



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

In the Matter of

Tronox Limited, a corporation,

National Industrialization Company (TASNEE), a corporation,

National Titanium Dioxide Company Limited (Cristal), a corporation,

and

Cristal USA Inc., a corporation,

Respondents.

Docket No. 9377

**NON-PARTY BILLIONS AMERICA CORPORATION'S MOTION TO QUASH
SUBPOENA AD TESTIFICANDUM, ADJUDICATIVE HEARING**

Pursuant to Rule 3.34 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.34(c), non-party Billions America Corporation ("Billions America") respectfully moves this Court to quash or limit Respondent Tronox, Ltd.'s ("Tronox's") Subpoena *Ad Testificandum*, Adjudicative Hearing, to Megan O'Malley Noe ("Noe"), Billions America Corporation (the "Subpoena"). A true copy of the Subpoena with accompanying cover letter is attached hereto as EXHIBIT A.

From every conceivable perspective, Noe has little or no personal knowledge to present admissible testimony in this proceeding. The sole employee of Billions America, her role and knowledge as a salesperson are strictly circumscribed, as her deposition testimony made clear.

Although Tronox's right to subpoena witnesses may be broad, a *sine qua non* that is missing here is that the subpoenaed witness must have some relevant, admissible, non-duplicative evidence to assist the trier of fact. That is not the situation here, and Tronox did not assert otherwise to Billions America – as this motion explains below.

Tronox appears to argue in its case that expansion by Chinese TiO₂ manufacturers, including separate foreign non-party Lomon Billions Group, may provide future competition. In an effort to elicit testimony pertaining to Lomon Billions Group's Chinese operations, it served Billions America with the Subpoena. Billions America, however, through its corporate representative Noe, possesses no relevant testimonial or other evidence about Chinese manufacturing of TiO₂ in general or Lomon Billions Group specifically. This inability to provide germane testimony stands as a powerful basis for quashing the Subpoena, especially when coupled with the burden to be imposed upon Billions America and its lone employee, Noe, who resides and works in Illinois.

BACKGROUND

Billions America is located in Illinois. A true copy of the Confidential Transcript of the May 18, 2018 Noe deposition transcript is attached as EXHIBIT B.¹ [REDACTED]

[REDACTED] Id. at 9:4-5, 16:3-8, 17:19-20. [REDACTED]

[REDACTED] Id. at 17:22 – 18:2. [REDACTED] Id. Billions America is a subsidiary of Billions Europe, Ltd., which is a European company located in the United Kingdom. Id. at 15:1-11. Billions Europe Ltd., in turn, is a subsidiary of Lomon Billions Group, which is located in China. Id.

¹ Pursuant to Rule 4.2, Billions America submits the transcript as "Confidential" under the Protective Order Governing Confidential Material, attached hereto as EXHIBIT E.

On May 14, 2018, Tronox sent a hearing Subpoena to Noe c/o Bressler, Amery & Ross, P.C., by overnight delivery service, EXHIBIT A. While the Subpoena set an appearance date of May 18, 2018, the cover letter advises that this was the starting date for the hearing and not intended to be the date of testimony. Id. Tronox instructs that the witness will be "notified in advance of the precise date on which you will be scheduled to testify." Id. The letter also references a Subpoena *Ad Testificandum* dated April 30, 2018, allegedly sent from the FTC to Billions America. Id. However, the FTC never served Billions America with a hearing subpoena, and Billions America is not even on its witness list. Id. Finally, Tronox advises that it will only reimburse qualified travel expenses and pay any required, nominal witness appearance fee beyond those incurred in complying with the referenced – though non-existent - FTC subpoena. Id.

On May 18, 2018, Noe testified at her deposition as a corporate representative of Billions America. EXHIBIT B at 12:9-16. She answered questions posed by counsel for both Tronox and the FTC. EXHIBIT B. [REDACTED]

[REDACTED]
[REDACTED] E.g., id. at 35:20 – 43:9. [REDACTED]

[REDACTED] Id. at 12:9-16. [REDACTED]

[REDACTED] E.g., id. at 36:7 – 16, 35:20 – 43:9, 48:23 – 52:14, 54:23 – 65:10, 88:6-90:21, 120:17 – 125:6, 128:19-129:4. [REDACTED] Id. She is not legally competent to testify about the separate foreign entity, Lomon Billions Group, or any other overseas entity.

