that you're the attorney for Ardagh --

5

Q. Uh-huh.

6

A. -- this is confidential information related to another supplier.

8

Q. Yes.

9

A. I'm a bit uncomfortable discussing it.

10

MR. GOUDISS: We understand, sir, and we're respectful of that. In this sort of proceeding the parties have entered into a protective order that strictly limits the dissemination of this sort of information. Information, for example, will not be shared with anybody at Ardagh or VNA.

17

It is strictly for the use of outside counsel in connection with this case. It has been so approved by the Court, and unless your counsel instructs you, I think -- and I apologize for your discomfort -- you do need to answer my questions.

22

MR. SEWARD: We appreciate that, Alan, but I think our -- our client just wanted to get it on the record that this is very sensitive.

25

MR. GOUDISS: I -- I completely

1

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4

Q. Okay. Are you familiar with a company called Vitro?

5

6

A. I am.

7

8

Q. Has AB as part of its footprint strategy considered the possibility of contracting with Vitro?

9

10

11

A. Vitro was included in our request for proposal.

12

Q. Uh-huh.

13

A. They declined to bid.

14

Q. Okay. Did they tell you why?

15

16

17

A. They didn't tell me why. We've asked them to bid, though, historically, and they've never been price competitive for our business.

18

Q. Is that because of freight cost?

19

20

A. That's my belief, it's because of freight.

21

[REDACTED]

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Q. Okay. Could you turn back to slide three?

A. Okay.

Q. It's entitled, Combination of Margins. Do you see that?

A. I do. I see the slide.

Q. Okay. And then the fourth bullet point says, Current Margin on ABI U.S. Business. Do you see that?

A. I do.

Q. What is that -- does that refer to the glassmakers' margins or ABI's margins on the glass supplied?

A. That refers to the glassmakers' projected margin on AB's business.

Q. Okay. And -- and do you know what the reference period is for this?

A. That would be our view of their current margin.

1

[REDACTED]

25

Q. Okay. Thank you. Do you know how Mars

1

4

Q. Okay. Separate and apart from Longhorn and the four DIFA, that's D-I-F-A, facilities, and putting aside any plants ABI might acquire as part of a divestiture here, has ABI considered acquiring other glass plants as part of its vertical strategy to mitigate the impact of price increases?

10

A. Not that I'm aware of.

11

Q. Okay.

12

A. In the U.S.

13

Q. Okay. You mentioned earlier the possibility of a greenfield plant?

15

A. Correct.

16

Q. Is the possibility of investing in a greenfield plant part of the vertical strategy to mitigate price increases?

19

A. Yes.

20

Q. Okay. And is ABI still considering the possibility of investing in a greenfield plant as part of that vertical strategy?

23

A. It's not under serious consideration today.

25

Q. Has it been ruled out?

1 A. I wouldn't say it's been completely
2 ruled out. We've determined the economics are not
3 at such a point where it makes a lot of sense for us
4 to invest the capital.

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[REDACTED]

19 MR. HASSI: Object to form.

20 MR. SEWARD: Objection, calls for

21 speculation.

22 Q. (By Mr. Goudiss) You can answer.

23 A. I don't.

24 Q. Okay. Now, the -- under the goals, it

25 talks about keep cost evolution in line with

1 three-year plan. Do you see that?

2 A. I do.

3 Q. Okay. I take it that's a reference to
4 an internal ABI three-year plan?

5 A. It is.

6 Q. And what three-year period does that
7 plan cover, if you know?

8 A. The plan would cover '14, '15, and '16.

9 Q. And is that a typical time frame for
10 the internal planning at ABI?

11 A. It is.

12

[REDACTED]

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[REDACTED]

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MR. GOUDISS: You can put that one to

19

the side for now. I'm going to ask the reporter to

20

mark as Exhibit 5 a multipage document bearing the

21

Bates number ABI-FTC-0002689 through 2837.

22

(WHEREIN, Exhibit 5, ABI-FTC-0002689

23

through 2837, was marked for identification by the

24

court reporter.)

25

Q. (By Mr. Goudiss) It's a long document.

1

[REDACTED]

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Q. Would you turn to page sixteen? That's the one entitled, Beer Package Mix by Player.

A. Okay.

Q. I take it at least with respect to ABI the mix of can, bottles, and others is to your knowledge accurate?

A. It is accurate.

Q. Okay. So cans make up by far the largest of your packaging needs?

MR. HASSI: Object to the form.

A. That's correct. Based on, again, different segments, different brand styles.

Q. (By Mr. Goudiss) Uh-huh.

A. Value versus premium, so on and so forth. That is our total aggregated --

Q. Right.

A. -- demand needs.

Q. Right. And cans are, generally speaking, cheaper, right?

A. Generally speaking, yes.

Q. Okay. Could you turn to page 24? This is the one entitled, Current ABI price versus

1

2

MR. GOUDISS: We're at the end of a
tape. I'll try to make this quick for you, John.

4

THE WITNESS: Yeah, please, so folks
can catch flights and stuff. Thank you.

6

7

VIDEOGRAPHER: We're going off the
record at approximately 10:15 a.m.

8

(WHEREIN, a recess was taken.)

9

10

VIDEOGRAPHER: We're back on the record
on tape three at approximately 10:24 a.m.

11

12

13

14

Q. (By Mr. Goudiss) I think you may have
answered this before, but in preparation for your
deposition today, did you speak to anybody at the
FTC staff?

15

A. No.

16

17

18

Q. Okay. Did you know that you've been
identified as a witness who will testify live at the
hearing of this matter in October?

19

A. I may have been told that.

20

21

Q. Okay. Are you currently planning on
appearing at that hearing live?

22

MR. SEWARD: That's fine to answer.

23

A. If compelled to, I will.

24

25

Q. (By Mr. Goudiss) But only by
compulsion?

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Q. Okay. I'll ask you to turn to the back

1 of the document. If you start at page 126, it's
2 called, Backup brewery by brewery evaluation.

3 A. Okay.

4 Q. The first one is Houston. And my first
5 question is, again, focusing on say page 128, those
6 are Mars's numbers or estimates as opposed to ABI's?

7 A. So I would assume Mars got the ABI
8 numbers -- got the numbers on the left and the table
9 on the left from ABI. So those would be our -- our
10 requirements and current supply numbers.

11 Q. Uh-huh.

12 A. And then their cost estimates, if this
13 is a similar chart. Let me look at it for a second.

14 Q. Sure. Take your time.

15 A. So this would be their estimates of at
16 least the other suppliers' costs, and I don't know
17 if -- if any other information on Nava production
18 costs were provided to Mars or not.

19 Q. Okay. Well, I'll start there. What
20 does Nava refer to?

21 A. Nava -- Nava I believe refers to the
22 DIFA production locations. Nava would be the Modelo
23 glass supplier locations.

