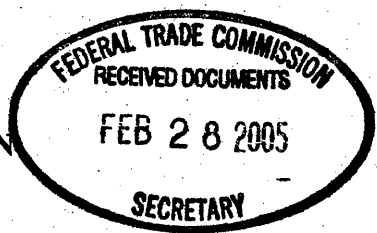


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



_____)
In the Matter of)
)
CHICAGO BRIDGE & IRON COMPANY N.V.) Corrected Public Version
a foreign corporation,)
)
CHICAGO BRIDGE & IRON COMPANY) Docket No. 9300
a corporation,)
)
PITT-DES MOINES, INC.,)
a corporation.)
_____)

**RESPONDENTS' MOTION FOR *IN CAMERA* TREATMENT OF MATERIAL
PREVIOUSLY DESIGNATED AS CONFIDENTIAL**

Respondents¹ file this Motion for *In Camera* Treatment of Material Previously Designated as Confidential pursuant to Rule 3.45(b) of the Federal Trade Commission ("FTC") Rules of Practice, 16 C.F.R. §3.45(b). Respondents respectfully request that the Commission enter a protective order directing *in camera* treatment for certain material containing highly confidential and sensitive CB&I business information.

**I.
INTRODUCTION**

On February 11, 2005, Complaint Counsel in this action filed an Opposition to Respondents' Petition to Reconsider (the "Opposition"). Complaint Counsel's Opposition included material that CB&I submitted to the FTC in another matter, and which it had previously designated as highly confidential (attached hereto at Exhibit A). The Opposition also included a discussion of that material. See Opposition, p. 12. Complaint Counsel requested that their Opposition be placed temporarily under seal pursuant to

¹ Respondents Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company are referred to herein collectively as "Respondents" or "CB&I."

Commission Rule 4.10(g), 16 C.F.R. §4.10(g), in order to afford Respondents the opportunity to seek a protective order for *in camera* treatment of this material. Respondents now do so.

The material in question concerns [

] See

Exhibit A. [

] *See* Affidavit of Richard E. Goodrich, attached

hereto at Exhibit B ("Goodrich Affidavit"). [

] *See id.* [

] *See* Exhibit A. [

] *See* Goodrich Affidavit. As noted by CB&I at the time, the material CB&I submitted to the FTC contained highly confidential business information, the release or publication of which would substantially harm CB&I's business. *See* Exhibit A. As such, CB&I requested that the material be treated as highly confidential and destroyed or returned [

] *See id.*

II. THE LEGAL STANDARD

Rule 3.45 governs *in camera* treatment of materials, stating that material shall be "placed *in camera* only after finding that its public disclosure would 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). The rule also indicates the FTC decisions which articulate the standard for placing materials *in camera*. See *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); see also *General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977). According to this authority, applicants for *in camera* treatment must make a "clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury." *General Foods Corp.*, 95 F.T.C. at 355.

Moreover, the Commission has established six factors to consider in determining whether an *in camera* applicant has made a sufficient showing: (1) the extent to which the information is known outside the party's business; (2) the extent to which the information is known by employees and others involved in the party's business; (3) the extent of measures taken by the party to guard the secrecy of the information; (4) the value of the information to the party and its competitors; if the information is old, a greater burden is placed on the party to demonstrate its value; (5) the amount of effort or money expended by the party in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Bristol-Myers Co.*, 90 F.T.C. at 456. In addition, "[t]he loss of business advantage is a good example of a 'clearly defined, serious injury.'" *Hoechst Marion Roussel, Inc.*, 2000 F.T.C. LEXIS 138 at *6 (citing *General Foods*, 95 F.T.C. at 355).

III.

THE MATERIAL AT ISSUE MEETS THE LEGAL STANDARD FOR *IN CAMERA* TREATMENT – PUBLIC DISCLOSURE OF THE INFORMATION WOULD RESULT IN A CLEARLY DEFINED, SERIOUS INJURY TO CB&I

Attachment A to Complaint Counsel's Opposition (Exhibit A hereto) should be placed *in camera*. Additionally, those portions of the instant motion, Exhibit B hereto,

and Complaint Counsel's Opposition that have been redacted in the public record should be afforded *in camera* treatment. The public disclosure of this information would damage CB&I's business by revealing [

] Competitors who are privy to [

] will have a competitive advantage over CB&I, who will not have the benefit of similar information concerning its competitors. In fact, information of this nature is some of the most sensitive that CB&I maintains.

Moreover, this information meets the six criteria set forth by the Commission for use in evaluating the need for *in camera* treatment. First, this information is not known publicly outside of CB&I's business. *See* Goodrich Affidavit. [

] *See*

id. Second, within CB&I's business this information is known to only a handful of high level executives. *See id.* Third, CB&I has taken all due precautions to safeguard the confidential nature of this information, including asking the FTC to destroy or return such information. *See id.* Fourth, this information is of great value to CB&I, as it represents [

] *See id.* [

] *See id.* Fifth, CB&I expended a significant amount of money and effort []. *See id.* Finally, this is the type of information that CB&I would not allow to be obtained by anyone outside of its

organization and which could not be duplicated by anyone outside of CB&I. *See id.* In sum, the public disclosure of information [] would cause CB&I a loss of business advantage because it would expose [] to its competitors, who would otherwise have no way to know this information.