By letter dated May 21, Billions America requested that Tronox withdraw the hearing subpoena because Noe's testimony lacks any cognizable relevance to the FTC proceeding. A true copy of the May 21, 2018 Letter is attached as EXHIBIT C. Billions America also advised that it is unduly burdensome to compel its sole employee, residing and working out-of-state, to be "on call" to travel to Washington D.C., and this burden could not be reconciled with Noe's lack of relevant information. Id. Finally, Billions America informed Tronox that the FTC never served a trial subpoena, as represented erroneously by Tronox in its May 14 letter. Id. Therefore, Tronox improperly endeavors to limit travel and appearance reimbursement to Billions America. Id.

Tronox responded that it would not withdraw the subpoena. A true copy of the May 22, 2018 e-mail is attached as EXHIBIT D. Its response avoided entirely the critical fact that Noe's requested testimony would lack any cognizable relevance to the FTC proceeding. Id. She is not legally competent to testify about any issue before the FTC. See FTC Rule 3.43(b) ("Evidence that constitutes hearsay may be admitted if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair."); cf. Fed. R. Evid. 401, 402, 601 and 602. Nor is Noe qualified as an expert or lay witness to express substantive opinions. Instead, Tronox effectively stated that Noe must testify because "there are numerous other parties who are similarly disinterested third parties who are testifying at trial." EXHIBIT D. Further, while offering to "address any reasonable concerns about accommodating Noe's schedule," it did not provide any further information about when she would be required to journey from Illinois to Washington D.C. Id. Finally, Tronox remained silent as to fully reimbursing Noe for reasonable travel costs and appearance fees. Id.

ARGUMENT

FTC Rule 3.34 (c) provides recipients of subpoena with the ability to move to quash as follows:

Motions to quash; limitation on subpoenas. Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of 10 days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate arguments, affidavits and other supporting documentation, and shall include the statement required by §3.22(g). Nothing in paragraphs (a) and (b) of this section authorizes the issuance of subpoenas except in accordance with §§3.31(c)(2) and 3.36.

"There is general unanimity among the courts that a subpoena meets the requirements for enforcement if the inquiry is (1) within the authority of the agency, (2) the demand is not too indefinite, and (3) **the information sought is reasonably relevant.**" *Adams v. FTC*, 296 F.2d 861, 866 (8th Cir. 1961), *cert. denied*, 369 U.S. 864 (1962) (addressing 15 U.S.C §49 in context of FTC investigatory authority) (emphasis added). "Of course the subpoena power must at all times be confined to 'the rudimentary principles of justice,' and the courts will plainly refuse to enforce an administrative subpoena which is not within the bounds of reasonableness." *Id.* (citation omitted). A decision on the appropriateness of a subpoena is fact specific and rests within the court's sound discretion. *Id.*

Reasonableness, in turn, may be gleaned from Rule 3.43 concerning the admissibility of evidence at hearing. Subsection (b) provides, in part, "[i]rrelevant, immaterial, and unreliable evidence shall be excluded. Evidence, even if relevant, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or if the evidence would be misleading, or based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Relating to the presentation of evidence, Subsection (d) provides:

(2) The Administrative Law Judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to -

- (i) Make the interrogation and presentation effective for the ascertainment of the truth;
- (ii) Avoid needless consumption of time; and
- (iii) Protect witnesses from harassment or undue embarrassment.

The above rules relating to limitations on evidence at a hearing are consistent with the FTC Rules on limitations of discovery, particularly from third-parties. Rule 3.31(c)(2) provides in part:

The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Administrative Law Judge if he or she determines that:

- (i) The discovery sought from a party or third party is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) The burden and expense of the proposed discovery on a party or third party outweigh its likely benefit.