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11

Q. (By Mr. Goudiss) Okay. And when

12

you're making those investment decisions, you are

13

attempting to make investments where you think you

14

can recover that investment and earn some kind of

15

return, right?

16

A. Yes.

17

Q. Okay. And that would be true of the

18

third-party glass suppliers as well, right?

19

MR. HASSI: Object to --

20

Q. (By Mr. Goudiss) When they make

21

investments, they're expecting to recover the cost

22

of those investments and a reasonable rate of

23

return, right?

24

MR. HASSI: Object to the form.

25

A. That seems like a reasonable

1 A. Okay.

2 Q. Okay. And again, I'm sorry to do this
3 to you, but these were numbers that were in part
4 supplied by -- by ABI and then -- and then, if you
5 will, input in this format by Mars?

6 A. So it's my belief we would have
7 provided information around volumes and/or pricing.
8 Mars would have made the estimated analysis on what
9 a glass -- what these individual plants' cost
10 structures would have been.

11 Q. Uh-huh. Okay. And am I correct that
12 according to this chart your -- your principal
13 suppliers in St. Louis have been Anchor and O-I?

14 A. Our principal suppliers in St. Louis
15 have been Verallia/Saint-Gobain Pevely.

16 [REDACTED]

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[REDACTED]

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[REDACTED]

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23 Q. Okay. Okay. If you turn to 148.

24 A. Okay.

25 Q. There -- this is the scorecard for

1 Merrimack.

2 A. It is.

3 Q. Okay. And -- and that's been
4 exclusively supplied at least as of this date by
5 Saint-Gobain, right?

6 A. That's correct.

7 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 MR. GOUDISS: We're going to mark

16 another exhibit, sir.

17 (WHEREIN, Exhibit 6, ABI-FTC-0002844
18 through 2874, was marked for identification by the
19 court reporter.)

20 MR. GOUDISS: For the record, Exhibit 6

21 is a multipage document bearing the Bates numbers

22 ABI-FTC-0002844 through 2874. It appears to be a

23 Mars & Company presentation dated February 27, 2013.

24 It is entitled, NA Glass Strategy Responding to

25 Ardagh's Big Bang.

1 Q. It also attempts to break down margin
2 by segment. Do you see that, the fourth squared
3 bullet?

4 A. I do.

5 Q. Okay. And of all the segments -- and I
6 guess ABI and Miller are treated as separate
7 segments, but they're both considered mass brewers,
8 right?

9 A. Yes.

10

[REDACTED]

1

[REDACTED]

1 [REDACTED]

2 Q. Okay. Would you turn to -- to page
3 three, that presentation? And it's the, Impact of
4 merger on sourcing options by brewery. Do you see
5 that?

6 A. I do.

7 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 Q. Okay. And -- and I think we've
5 established this, but the Anchor facility in
6 Jacksonville is clearly the closest facility for
7 those, correct?

8 A. For Jacksonville.

9 Q. Yes.

10 A. Correct.

11 Q. And -- and Warner Robins is the closest
12 for Cartersville, right?

13 A. Actually, the O-I Atlanta facility is
14 closer to Cartersville than the Warner Robins
15 facility.

16 Q. Uh-huh.

17 A. Geographically.

18 [REDACTED]
[REDACTED]
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14 Q. -- capacity, right. Okay. If you
15 return to page six of the presentation, it says,
16 Realistic Negotiation Options. Do you see that?

17 A. I do.

18 Q. And if you look at the Supplier
19 alignment options, do you see that?

20 A. I do.

21

22

23

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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● [REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

1 [REDACTED]

2 Q. Any other potential new entrants that
3 you can think of as you sit here today?

4 A. Not that I can think of.

5 Q. Okay. Now, if you turn to page eight.
6 This is an estimate of synergies done by Mars on the
7 Ardagh/Verallia deal?

8 A. Okay.

9 Q. I'm asking if you --

10 A. I believe that's what this is.

11 Q. -- recognize it as such.

12 A. I do.

[REDACTED]

23 Q. Could you turn to page eleven?
24 Initial -- and this is, Options assessment,
25 recommended approach, 202?

1

2

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5

MR. HASSI: Object to the form.

6

A. Define "strong-arm."

7

8

9

MR. GOUDISS: Well, let me mark as the next exhibit a one-page document bearing the Bates number ABI-LIT-0001955.

10

11

12

(WHEREIN, Exhibit 11, ABI-LIT-0001955, was marked for identification by the court reporter.)

13

14

Q. (By Mr. Goudiss) Is that an e-mail from you to the team?

15

16

A. It is.

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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12

[REDACTED]

13

Q. Okay. Okay, sir. Do -- has

14

Anheuser-Busch from time to time looked at both

15

aluminum bottles as an alternative packaging source

16

to glass?

17

A. We have. As an -- as an alternative

18

packing source to glass?

19

Q. Yes.

20

A. No.

21

Q. Okay. You've looked at it as a

22

packaging source, correct?

23

A. That's correct.

24

MR. GOUDISS: Okay. Let's have the

25

reporter mark as Exhibit 11 -- 12, sorry, the

1 ABI knew that at the end of 2013 it had contracts
2 expiring with each of Ardagh and Verallia; is that
3 right?

4 A. Yes, we did.

5 Q. And it engaged Mars to assist you in
6 the upcoming negotiations with those two suppliers?

7 A. Given the magnitude of spend for us in
8 [REDACTED]
9 was appropriate to begin building a strategy around
10 how we would manage those contracts going forward
11 all the way back into 2012. So we considered -- we
12 worked on this strategy for some time.

13 Q. And did the strategy require some
14 adjustment when Ardagh announced it was acquiring
15 Verallia?

16 A. Yes, it did.

17 Q. What was the -- strike that.

18 Why did it require changes as a result
19 of that acquisition?

20 MR. GOUDISS: I object. Go ahead.

21 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

Q. (By Mr. Hassi) And the RFP that ABI

18

put out, when did you put that out?

19

A. Wow. I know we have the document here.

20

I think it was sometime around end of January, early

21

February. I -- somewhere in that time frame.

22

Q. Was it after the proposed merger was

23

announced?

24

A. I think the formal document actually

25

went out after we knew about the merger. But I

1 could be wrong. That's my recollection.

2 Q. And the first responses you received
3 from Ardagh and Verallia, those came in after they
4 had announced their intent to merge?

5 A. They did.

6 Q. Okay. And in those responses Ardagh
7 declined to -- well, strike that.

8 In the RFP did you ask Ardagh to bid on
9 business where Verallia was the incumbent?

10 A. We gave all the suppliers in the RFP
11 the opportunity to bid on any pieces of volume that
12 they would be interested in. So yes.

13 Q. And so you likewise offered Verallia
14 the opportunity to bid on business where Ardagh was
15 the incumbent?

16 A. That's correct.

17 [REDACTED]

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[REDACTED]

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[REDACTED]

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Q. (By Mr. Hassi) You mentioned in

15

regards to that meeting, you said something about

16

concern about two big suppliers reducing competition

17

in the industry. Can you tell us what you meant by

18

that?

