

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION



In the Matter of )

CHICAGO BRIDGE & IRON COMPANY N.V. )

a foreign corporation, )

CHICAGO BRIDGE & IRON COMPANY )

a corporation, )

and )

PITT-DES MOINES, INC. )

a corporation. )

Docket No. 9300

[REDACTED]

discovery depositions.

None of these witnesses are "dead," "out of the United States or is located at such a

~~Example~~

[REDACTED]

[REDACTED]

[REDACTED]

Witnesses by Deposition should be denied.

## FACTUAL BACKGROUND

On September 17, 2002, this Court issued a letter to the parties stating that "Judge Chappell will allow the use of properly offered and admitted depositions of third parties in lieu of live testimony where such use is agreed to by both sides." The parties engaged in negotiations relating to the use of deposition testimony of various witnesses and reached an agreement relating to several witnesses. Complaint Counsel has not agreed to use of depositions in lieu of live testimony for nine third-party witnesses referenced in Respondents' Motion because Complaint Counsel intends to cross examine these witnesses at trial.

## ARGUMENT

Respondents Can Not Meet the Standards Set Out in ETC Rule 312(a)(1) for the Use of

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(B) That the deponent is out of the United States or is located at such a distance that his attendance would be impractical, unless it appears that the absence of the deponent was excused by the party offering the deposition.

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attendance of the deponent by subpoena; or

restrictions imposed by Fed. R. Civ. P. 32 codify the long-established principle that testimony by deposition is less desirable than oral testimony and should ordinarily be used as a substitute only

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<sup>1</sup> The Rule, however, also recognizes that depositions of party witnesses are admissions,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.000... [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

lives in Washington state. CB&I Letter (Oct. 8, 2002). Respondents have offered no rationale why the journey to Washington D.C. is any more arduous for some third-party witnesses than for others. In fact, Complaint Counsel and Respondents intend to call live witnesses from as far away as Alaska, California, and Washington state.

Respondents note that the third-party witnesses at issue have "extremely pressing job responsibilities that prevent them from traveling to Washington." Respondents' Motion ¶¶13-14. Many of the third party witnesses Complaint Counsel and Respondents intend to call live are busy high-level executives or principals in small businesses. For example, Respondents have

stated that they intend to call live Respondents' third-party witness number 8 is a vice president proposed would push the trial into the holiday season. Indeed, Complaint Counsel warned, in its opposition to Respondents' motion, that Respondents' requested 60-day extension would push

depositions in lieu of live testimony.

**II. Respondents Can Not Meet the Standards Set Out by this Court for the Use of**

**Depositions in Lieu of Live Testimony**

On September 17, 2002, this Court issued a letter to the parties stating that "Judge

Chaffetz will allow the use of properly offered and admitted depositions of third parties in lieu of

party may be used by an adverse party for any purpose. As explained above, the individuals at

[REDACTED]

[REDACTED]

**III. Complaint Counsel Would Be Prejudiced by the Use of Deposition in Lieu of Live Testimony for the Witnesses at Issue**

[REDACTED]

would lose the ability to pursue these issues later at trial.

Further, Respondents elected to use leading questions in conducting their examination of the witnesses, as is their right in conducting discovery. Complaint Counsel did not interfere with

[REDACTED]



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witnesses are employees of The Williams Companies, which sold its Cove Point LNG facility to Dominion Resources, Inc. on Sept. 5, 2002. Respondents disclose, in their Supplement to Respondents' Motion to Call Certain Witnesses by Deposition, filed November 4, 2002, that the two witnesses have been assigned to other duties at Williams. Respondents' Supplement ¶ 3.

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purposes of cross examination and would have the witness confirm the statements in the declaration. These statements record the perception of the witness at the time of the acquisition.

The declaration is attached to Respondents' Motion as Exhibit I. During the deposition

Respondents cross examined the witness regarding the contents of the declaration. The  
Washington D.C. 20580  
(202) 326-2650



IT IS FURTHER ORDERED that Respondents may present the testimony of these witnesses live.

ORDERED

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

Date: November , 2002

CERTIFICATE OF SERVICE

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