Noe's testimony would not only be irrelevant, but also inadmissible for lack of personal knowledge. The burden on this disinterested third-party outweighs any discernable benefit to the parties. See Katz v. Batavia Marine & Sporting Supplies, Inc., 984 F.2d 422, 424 (Fed. Cir. 1993) ("fact of nonparty status may be considered by the court in weighing the burdens imposed in the circumstances."). Noe resides and works for Billions America in Illinois. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] She has already testified pursuant to Tronox's deposition subpoena as the corporate representative of Billions America, and answered all questions by counsel for both

Tronox and the FTC. Her testimony clearly shows that she has no information relevant to the matters at-issue in the proceeding.

Instead, Tronox presented Noe with documents relating to the separate foreign entity, Lomon Billions Group, and asked about her “understanding” of those documents. That is, Tronox inquired about her “understanding” of documents from others, but those and similar documents are what gave her such “understanding.” [REDACTED]

[REDACTED]
[REDACTED] EXHIBIT B at 35:20-36:8. [REDACTED]
[REDACTED]

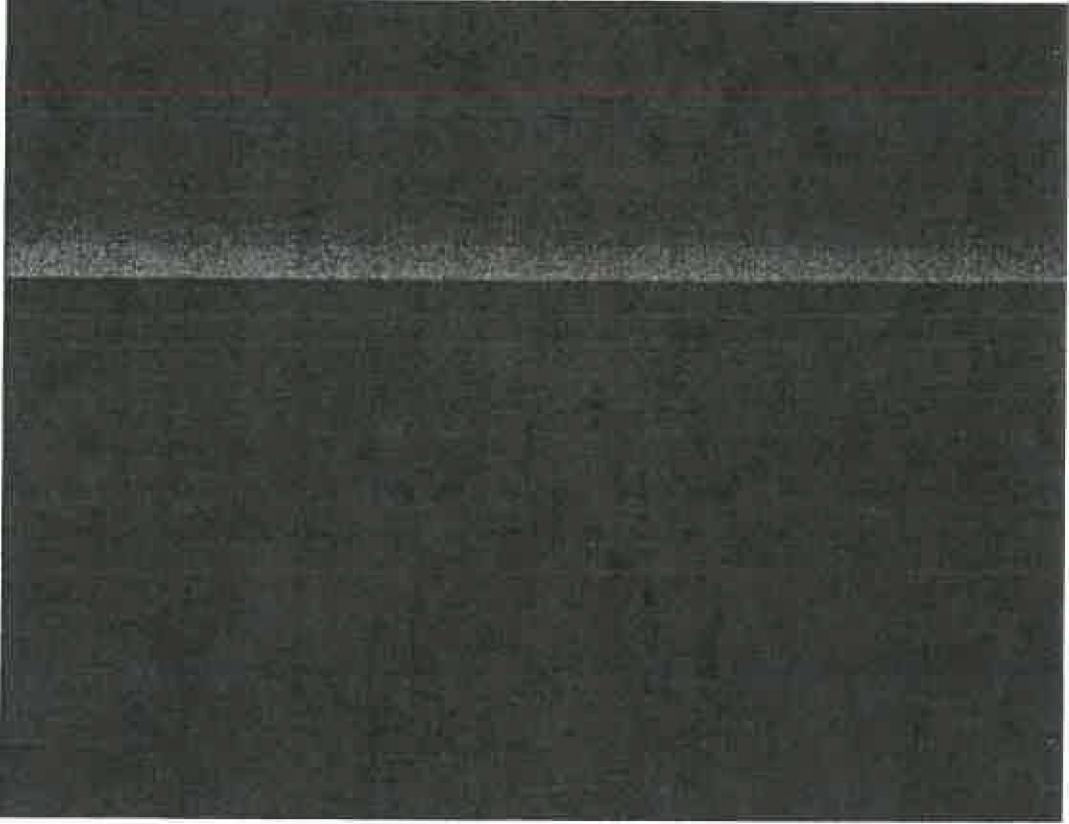


EXHIBIT B at 38:25 – 39:21 (emphasis added).²

²

[REDACTED] EXHIBIT B at 36:23 – 37:1.