19

MR. GOUDISS: Again, I object. Go

20

ahead.

21

A. Well, so with two big suppliers now

22

merging in the industry, that -- that essentially

23

creates in the U.S. for suppliers that are of

24

significant competition for us a duopoly type of

25

environment now. Instead of three players, you

1 Q. Okay. You were asked a number of
2 questions about the Mars estimates of the various
3 companies' EBITDA margins. Do you remember that?

4 A. I do.

5 Q. If you had access to Mars's estimates
6 or the actual company's internal documents that show
7 their EBITDA, which one would you rely upon?

8 MR. GOUDISS: I object. Go ahead.

9 A. So to make sure I understand the
10 question, if I had actual audited financial
11 statements from the supplier versus Mars's
12 estimates, I would have to rely on the suppliers'
13 audited financial statements.

14 Q. (By Mr. Hassi) Okay. In other words,
15 the Mars estimates are just that, they're estimates,
16 right?

17 A. That's correct.

18 [REDACTED]
[REDACTED]

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[REDACTED]

MR. HASSI: Okay. Let me show you a document we marked as PX4526.

(WHEREIN, Exhibit PX4526, List of opportunities, was marked for identification.)

Q. (By Mr. Hassi) And if you could take a minute to look at it and identify it for me.

A. So this looks like a listing of opportunities to save money in the glass area.

Q. Okay. And if you -- and Tim Braden, that's somebody who's on your team?

A. It is.

Q. Okay. If you could turn to the second page, it's listed, Top Fifteen Opportunities Glass. And if you could take a look at the very first opportunity and the largest opportunity on the page and explain to us what that opportunity is according to Mr. Braden?

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

12

[REDACTED]

13

Q. Okay. I take it beer sale -- beer sales are -- at least in cans are seasonal?

15

MR. GOUDISS: I object. Go ahead.

16

A. Beer sales across the board are seasonal.

18

Q. (By Mr. Hassi) Okay. Are cans more popular in the summer months than they are in the winter months?

21

A. So cans and glass are both more popular in the summer months than they are in the winter months since we have a seasonal product.

24

Q. Okay. People just generally drink more beer in the summer?

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[REDACTED]

Q. (By Mr. Hassi) Do you know how long it would take to greenfield a plant in the U.S.?

A. Our estimates based on the work that's been done as part of the negotiation analysis is approximately three years.

MR. HASSI: I'll show you a document that's been marked PX4491.

(WHEREIN, Exhibit PX4491, Schedule for greenfield glass plant, was marked for identification.)

Q. (By Mr. Hassi) Can you identify this?

A. I can. This is a schedule that we put together to estimate the time to actually construct a greenfield glass plant.

Q. And how long did you estimate it would

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. If you could -- I'm going back now, I'm sorry, to Exhibit 4, which was the PowerPoint.

A. Okay.

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

1 by an Anheuser-Busch person.

2

[REDACTED]

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[REDACTED]

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● [REDACTED]

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3

Q. Was there a third option presented,
which would be swinging to cans?

5

A. No.

6

Q. Why not?

7

8

A. Again, we have not evaluated really
moving to cans as a strategy for consumer preference
reasons.

10

11

Q. When -- when you say "for consumer
preference reasons," can you explain that?

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A. So consumers demand packaging -- again,
we've talked a little bit about this -- package and
brand configurations that meet their needs. So just
because as an example we put more cans in the
market, it doesn't mean a consumer will move from a
glass package to a can package. We provide the
combinations to the marketplace and then the
consumer determines what they're going to buy.

Q. If you were to offer your brands only
in cans, does the analysis suggest that the
consumers might move to someone else's glass brand?

MR. GOUDISS: I object. Go ahead.

A. It suggests that they would move away
from our brand. I don't know that we've done

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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3

Q. Are you familiar with a consultant by
the name of Wallace Church or Robert Wallace?

5

A. I am.

6

7

Q. Okay. Have you employed -- has ABI
employed Wallace Church in the past?

8

9

A. At one time we did employ them for a
short engagement.

10

11

Q. And what was the purpose of that
engagement?

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A. So I believe the purpose of that
engagement was to provide conceptual views on
Budweiser packaging. So very high level conceptual
thoughts on primary packaging and secondary
packaging for the Budweiser brand.

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Q. And when you say -- you said glass and
secondary. What are the secondary options? What do

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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Q. On the issue of MACO, I'd like to show

14

you a document we've marked as PX4514.

15

(WHEREIN, Exhibit PX4514, Spreadsheet,

16

was marked for identification.)

17

Q. (By Mr. Hassi) So what I really want

18

to walk through is the last page. This is from an

19

Excel spreadsheet. There are three different

20

workbooks here.

21

A. Okay. Page nine?

22

Q. Yes. And I just want to make sure that

23

we understand the categories here. Well, first, are

24

you familiar with this document or this information?

25

A. I am.

1 MR. GOUDISS: I object. Go ahead.

2 A. I'm not aware of a study that addresses
3 that.

4 Q. (By Mr. Hassi) Okay. Under
5 negotiations, we were just talking about this, but
6 the second bullet says, Moved volume from O-I based
7 on large increases and awarded to SGC and regional
8 players. It goes on to say Anchor and Fevisa. So
9 did Anchor capture some of the volume from former --
10 would it formerly have been supplied by O-I?

11 A. So again, I'm not familiar with the
12 details at that time, but according to this
13 document, which looks like a presentation that was
14 made to management relative to approvals needed to
15 enter into these agreements, Anchor would have won
16 some of that volume, as well as Fevisa.

17 [REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

18

[REDACTED]

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MR. HASSI: Let me show you a document

22

we've marked as PX4494.

23

(WHEREIN, Exhibit PX4494, Graphs, was

24

marked for identification.)

25

Q. (By Mr. Hassi) I asked you some

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[REDACTED]

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(WHEREIN, Exhibit PX4525, Summary of proposed terms with Fevisa, was marked for identification.)

Q. (By Mr. Hassi) Let me show you a document we've marked as PX4525.

A. Okay.

Q. This is a summary of the proposed terms with Fevisa that was presented to the -- is this to the -- DAG, is that the global board of directors or who is that?

A. That's -- that's delegation of authority. That's -- that's the term around requiring a level of approval that the board would need to -- to execute for this contract.

23

● [REDACTED]
● [REDACTED]
● [REDACTED]

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[REDACTED]

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MR. HASSI: I'll show you a document
we've marked as PX4524.

11

12

(WHEREIN, Exhibit PX4524, E-mail chain,
was marked for identification.)

13

14

Q. (By Mr. Hassi) It's a lengthy
document. My question is just going to relate to
Mike Fair's e-mail at the top of the page.