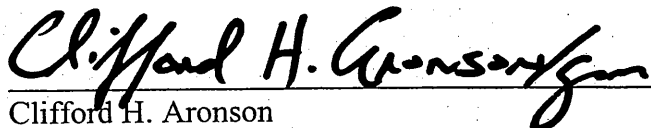
IV.
**THE MATERIAL AT ISSUE SHOULD BE KEPT *IN CAMERA* FOR A PERIOD
OF FIVE YEARS**

Once it is established that material deserves *in camera* treatment, the duration of such treatment must be determined. *See* 16 C.F.R. §3.45(b). When *in camera* treatment is granted for ordinary business records, as opposed to trade secrets or other sensitive technical information, it is typically extended for two to five years. *See e.g., In re E.I. Du Pont de Nemours & Co.*, 97 F.T.C. 116 (Jan. 21, 1981). Due to the highly sensitive nature of the material at issue here, CB&I requests that the material be granted *in camera* treatment for a period of five years. Previously in this action, similar competitive information has been granted *in camera* treatment for a period of five years or more. *See e.g., Order Granting Respondents' Renewed Motion for In Camera Treatment of Certain Exhibits*, December 3, 2002 (granting corporate strategy documents *in camera* treatment for a period of ten years); *Order on Non-Parties' Renewed Motions for In Camera Treatment of Documents Listed on Parties' Exhibit Lists*, November 14, 2002 (granting certain non-party testimony *in camera* treatment for a period of 5 years).

WHEREFORE, CB&I respectfully requests that the Commission enter an Order granting *in camera* treatment for Attachment A to Complaint Counsel's Opposition (attached hereto as Exhibit A), as well as those portions of the instant motion, Exhibit B

hereto and Complaint Counsel's Opposition that have been redacted in the public record,
for a period of five years.

Dated: February 22, 2005



Clifford H. Aronson

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ATTORNEYS FOR RESPONDENTS
CHICAGO BRIDGE & IRON COMPANY N.V.
AND CHICAGO BRIDGE & IRON COMPANY

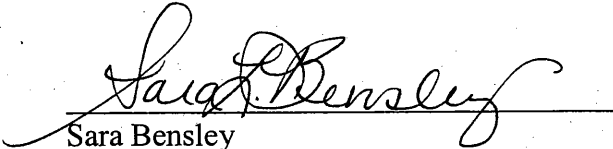
CERTIFICATE OF SERVICE

I, Sara Bensley, hereby certify that on February 28, 2005, true and correct copies of the foregoing Corrected Public Version of *Respondents' Motion for In Camera Treatment of Material Previously Designated as Confidential* were served on the following persons by hand delivery:

Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Steven L. Wilensky, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Room NJ-6120
Washington, D.C. 20001

Rhett R. Krulla, Esq.
Assistant Director
Bureau of Competition
Federal Trade Commission
Room S-3602
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580


Sara Bensley

ATTACHMENT A
Temporarily under seal in accordance with Commission Rule 4.10(g), 16 C.F.R. § 4.10(g).

B

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
CHICAGO BRIDGE & IRON COMPANY N.V.)	Corrected Public Version
a foreign corporation,)	
)	
CHICAGO BRIDGE & IRON COMPANY)	Docket No. 9300
a corporation,)	
)	
PITT-DES MOINES, INC.,)	
a corporation.)	
)	

AFFIDAVIT OF RICHARD E. GOODRICH

1. I am Executive Vice President and Chief Financial Officer of Chicago Bridge & Iron Company N.V. ("CB&I").

2. In 2004, CB&I [

]

3. At the time CB&I submitted these materials to the FTC, it designated them as highly confidential and requested that the FTC destroy or return the materials to CB&I [

]

4. [

]

5. [

] CB&I

considers [] its voluntary submission of materials to the FTC as highly confidential and extremely sensitive business information, the release or publication of which would substantially harm CB&I's business.

6. To CB&I's knowledge, no one outside of CB&I, aside from certain individuals at the FTC [] at the time or knows about it now.

7. Only a small number of high level executives at CB&I were ever privy to any information concerning [] This information constitutes a highly confidential executive level strategy, and I would not casually discuss it even within CB&I.

8. CB&I has taken, and continues to take, all due precautions to safeguard the confidential nature of this information.

9. Information concerning [] is of great value to CB&I because it concerns [

]

10. CB&I expended a significant amount of effort and money pursuing [

]

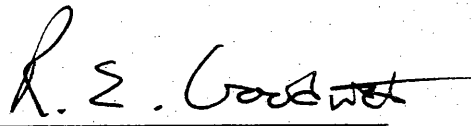
11. Information concerning [] is the type of information that cannot be duplicated outside of CB&I and which CB&I will not allow anyone outside of its business to obtain.

12. CB&I is particularly concerned that the release of this information would disadvantage CB&I with respect to its competitors because it would give competitors inside information concerning []

] In addition, CB&I voluntarily contacted the FTC and provided information to the FTC with the understanding that its contacts and information would be held confidential and not publicly disclosed, especially in an unrelated matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 21 Feb 2005


Richard E. Goodrich

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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February 28, 2005

BY HAND

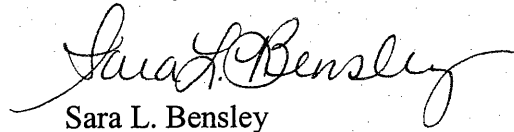
Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: *In the Matter of Chicago Bridge & Iron Company N.V.,
Chicago Bridge & Iron Company, Pitt-Des Moines, Inc.
(Docket No. 9300)*

Dear Secretary Clark:

Please find enclosed for filing today an updated public version of Respondents' Motion for *In Camera* Treatment of Material Previously Designated as Confidential, corrected to show brackets where confidential information has been redacted. This updated version replaces the public version filed on Tuesday, February 22, 2005. The signed original and twelve copies of the confidential version of Respondents' Motion for *In Camera* Treatment of Material Previously Designated as Confidential were filed on Tuesday, February 22, 2005.

Sincerely,


Sara L. Bensley

Enclosures