This was pure bootstrapped hearsay without a scintilla of reliability from the witness, and is representative of the type of testimony elicited from Noe by Tronox. [REDACTED]

[REDACTED] Essentially, anyone could read something and express an “understanding.” That kind of testimony does not validate a witness for testimony about what may be in a document.³ See FTC Rule 3.43(b). Compare In re LabMD Inc., 2015 FTC Lexis 272 at *165-171 (FTC Nov. 13, 2015) (document excluded as hearsay when witness tasked with creating foundation “could not possibly authenticate or otherwise vouch for the reliability of the data in CX0451 since he has no personal knowledge of the CLEAR database itself, or the accuracy or reliability of the source data comprising the CLEAR database.”). [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Instead, Tronox would have an unknowledgeable witness testify that, yes, she read what someone else said.

Billions America asked Tronox to withdraw its Subpoena based upon the above grounds. Yet, despite participating in the deposition, and knowing Noe’s circumscribed knowledge, Tronox evaded this core issue. Instead, it replied, in pertinent part: “We appreciate your concerns about Lomon Billions’ status as a disinterested third party in these proceedings, but you should understand that there are numerous other parties who are similarly disinterested third parties who are testifying at the trial.” EXHIBIT D. That other third parties are being called on to testify is meaningless and inapplicable to Noe’s circumstances. Tronox demands that Billions America’s

³ Tronox meticulously avoided background or follow-up questions to ascertain how Noe could possibly authenticate or vouch for the substance of the documents or whether she had any personal knowledge thereof. The questions also avoided even a semblance of Noe’s experience or background.

only employee put aside all her work to travel from Illinois to Washington D.C. at some unknown future date. Other than a hollow statement, Tronox offers nothing to reduce the burden and make arrangements convenient for the witness. Nor does it even try to define any possible need for her testimony or explain how any relevant and admissible substantive testimony from her could possibly exist. Further, it ignored the simple request to fully compensate Noe for reasonable travel expenses and witness fees if she were to be required to appear.⁴ 16 C.F.R. § 4.5. The burden Tronox places upon Billions America simply cannot be reconciled with the absence of relevant information from Noe.

CONCLUSION

For the reasons set forth above and as supported by the accompanying exhibits, Billions America Corporation respectfully requests that this Court grant its motion to quash Respondent Tronox, Ltd.'s Subpoena *Ad Testificandum*, Adjudicative Hearing, to Megan O'Malley Noe, Billions America Corporation.

DATED: May 24, 2018



Eric L. Chase, Esq.
Gerd W. Stabbert, Jr., Esq.
BRESSLER, AMERY & ROSS
A Professional Corporation
325 Columbia Turnpike
Florham Park, New Jersey 07932
(973) 514-1200
Attorneys for Non-Party
Billions America Corporation

⁴Tronox's May 14 Letter states that it would only reimburse Billions America for costs beyond those incurred responding to an FTC Subpoena. Exhibit A. But, no such FTC subpoena to Billions America exists. Exhibit C. Tronox does not acknowledge or account for this. Exhibit D.

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for non-party Billions America Corporation notified counsel for Tronox Limited via letter dated May 21, 2018, that it requested Tronox Limited to Withdraw the Subpoena. Counsel for Tronox Limited has responded by May 22, 2018, and the parties have not resolved the instant dispute.

DATED: May 24, 2018


Eric L. Chase, Esq.
Gerd W. Stabbert, Jr., Esq.
BRESSLER, AMERY & ROSS
A Professional Corporation
325 Columbia Turnpike
Florham Park, New Jersey 07932
(973) 514-1200
Attorneys for Non-Party
Billions America Corporation

CERTIFICATE OF SERVICE

I, Gerd W. Stabbert, Jr., hereby certify that on May 24, 2018, I caused an original and one copy of Non-Party Billions America Corporation's Motion to Quash and proposed Order, to be filed via overnight mail with:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580

I further hereby certify that on May 24, 2018, I caused a courtesy copy of Non-Party Billions America Corporation's Motion to Quash and proposed Order, to be sent via overnight mail to:

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

I further hereby certify that on May 24, 2018, I caused copies of Non-Party Billions America Corporation's Motion to Quash and proposed Order, to be served via overnight mail to:

Michael Williams, Esq.
Rachel Hansen, Esq.
Kirkland & Ellis, LLP
655 Fifteenth street, N.W.
Washington, DC 20005

E. Eric Elmore, Esq.,
Bureau of Competition,
Mergers II Division
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

I further hereby certify that on May 24, 2018, I caused an electronic copy of Non-Party Billions America Corporation's Motion to Quash (public version) and proposed Order, to be filed with the Federal Trade Commission and served on parties in this matter who are registered with the FTC E-Filing System via E-Service.