15

16

17

A. Okay.

18

Q. Do you know who Mike -- Mike Fair is?

19

20

A. I think Mike Fair used to be the
quality manager for Anchor. I'm assuming he
continues to reside in that position.

21

22

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[REDACTED]

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● [REDACTED]

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● [REDACTED]

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● [REDACTED]

1 -- bottle caps or is that sort of an all-in price to
2 the can?

3 A. So to have a comparable cost to the can
4 and the lid together, you would need to add the
5 plastic bottle price shown here, the roll-on lid
6 closure price which is not shown here, and -- and a
7 label which is also not shown here.

8 Q. And the aluminum bottle to the left of
9 that 16-ounce IE, is that -- can you tell us what
10 those prices represent?

11 A. That is our cost of a 16-ounce impact
12 extruded aluminum bottle purchased from Exal.
13 Again, in cost per thousand.

14 Q. And what's the difference between
15 standard and case packaging?

16 A. So stan -- case packing would be when
17 we require them to pack the bottles in cases for us.

18 

19 Q. Can you take a look at your
20 declaration? I don't remember what number it was
21 marked at. It was --

22 A. I know I have it here.

23 Q. -- 8, 9, or 10, I think. 7, 8, 9?

24 MS. GRAIVIER BARNES: 8.

25 A. I got it.

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MR. HASSI: Subject to recross, I have
no further questions at this time.

MR. GOUDISS: I'm going to just take
two minutes, talk to my colleagues.

VIDEOGRAPHER: We're going off the
record -- watch your microphone. We're going off
the record at approximately 4:13 p.m.

(WHEREIN, a recess was taken.)

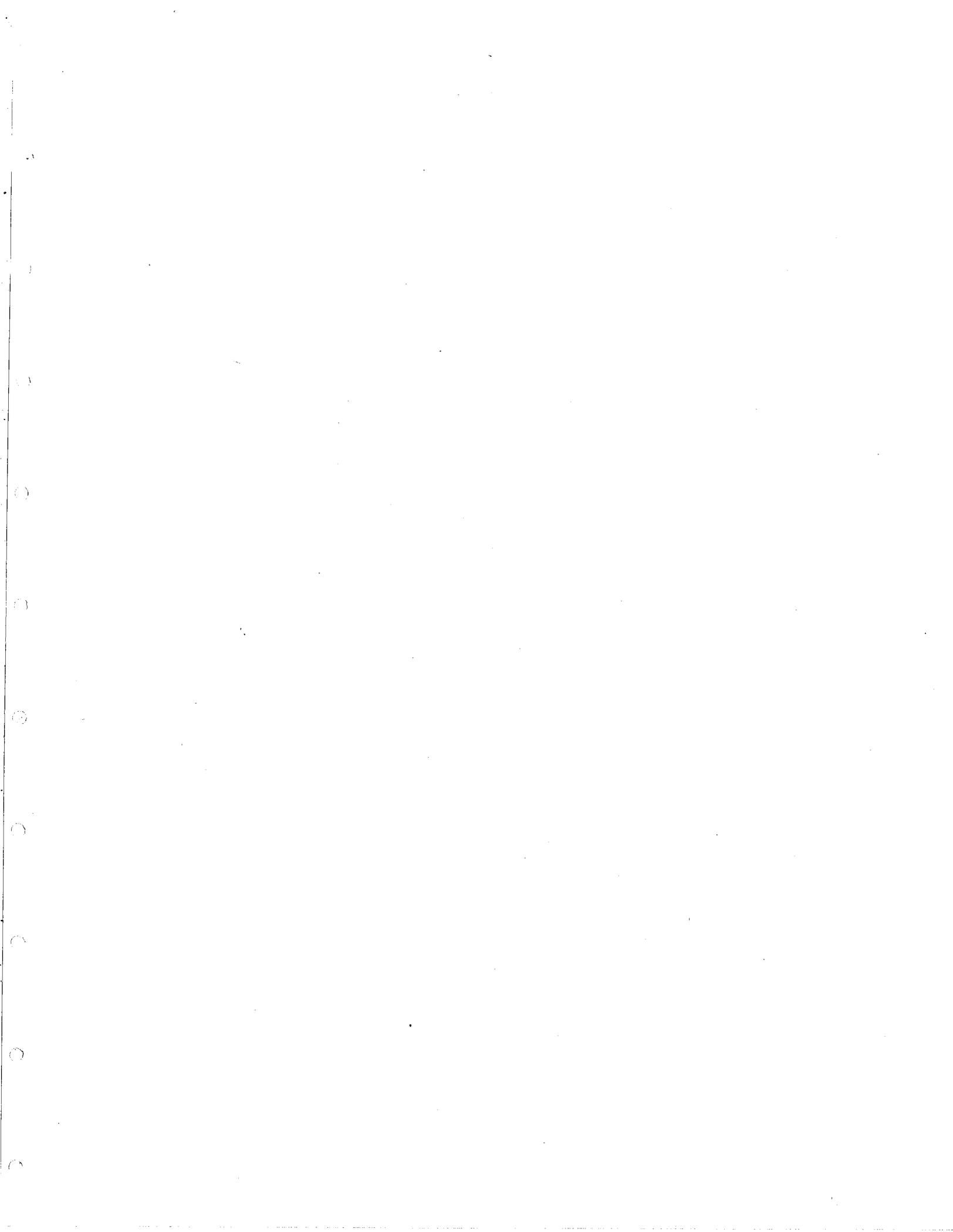
VIDEOGRAPHER: We're back on the record
at approximately 4:16 p.m.

MR. GOUDISS: Sir, we have no further
questions for you. Thank you very much for your
time.

THE WITNESS: Thank you.

MR. HASSI: Thank you for your time,
sir.

THE WITNESS: Thank you.



1 Anheuser-Busch considered the possibility of
2 acquiring any plants that might be divested as part
3 of a resolution of this matter with the FTC?

4 MR. HASSI: Object to the form.

5 A. We would consider it based on the
6 conditions.

7 Q. (By Mr. Goudiss) So depending on
8 conditions, Anheuser-Busch might be interested in
9 acquiring one or more of the plants that might be
10 divested in this matter?

11 MR. HASSI: Object to the form,
12 leading.

13 A. Correct.

14 Q. (By Mr. Goudiss) Do you know which
15 plants?

16 A. I know we've considered a list of
17 plants, but we've made no specific decisions on --
18 on specific facilities, no.

19 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

1 Q. Okay. When was the last such occasion?

2 MR. SEWARD: Objection, privilege.

3 Q. (By Mr. Goudiss) Let me try it this
4 way, sir. In each and every conversation that
5 you've had with anybody else from ABI on the
6 business side about the possibility of divestitures
7 in this matter, has a lawyer been present?

8 A. I don't remember.

9 Q. Okay. Is it possible for you as you
10 sit here today to separate conversations that you
11 had with Mr. Hissnauer, Mr. Fuenmayor, any other
12 business person on the subject of divestitures from
13 those occasions where lawyers were present and
14 participated?