DATED: May 24, 2018

E/C

Eric L. Chase, Esq.
Gerd W. Stabbert, Jr., Esq.
BRESSLER, AMERY & ROSS
A Professional Corporation
325 Columbia Turnpike
Florham Park, New Jersey 07932
(973) 514-1200
Attorneys for Non-Party
Billions America Corporation

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EXHIBIT A

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

Michael F. Williams, P.C.,
To Call Writer Directly:
+1 202 879 5123
michael.williams@kirkland.com

655 Fifteenth Street, N.W.
Washington, D.C. 20005
United States
+1 202 879 5000
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May 14, 2018

VIA FEDEX

Megan O'Malley Noe
Billions America Corporation
c/o Gerd W. Stabbert, Jr. Esq.
Bressler, Amery & Ross, P.C.
325 Columbia Turnpike, Suite 301
Florham Park, NJ 07932

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

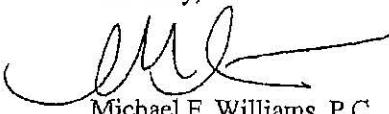
Dear Ms. Noe:

Please find enclosed the *subpoena ad testificandum* issued for your appearance to testify in the above-referenced matter in Washington, DC. You will be notified in advance of the precise date on which you will be scheduled to testify. Please note that the date in Box 5 of the subpoena is the date and time on which the adjudicative hearing is set to begin, not the date on which you will be scheduled to testify.

We understand that Complaint Counsel previously issued a subpoena to you to testify at the adjudicative hearing. To the extent that you incur any reimbursable travel expenses above and beyond those incurred for testifying in accordance with Complaint Counsel's April 30, 2018 subpoena, Tronox Limited will reimburse those qualifying travel expenses in accordance with the applicable rules. Similarly, to the extent that you testify on days you otherwise would not have testified pursuant to Complaint Counsel's subpoena, Tronox Limited will pay the applicable witness appearance fee of \$40.00 per day. Please direct all questions related to travel reimbursement pursuant to this subpoena to Travis Langenkamp at (202) 824-6984 or tlangenkamp@kirkland.com.

Please direct all other questions to Michael Williams at (202) 879-5123 or mwilliams@kirkland.com.

Sincerely,



Michael F. Williams, P.C.



SUBPOENA AD TESTIFICANDUM ADJUDICATIVE HEARING

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO	2. FROM
Megan O'Malley Noe, Billions America Corporation c/o Gerd W. Stabbert, Jr. Esq. Bressler, Arney & Ross, P.C. 325 Columbia Turnpike, Suite 301 Florham Park, NJ 07932	UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
<p>This subpoena requires you to attend and give testimony at an adjudicative hearing, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.</p>	
3. PLACE OF ADJUDICATIVE HEARING	4. YOUR APPEARANCE WILL BE BEFORE
FTC Courtroom, Room 532 Federal Trade Commission Building 600 Pennsylvania Ave. N.W. Washington, D.C. 20580	The Honorable D. Michael Chappell
	5. DATE AND TIME OF ADJUDICATIVE HEARING
	May 18, 2018 at 10:00 a.m.
6. SUBJECT OF PROCEEDING	
<p>Matter Name: Tronox Limited/ Cristal USA Matter # D09377</p>	

7. ADMINISTRATIVE LAW JUDGE	8. COUNSEL AND PARTY ISSUING SUBPOENA
D. Michael Chappell	Michael F. Williams Kirkland & Ellis LLP 655 Fifteenth Street NW, Suite 1200 Washington, D.C. 20005
Federal Trade Commission Washington, D.C. 20580	

DATE SIGNED	SIGNATURE OF COUNSEL ISSUING SUBPOENA
5/14/18	

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1995.