15 A. I would tell you for the most part when
16 we've had discussions related to divestitures, we
17 have had attorneys present. I can't guarantee
18 there's not been a situation where that maybe hasn't
19 happened, but that's generally been our practice for
20 those specific discussions to have an attorney
21 present.

22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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Q. Okay. And were you involved in the

1 negotiation of that agreement?

2 A. I was not involved in the face-to-face
3 negotiation of that agreement, but participated on
4 the negotiation team discussing the strategies and
5 terms that we would request.

6 Q. But you didn't interface directly with
7 the Ardagh team in the negotiations, correct?

8 A. I did not.

9 Q. Okay. Who did?

10 A. To my knowledge, Juan Carlos. At
11 times, again, through various negotiations it would
12 have been Juan Carlos Fuenmayor, Marcus Eloi, or
13 Cassiano Hissnauer, as well as in -- on some
14 circumstances people from my team, Tim Braden or Sue
15 Hoskins would also have been involved in some
16 discussions.

17 Q. Okay. And do you know if lawyers were
18 present throughout those negotiations?

19 A. I know lawyers were not present in
20 every negotiation.

21 Q. Okay. Do you recall receiving reports
22 about the negotiations as they proceeded?

23 A. I recall various discussions about
24 feedback from those negotiations, yes.

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Q. Okay. Fair enough. Has ABI also been engaged in discussions about a new long-term supply agreement with VNA?

9

A. They have.

10

Q. Okay. Who's responsible for conducting those discussions?

12

A. The same team, Juan Carlos, Marcus Eloi, Cassiano Hissnauer.

14

Q. Okay. And you're not the direct interface with VNA on those discussions?

16

A. I'm not.

17

Q. Okay. Now, ABI last entered into long-term supply contracts with Ardagh and VNA in or about 2009; is that right?

20

A. That's correct.

21

Q. Okay. Were you directly involved in the negotiations at that stage?

23

A. I was not.

24

Q. Who conducted those negotiations if you know?

25

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[REDACTED]

14 Q. The FTC asked ABI to produce documents
15 as part of its investigation. Were you aware of
16 that?

17 MR. HASSI: Object to the form.

18 A. I am.

19 Q. (By Mr. Goudiss) Okay. Were you
20 involved in gathering up the documents to produce to
21 the FTC in response to its requests?

22 A. In a very minor sort of way.

23 Q. Okay. And what was your role, if any?

24 A. I looked for documents that may have
25 been in my possession.

1

[REDACTED]

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[REDACTED]

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[REDACTED]

24

MR. GOUDISS: Okay. Okay. We're at

25

the end of the tape, so why don't we take a quick

1 break if that's okay?

2 VIDEOGRAPHER: We're going off the
3 record at approximately 9:06 a.m.

4 (WHEREIN, a recess was taken.)

5 VIDEOGRAPHER: We're back on the record
6 on tape two at approximately 9:16 a.m.

7 Q. (By Mr. Goudiss) Prior to the break,
8 sir, you were telling us about ABI's reaction to
9 Ardagh's initial response to the RFP. Do you recall
10 that?

11 A. Correct.

12 Q. Okay. You understood that that was
13 Ardagh's opening response, right?

14 MR. HASSI: Object to the form.

15 A. That was their first response to the
16 RFP, correct.

17 Q. (By Mr. Goudiss) And it was your
18 expectation that that was going to form the basis
19 for further negotiation, right?

20 MR. HASSI: Object to the form.

21 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. And that initial response on the RFP was for Ardagh on a stand-alone basis, right, not in combination with VNA, right, the initial response?

A. Yes.

Q. And VNA separately responded to the RFP with its own initial response, right?

A. That's correct.

Q. Okay. Now, earlier your counsel objected when I used the term "opposition." Your testimony had been that as far as you know, ABI has not taken a position one way or the other on the acquisition, correct?

A. Correct.

Q. Okay. Do you know if your lawyers in communicating with the FTC have expressed opposition to the --

MR. SEWARD: Objection, privilege.

MR. GOUDISS: I guess we'll never know.

Could you mark as Exhibit Number 4 a multipage document bearing the Bates numbers ABI-LIT-0000318 through -- produced as a native

1 A. The left is a map showing --

2 Q. Oh, yeah. I'm sorry. On page 27
3 there's a map and then there's some historical data
4 on the right?

5 A. Okay.

6 Q. Do you see that?

7 A. I do.

8 [REDACTED]

19 Q. Okay. And then there's the brewery
20 scorecard on page 28. Do you see that?

21 A. I do.

22 Q. Okay. That was prepared by Mars?

23 A. They may have put the information in
24 the slide, but the scorecard information would have
25 had to come from an Anheuser-Busch data source.

1 [REDACTED]

2 Q. Okay. Would you turn to -- to page
3 three, that presentation? And it's the, Impact of
4 merger on sourcing options by brewery. Do you see
5 that?

6 A. I do.

7 [REDACTED]

1

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

Q. Okay. And -- and I think we've

5

established this, but the Anchor facility in

6

Jacksonville is clearly the closest facility for

7

those, correct?

8

A. For Jacksonville.

9

Q. Yes.

10

A. Correct.

11

Q. And -- and Warner Robins is the closest

12

for Cartersville, right?

13

A. Actually, the O-I Atlanta facility is

14

closer to Cartersville than the Warner Robins

15

facility.

16

Q. Uh-huh.

17

A. Geographically.

18

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

16 MR. GOUDISS: Okay. Thank you. I
17 think we're at the end of the tape.

18 VIDEOGRAPHER: We're going off the
19 record at approximately 11:23 a.m.

20 (WHEREIN, a recess was taken.)

21 (WHEREIN, Exhibit 7, FTC-FILE-00024455
22 through 24461; Exhibit 8, PX5020-001 through 008;
23 and Exhibit 9, Blackline comparison of Exhibits 7
24 and 8, was marked for identification by the court
25 reporter.)

1 Exhibit 9, which is the blackline we did -- and I
2 want you to feel free to refer to Exhibits 7 and 8
3 if you would prefer. We just created Exhibit 9 for
4 convenience, okay.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

29 [REDACTED]

30 [REDACTED]

31 [REDACTED]

32 [REDACTED]

33 [REDACTED]

34 [REDACTED]

35 [REDACTED]

36 [REDACTED]

37 [REDACTED]

38 [REDACTED]

39 [REDACTED]

40 [REDACTED]

41 [REDACTED]

42 [REDACTED]

43 [REDACTED]

44 [REDACTED]

45 [REDACTED]

46 [REDACTED]

47 [REDACTED]

48 [REDACTED]

49 [REDACTED]

50 [REDACTED]

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[REDACTED]

22

MR. HASSI: Object to the form.

23

MR. GOUDISS: Okay. Let's mark as

24

Exhibit 10 a single-page document bearing the Bates

25

number ABI-LIT-0001986 and 1987.