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RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- In person.
- By registered mail.
- by leaving copy at principal office or place of business, to wit:

via Federal Express

on the person named herein on:

(Month, day, and year)

Michael F. Williams

(Name of person making service)

Attorney

(Official title)

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EXHIBIT B

In re Tronox Limited; FTC Docket No. 9377

Confidential Transcript of May 18, 2018 Deposition of Billions America
Corporation designee Megan O'Malley Noe

MARKED CONFIDENTIAL
REDACTION IN ENTIRETY REQUESTED

PUBLIC - REDACTED

EXHIBIT C

BRESSLER, AMERY & ROSS

A PROFESSIONAL CORPORATION

P.O. Box 1980 • Morristown, NJ 07962

Hand Delivery:

325 Columbia Turnpike • Suite 301 • Florham Park, NJ 07932

Gerd W. Stabbert, Jr.
Counsel

973.514.1200 • fax 973.514.1660
www.bressler.com

direct: 973.660.4457
gstabbert@bressler.com

May 21, 2018

Via Email & First-Class Mail

[michael.williams@kirkland.com]

Michael F. Williams, Esq.

Kirkland & Ellis LLP

655 Fifteenth St. NW, Suite 1200
Washington, D.C. 20005

Re: Tronox Limited / Cristal USA
Docket No. 9377

Dear Michael:

We are in receipt of a Subpoena *Ad Testificandum*, Adjudicative Hearing, to Megan O'Malley Noe, Billions America Corporation ("Billions America") and accompanying cover letter. In light of Ms. Noe's recent deposition testimony, however, we request that you reconsider the need for her hearing testimony and that you withdraw the Subpoena *Ad Testificandum*.

Billions America is a disinterested non-party. Your colleague's lines of questioning during the recent deposition, and public filings in the FTC proceeding, indicate that one of Tronox's arguments is that operation and expansion by Chinese manufacturers, including separate foreign third-party Lomon Billions Group, may provide future competitive restraint. Ms. Noe is the only employee of Billions America, and her duties as a corporate representative do not include substantive information about the separate entity Lomon Billions Group. Her May 18 testimony made clear that she is not knowledgeable about expansion of Chinese manufacturing in general, or as to Lomon Billions Group specifically. She does not do analysis or strategic planning. We ask that you withdraw the hearing subpoena because her testimony lacks any cognizable relevance to the FTC proceeding.

Further, your letter states that the date and time set in the subpoena is not the date for Billions America's appearance, and that the date would be some unknown date in the indefinite future. Public filings in this matter indicate that the hearing is to be set for non-consecutive days throughout the summer, including at least through July 2018. It is unreasonable and burdensome to compel Billions America's sole employee, residing and working out-of-state, to be "on call" to

Michael F. Williams, Esq.
May 21, 2018
Page 2

BRESSLER, AMERY & ROSS
A PROFESSIONAL CORPORATION

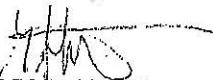
travel to Washington D.C. Your letter does not offer any accommodation. This burden cannot be reconciled with Ms. Noe's lack of relevant information.

Finally, your letter references "Complaint Counsel's April 30, 2018 subpoena" to Billions America. However, Complaint Counsel never served Billions America with a hearing subpoena, and we understand that Billions America is not even on its hearing witness list. Therefore, your effort to limit Tronox's reimbursement to Billions America for travel expenses and appearance fees is improper and in contravention of applicable authority.

This is a good faith effort to confer and resolve the above disputes by agreement under FTC Rules 3.34(c) and 3.22(g). In light of the time constraints provided by Rule 3.34(c), we request that you advise us no later than tomorrow, May 22, whether Tronox will withdraw the hearing subpoena. Thank you for your cooperation in the foregoing.

Very truly yours,

BRESSLER, AMERY & ROSS, PC.



Gerd W. Stabbert, Jr.

cc: Rachel Hansen, Esq. (via Email & First-Class Mail)
 Eric Elmore, Esq. (via Email & First-Class Mail)
 Eric L. Chase, Esq.