1 give me a broad overview of how you make those
2 packaging decisions?

3 A. So -- so on a broad basis, generally
4 speaking we want to have a package type and
5 configuration for each brand that -- that allows us
6 to reach the maximum consumer base, thereby
7 maximizing our volume.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 So recognizing all consumers don't want
14 the same thing, we try to project as we're
15 introducing a new brand or managing an existing
16 brand what the correct package configurations are
17 that -- that yield the broadest opportunity for
18 our -- for our brands in the marketplace.

19 Q. And how does -- are you comfortable
20 with me calling it ABI? Is that --

21 A. Sure.

22 Q. How does ABI determine on the launch of
23 a new brand what consumers want and what package to
24 put things in?

25 A. We typically will do studies, market

1 A. That's correct.

2 Q. And this second slide, what's the
3 difference between -- between the two?

4 A. So the first slide is percentages. So
5 the second slide is in some type of units. They are
6 not millions or thousands of cans. They could be
7 barrels. I'm not sure exactly what the units are.
8 They're meant to show the change in units. My first
9 guess would be they would be barrels, but I'm not
10 positive.

11 Q. So ABI's volume is down. The volume of
12 beer that you've sold in total is down since 2008;
13 is that right?

14 A. That's correct.

15 Q. And it sounded like you weren't sure
16 what the units were, but is it correct that --

17 A. I think they're barrels, but I'm not
18 positive.

19 Q. Okay.

20

[REDACTED]

24 MR. HASSI: I'll show you a document
25 we've marked as PX3530.

1

[REDACTED]

1

[REDACTED]

21
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Q. Right. If you could look at Exhibit 6,
please. Actually, you know what, set that to the
side for a minute. Let me ask a couple of questions
first.

ABI knew that it was going to have --

1 ABI knew that at the end of 2013 it had contracts
2 expiring with each of Ardagh and Verallia; is that
3 right?

4 A. Yes, we did.

5 Q. And it engaged Mars to assist you in
6 the upcoming negotiations with those two suppliers?

7 A. Given the magnitude of spend for us in
8 [REDACTED]
9 was appropriate to begin building a strategy around
10 how we would manage those contracts going forward
11 all the way back into 2012. So we considered -- we
12 worked on this strategy for some time.

13 Q. And did the strategy require some
14 adjustment when Ardagh announced it was acquiring
15 Verallia?

16 A. Yes, it did.

17 Q. What was the -- strike that.

18 Why did it require changes as a result
19 of that acquisition?

20 MR. GOUDISS: I object. Go ahead.

21 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 MR. HASSI: Let me show you a document
9 we've marked as PX4553.

10 (WHEREIN, Exhibit PX4553, Slides, was
11 marked for identification.)

12 THE WITNESS: Okay.

13 Q. (By Mr. Hassi) Are you familiar with
14 this document?

15 A. I am.

16 Q. And can you tell us what it is?

17 A. It's -- it's a deck that was put
18 together as a review of -- of the glass strategy for
19 2013, including an update on where we were with the
20 Ardagh/Saint-Gobain negotiation.

21 Q. Was it prepared by someone in your
22 group?

23 A. I'm sure the deck was -- it could have
24 been prepared by either one, Carlos or Tim Braden or
25 a combination of the two of them. It was prepared

1

[REDACTED]

2

[REDACTED]

3

4

Q. Are you familiar with a consultant by the name of Wallace Church or Robert Wallace?

5

A. I am.

6

7

Q. Okay. Have you employed -- has ABI employed Wallace Church in the past?

8

9

A. At one time we did employ them for a short engagement.

10

11

Q. And what was the purpose of that engagement?

12

13

14

15

16

A. So I believe the purpose of that engagement was to provide conceptual views on Budweiser packaging. So very high level conceptual thoughts on primary packaging and secondary packaging for the Budweiser brand.

17

[REDACTED]

24

25

Q. And when you say -- you said glass and secondary. What are the secondary options? What do

1 Q. Okay. Container form, that's
2 self-explanatory, as are size and container type.
3 Volume, is that volume of beer packaged in --
4 measured in barrels?

5 A. It is.

6 Q. Okay. And you mentioned MACO. That's
7 margin contribution?

8 A. That's correct.

9 Q. Can you explain what margin
10 contribution means?

11 A. So margin contribution, if I were
12 comparing it to more of an industry standard
13 terminology for margin, it equates most closely to
14 gross profit. So it would be net revenue minus
15 variable cost or costs of goods sold would equal
16 total margin divided by barrels would be margin
17 contributions per barrel.

18 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 bottle, which O-I produced, that has the internal
2 embossing in the neck.

3 Q. (By Mr. Hassi) Uh-huh.

4 A. We evaluated that in the early 2000s
5 before Miller actually adopted it. So that's an
6 example of one. Many different embossing options.
7 Shape options. Color options. Size options.

8 Pretty much the suppliers work with us
9 regularly on package innovation in the glass area,
10 either by our request, or we also have situations
11 where we ask them to come in and present their ideas
12 as well. So it's -- it's a two-way communication on
13 innovation.

14 Q. Okay. Did they compete for your
15 business on innovation?

16 MR. GOUDISS: I object. Go ahead.

17 A. We try to get them to compete for our
18 business on innovation.

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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MR. HASSI: Let me show you a document we've marked as PX4502.

(WHEREIN, Exhibit PX4502, E-mail chain, was marked for identification.)

Q. (By Mr. Hassi) And I'm just going to ask you about the -- you can read whatever you like. I'm just going to ask you about the topmost e-mail on the first page.

A. Okay. I've looked at it.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 MR. HASSI: Okay. I think we need to
9 take a break and change the tape.

10 VIDEOGRAPHER: We're going off the
11 record at approximately 3:23 p.m.

12 (WHEREIN, a recess was taken.)

13 VIDEOGRAPHER: We're back on the record
14 on tape seven at approximately 3:35 p.m.

15 MR. HASSI: Sir, let me show you a
16 document we've marked as PX4512.

17 (WHEREIN, Exhibit PX4512, Glass
18 Contract Review, was marked for identification.)

19 Q. (By Mr. Hassi) It's a thick document.
20 My questions are going to -- if -- if you want to
21 jump there, are going to start on page -- there's a
22 2010 glass contract review that starts on page 95.

23 A. 95.

24 Q. Dash -- dash 95. So if you look at the
25 -- the 4512-095, and my questions are going to start

1

3

MR. HASSI: Okay. You can set that to the side. Let me show you a document we've marked as PX4513.

6

(WHEREIN, Exhibit PX4513, U.S. glass contracts, was marked for identification.)

8

Q. (By Mr. Hassi) My questions, not surprisingly, are going to center around the -- this page ten has a summary of the U.S. glass contracts.

11

A. Okay.

12

Q. Under -- on the page ten, the summary of U.S. glass contracts, the second bullet says, Volume has decreased dramatically year over year to levels not seen since 1997. Do you see that?

16

A. I do.

17

Q. Do you have an understanding as to why ABI's beer packaged in glass volume decreased dramatically in the time leading up to 2010?

20

A. I really don't. I'm not aware that we've studied the shift between glass and cans specifically.

23

Q. Do you know whether -- have you looked at whether the recession played a role, specifically for example on premise sales versus retail sales?

25

1 questions before about the -- I think I asked you
2 some questions before about the performance of Bud
3 Light Platinum in cans. Do you recall that?

4 A. I do.

5 [REDACTED]

1

[REDACTED]

10

MR. HASSI: I'll show you a document
we've marked as PX4524.

12

(WHEREIN, Exhibit PX4524, E-mail chain,
was marked for identification.)

14

Q. (By Mr. Hassi) It's a lengthy
document. My question is just going to relate to
Mike Fair's e-mail at the top of the page.

17

A. Okay.

18

Q. Do you know who Mike -- Mike Fair is?

19

A. I think Mike Fair used to be the
quality manager for Anchor. I'm assuming he
continues to reside in that position.

22

[REDACTED]



1 A. I wanted to clarify that, yes, that
2 there would be more than one supplier in the
3 industry.

4 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 Q. Okay. And why did you -- if you
11 recall, why did you remove that sentence?

12 A. I can't recall why that sentence was
13 removed in lieu of the way it's been rephrased.

14 Q. Okay. If you turn to paragraph 25, the
15 following sentence was removed from the draft.
16 While cans -- while the cans are less expensive to
17 produce, ABI sells a six-pack of Bud Light Platinum
18 in cans at the same wholesale price as a six-pack of
19 Bud Light Platinum in bottles. Do you see that?

20 A. I do.

21 Q. Why was that removed?

22 A. My recollection is it was too much
23 detail for the meaning of the paragraph.

24 Q. That's your best recollection?

25 A. That is my best recollection.

1 location.

2 Q. And does ABI try to determine when
3 consumers are buying on premise what sort of
4 packaging they prefer?

5 A. Yes.

6 Q. And is there a -- is there a preference
7 as between bottles and cans in terms of on premise
8 purchases to your knowledge?

9 MR. GOUDISS: I object. Go ahead.

10 A. It depends on which brand we're talking
11 about.

12 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19 Q. How do you -- how do you categorize
20 your brands? What are the categories that ABI uses?

21 A. So we would have high-end, premium
22 plus, premium, and value. And then there can be
23 varying degrees inside those categories as well, but
24 those are the primary categories.

25 Q. Does the mix of cans and bottles differ

1 A. That would be your Bud Light Platinums,
2 your Black Crowns, those type of brands..

3 Q. Can you give us an example of a value
4 brand?

5 A. A value brand would be Natural Light.

6 Q. Did there -- you mentioned when you
7 first launched Bud Light Platinum it was launched
8 solely in glass; is that right?

9 A. That's correct.

10 Q. And for how long was it solely in
11 glass?

12 A. For at least the first year.
13 Thereabouts.

14 Q. And did there come a point in time
15 where you launched it in cans?

16 A. There did. This year, 2013.

17 Q. And why did ABI launch Bud Light
18 Platinum in cans?

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Q. And before launching it in a can, did ABI study what its consumers wanted and how it might achieve that reach?

A. We did.

(WHEREIN, Exhibit PX4497, Packaging study for the brand Bud Light Platinum, was marked for identification.)

Q. (By Mr. Hassi) Okay. Let me show you a document we marked as PX4497. If you could just take a minute to look at it and -- and then tell me if you -- if you know what this document is.

A. I do recognize the document.

Q. Okay. And can you tell us what it is?

A. It's a study for the brand Bud Light Platinum to determine what new packaging should be introduced for the brand.

Q. And so is this an example of the kind of study that we've just been discussing for an existing brand how you might extend the reach?

A. It is.

Q. Okay. If you would turn to slide eight, it's entitled, Key Learnings. Can you tell us what you understand the first key learning to be here?

1

[REDACTED]

21 MR. GOUDISS: I object. Go ahead.

22 A. That's correct.

23 Q. (By Mr. Hassi) Could you turn to slide
24 eleven, please?

25 A. Okay.

1

[REDACTED]

●

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

16

[REDACTED]

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[REDACTED]

18

Q. I want to show you a document we've
marked as 45 -- PX4531.

20

(WHEREIN, Exhibit PX4531, Two pages
from fact book, was marked for identification.)

22

THE WITNESS: Okay.

23

Q. (By Mr. Hassi) These appear to be two
pages out of something called a fact book. Do I
have that right?

24

25

1 Q. And so you mentioned some of these
2 before, party time, proving myself, outdoor
3 refreshment. Those are examples of need states that
4 ABI uses to classify drinkers or consumers?

5 A. To classify occasions.

6 Q. Or occasions?

7 A. I guess is the way I would characterize
8 it.

9 Q. And by matching a person and a segment
10 with the occasion, you try to then figure out what
11 the right packaging is for that consumer?

12 A. The right packaging, the right
13 marketing, the right brand. We use it for a number
14 of what I'll call commercial initiatives and
15 reviews.

16 [REDACTED]
[REDACTED]

1

[REDACTED]

23 Q. (By Mr. Hassi) And I don't think I
24 asked. Who is the Cambridge Group?

25 A. They're an outside firm that we engaged

1 than glass. However, we choose not to do that.

2

[REDACTED]

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[REDACTED]

MR. HASSI: Let me show you a document we've marked as PX4554.

(WHEREIN, Exhibit PX4554, Glass strategy review, was marked for identification.)

Q. (By Mr. Hassi) I'm going to -- this is -- I'm going to ask you to identify the document, then I'm going to ask you to look specifically at slide six, but feel free to look at whatever you'd like in terms of in the document itself.

A. So this document is a glass strategy review. Again, updating our position following the Ardagh/Saint-Gobain negotiations. I'm not sure this isn't already an exhibit somewhere.

MR. SEWARD: Yeah.

A. It looks familiar.

MR. SEWARD: It looks very similar.