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EXHIBIT D

Gerd W. Stabbert

From: Williams, Michael F. <mwilliams@kirkland.com>
Sent: Tuesday, May 22, 2018 9:02 AM
To: Elaine Kokawski; Hansen, Rachel S.; eelmore@ftc.gov
Cc: Gerd W. Stabbert; Eric Chase
Subject: RE: Tronox Limited / Cristal USA (Docket No. 9377)

Gerd -- I am writing in response to your letter of yesterday afternoon concerning our trial subpoena to Ms. Noe. We appreciate your concerns about Lomon Billions' status as a disinterested third party in these proceedings, but you should understand that there are numerous other parties who are similarly disinterested third parties who are testifying at the trial. We can address any reasonable concerns about accommodating Ms. Noe's schedule and can provide more information about when we anticipate her testimony will occur. We will not be withdrawing our trial subpoena, but we can be available to discuss any other concerns you might have. Thank you.

MICHAEL F. WILLIAMS, P.C. | KIRKLAND & ELLIS LLP
655 15th Street, NW, Suite 1200 | Washington, DC 20005
1+202-879-5123 PH | <http://www.kirkland.com/mwilliams>

From: Elaine Kokawski <EKokawski@bressler.com>
Sent: Monday, May 21, 2018 2:37 PM
To: Williams, Michael F. <mwilliams@kirkland.com>; Hansen, Rachel S. <rachel.hansen@kirkland.com>; eelmore@ftc.gov
Cc: Gerd W. Stabbert <GStabbert@bressler.com>; Eric Chase <EChase@bressler.com>
Subject: Tronox Limited / Cristal USA (Docket No. 9377)

Please see attached.

Elaine A. Kokawski
Legal Secretary
BRESSLER, AMERY & ROSS, P.C.
325 Columbia Turnpike, Florham Park, NJ 07932
973.514.1200 | ekokawski@bressler.com
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BRESSLERAMERYROSS

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EXHIBIT E

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

In the Matter of

Tronox Limited,
a corporation,

National Industrialization Company
(TASNEE)
a corporation,

National Titanium Dioxide Company
Limited (Cristal)
a corporation, and

Cristal USA Inc.
a corporation,

Respondents.

DOCKET NO. 9377

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:


D. Michael Chappell
Chief Administrative Law Judge

Date: December 7, 2017

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter;

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL - FTC Docket No. 9377" or any other appropriate notice that identifies this proceeding together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL - FTC Docket No. 9377" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.
7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.
8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.
9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.
11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.
12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.
13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Notice of Electronic Service

I hereby certify that on May 24, 2018, I filed an electronic copy of the foregoing Non-Party Billions America Corporation Motion to Quash Subpoena - Public - Redacted, Proposed Order for Non-Party Billions America Corporation Motion to Quash Subpoena, with:

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

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

I hereby certify that on May 24, 2018, I served via E-Service an electronic copy of the foregoing Non-Party Billions America Corporation Motion to Quash Subpoena - Public - Redacted, Proposed Order for Non-Party Billions America Corporation Motion to Quash Subpoena, upon:

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



In the Matter of

Tronox Limited, a corporation,

National Industrialization Company (TASNEE), a corporation,

National Titanium Dioxide Company Limited (Cristal), a corporation,

and

Cristal USA Inc., a corporation,

Respondents.

Docket No. 9377

ORDER FOR MOTION TO QUASH

UPON CONSIDERATION of Non-Party Billions America Corporation's Motion to Quash Subpoena *Ad Testificandum*, Adjudicative Hearing, and having considered the Motion and the supporting arguments and any responses thereto, it is HEREBY ORDERED that the Motion to Quash is hereby GRANTED.

IT IS THEREFORE ORDERED that the Subpoena *Ad Testificandum*, Adjudicative Hearing, issued to Megan O'Malley Noe, Billions America Corporation, by Tronox Ltd., dated May 14, 2018, is hereby quashed in its entirety.

SO ORDERED this _____ day of _____, 2018.

Honorable D. Michael Chappell
Administrative Law Judge

Notice of Electronic Service

I hereby certify that on May 24, 2018, I filed an electronic copy of the foregoing Non-Party Billions America Corporation Motion to Quash Subpoena - Public - Redacted, Proposed Order for Non-Party Billions America Corporation Motion to Quash Subpoena, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
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Donald Clark
600 Pennsylvania Ave., NW
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