Q. (By Mr. Hassi) It's similar. It's got different --



DECLARATION OF LEE KEATHLEY

Pursuant to 28 U.S.C. § 1746, I, Lee Keathley, declare and state as follows:

1. I am the Vice President of Procurement for the North American Zone of Anheuser-Busch Companies, LLC, a subsidiary of Anheuser-Busch InBev ("ABI"). The North American Zone, as delineated by ABI, includes the United States and Canada. I am also Vice President of Procurement for Anheuser-Busch, LLC ("AB"), a subsidiary of Anheuser-Busch Companies, LLC and the U.S. beer manufacturer. I have been in my current position for approximately two years, and have been with the company for 23 years, during which time I have held a variety of procurement positions. I am presently responsible for all North American procurement activities, including the procurement of glass bottles for ABI's beverages brewed and filled in North America.
2. ABI is the world's largest brewing company. In 2012, AB produced approximately 119 million hectoliters of beer, the majority of which was made up of the Budweiser and Bud Light brands. This beer is produced in AB's 12 U.S. breweries located in St. Louis, Missouri; Newark, New Jersey; Los Angeles, California; Houston, Texas; Columbus, Ohio; Jacksonville, Florida; Merrimack, New Hampshire; Williamsburg, Virginia; Fairfield, California; Baldwinsville, New York; Fort Collins, Colorado; and Cartersville, Georgia. In addition, in 2012 AB imported approximately 2.1 million hectoliters of beers from breweries located abroad. Altogether, AB sells over 115 brands of beer in the United States.
3. AB spends approximately [REDACTED] annually to purchase roughly [REDACTED] glass bottles ([REDACTED] gross) for our breweries in the United States. AB's glass bottle demand rose slightly in 2012 with the introduction and success of our Bud Light Platinum brand. Going forward, AB expects its glass bottle demand to [REDACTED]. Indeed, in our glass bottle Request for Proposal ("RFP") issued to our glass bottle suppliers earlier this year, AB provided guidance that it expects its bottle volumes to [REDACTED]. Over [REDACTED] of AB's glass container demand is for amber colored bottles. Our next biggest demand is for flint (i.e., clear) bottles, which represent about [REDACTED] of our demand. The remainder of our demand is for green bottles, as well as some specialty colors, such as blue and black. The vast majority of our bottles are 12 ounces in size, but we also use many other sizes, including, for example, smaller seven-ounce bottles and larger 18, 32, and 40-ounce bottles.
4. AB presently sources our bottles from five suppliers. Currently, our three main suppliers are Verallia North America ("VNA"), which supplies approximately [REDACTED] our needs, Ardagh Group S.A. ("Ardagh"), which supplies approximately [REDACTED] of our needs, and Owens-Illinois ("O-I"), which supplies around [REDACTED]. The remaining [REDACTED] or so is split roughly evenly between a Mexican supplier, Fevisa, and ABI's own dedicated glass bottle plant, Longhorn. Other than its present suppliers, ABI is unaware of any other viable options for sourcing beer bottles that could meet AB's U.S. needs. More distant beer bottle manufacturers would face significant freight disadvantages in supplying AB's U.S. operations.
5. Longhorn, located in Jacinto City, Texas, is the only glass container plant owned by AB. AB uses all of Longhorn's glass bottle output internally. For the most part, Longhorn's entire production is dedicated to serving AB's Houston brewery. Longhorn is able to meet approximately [REDACTED] of the Houston brewery's annual glass bottle needs. While operating glass bottle plants is not within AB's area of core competency, Longhorn's operation provides AB

with insights into glass production costs and potential efficiencies that are useful to AB in negotiating with third-party glass bottle suppliers. [REDACTED]

6. Fevisa's glass container plant is located in Mexicali, Mexico. Freight costs are a large fraction of the landed cost (i.e., total cost after delivery to a brewery) of bottles. [REDACTED]

7. Although the Mexican supplier, Fevisa, does supply our Los Angeles brewery, I believe all other Mexican glass bottle suppliers seeking to supply to any of AB's other U.S. breweries would carry freight costs that would render their delivered beer bottle cost significantly higher than the delivered costs available from AB's present domestic suppliers. The only other AB brewery close to Mexico is our Houston brewery, but it is primarily supplied by our Longhorn glass plant. [REDACTED]

Heineken/FEMSA, a large beer brewer in Mexico, also owns a Mexican glass plant. If Heineken/FEMSA supplied beer bottles to third-parties, it is highly likely that given its plant's location in Southern Mexico, it would face a large freight disadvantage in supplying breweries in the United States. AB would also be reluctant to source bottles from Heineken/FEMSA because it is a significant rival in the sale of beer.

8. On June 4, 2013, by purchasing the shares tendered in response to its offer, ABI successfully completed its combination with Grupo Modelo ("Modelo"). This transaction included acquiring three existing glass container plants in Mexico owned by DIFA, a Modelo subsidiary. [REDACTED]

[REDACTED] DIFA is also currently constructing a fourth glass container plant in Piedras Negras, Mexico, which is on the U.S. border roughly adjacent to San Antonio, Texas. When completed, the Piedras Negras facility may be able to supply bottles to ABI's Houston brewery, which is approximately 350 miles away, although [REDACTED] of that brewery's glass bottle demand is already supplied by the Longhorn plant described above. [REDACTED]

9. In the past, ABI has occasionally analyzed the viability of potential overseas imports of glass bottles from places like China, Europe, and the Middle East. In addition to freight expenses that make them uncompetitive compared to domestic supplies, overseas imports have other drawbacks as well. For example, most of AB's glass is supplied from glass plants that are within a few hundred miles of a given brewery and delivered within hours of when the bottles are going to be filled. Foreign supplies would impose significant additional logistical costs in the form of warehousing and managing a more complicated supply stream. In addition, AB requires quality



1

[REDACTED]

2

(WHEREIN, Exhibit PX4576, Different

3

scenarios for glass plants in three locations, was

4

marked for identification.)

5

Q. (By Mr. Hassi) Let me show you a

6

document that we marked as document PX4576. I'm

7

just going to refer to one page. I've got a copy of

8

the full document if you want to look at it for the

9

record, but for our purposes --

10

A. This page?

11

Q. I'm going to, yeah, refer to the --

12

A. Oh.

13

Q. -- the second page, but if you want to

14

look at any of the backup. Looking at PX4576, can

15

you identify this?

16

A. These are different scenarios for glass

17

plants in three different locations, varying

18

volumes, and the associated capital costs and

19

returns.

20

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

Q. Okay. If you could -- I'm going back

7

now, I'm sorry, to Exhibit 4, which was the

8

PowerPoint.

9

A. Okay.

10

[REDACTED]

1 Q. (By Mr. Hassi) Okay. Can you explain
2 what a freight lane is?

3 A. So a freight lane would be a normal
4 pattern between a supplier's location and a brewery
5 location.

6 Q. And can the availability of freight
7 lanes sometimes make shipping something farther less
8 expensive because there are regular shipments going
9 down -- going up and back that lane if you will?

10 A. That's correct.

11 MR. HASSI: Let me show you a document
12 we've marked as PX4510.

13 (WHEREIN, Exhibit PX4510, Modelo DIFA
14 Analysis, was marked for identification.)

15 THE WITNESS: Okay.

16 Q. (By Mr. Hassi) Is this an analysis of
17 how AB InBev might use the DIFA plants that it
18 recently acquired in the Modelo deal?

19 A. It is.

20 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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ATTORNEYS' EYES ONLY

1

[REDACTED]

1

[REDACTED]

16

[REDACTED]

23

Q. Okay. I know it's probably on the

24

bottom of your pile, but look at Exhibit 11, please?

25

It's an e-mail. It's a one-page..