EXHIBIT D

Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. On June 12, 2003, an Administrative Law Judge ("ALJ") of the FTC issued a decision holding that CB&I's acquisition of PDM violated Section 7 of the Clayton Act and Section 5 of the FTC Act. The ALJ also issued an order requiring that CB&I divest various assets CB&I acquired from PDM, including the Provo facility. Without prior notice to the Commission, CB&I is now in the process of closing the Provo facility. CB&I's actions are in direct violation of the order accompanying the ALJ's decision and will make it difficult for the Commission to obtain effective relief if it should ultimately prevail in this litigation. The Commission seeks an order enjoining CB&I from taking any action that would result in the closure of its Provo fabrication facility and the dispersal of its employees, and requiring it to take all appropriate measures to insure the continued competitive viability of that facility pending completion of the ongoing administrative proceeding and potential appeal to the federal courts.

<u>Jurisdiction and Venue</u>

1. Jurisdiction is based on Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1337 and 1345. Venue is proper under Section 13(b) of the FTC Act; 28 U.S.C. § 1391(b) (c) and (d); and Section 12 of the Clayton Act, 15 U.S.C. § 22.

<u>The Parties</u>

2. The Commission is an administrative agency of the United States Government established, organized, and existing pursuant to the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.*, with its principal offices at 600 Pennsylvania Avenue, NW, Washington, DC 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act and Section 5 of the FTC Act.

3. Defendant Chicago Bridge & Iron Company N.V. is a foreign corporation organized and existing under the laws of The Netherlands, with its principal place of business at Polarisavenue 31, 2132 JH Hoofddorp, The Netherlands.

4. Defendant Chicago Bridge & Iron Company is a corporation organized and existing under the laws of the Delaware, with its principal place of business at 1501 North Division Street, Plainfield, Illinois 60544. Defendant Chicago Bridge & Iron Company is a wholly owned subsidiary of Chicago Bridge & Iron Company N.V.

5. Defendant CB&I is engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

Section 13(b) of the FTC Act

6. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

> (b) Whenever the Commission has reason to believe --
>
> (1) that any person, partnership or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
>
> (2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is di3.33 TDj0 -1.165 TD0.0005 Tc-0.0409002 bric

7. On or about February 7, 2001, CB&I acquired, pursuant to agreement with PDM, PDM's Water Division and Engineered Construction Division for approximately $84 million ("the Acquisition").

8. On October 25, 2001, the FTC issued an administrative complaint against CB&I and PDM alleging that the acquisition violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

9. On June 12, 2003, an ALJ of the FTC issued an Initial Decision that found that the acquisition violated Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition in LNG tanks, LPG tanks, LIN/LOX tanks, and thermal vacuum chambers in the U.S. (Exhibit 1). LNG tanks are very large, field-erected tanks used to store liquefied natural gas ("LNG") at cryogenic (extremely low) temperatures of approximately -260 F. LIN/LOX tanks are large, field-erected tanks used to store liquid nitrogen, liquid oxygen and liquid argon at cryogenic temperatures ranging from approximately -300 F to -320 F. LPG tanks are field-erected tanks that are used to store liquefied petroleum gas ("LPG") at low temperatures of approximately -50 F. Thermal vacuum chambers are large, field-erected chambers that are used to simulate the environment of outer space (high vacuum and extreme variations in temperature) and are used for testing satellites and other aerospace and defense equipment.

10. The Initial Decision contains an order that requires CB&I to divest certain assets it acquired from PDM, including the Provo fabrication facility. (Exhibit 2). Paragraph V. of the ALJ's Order directs

> that from the date that this Order becomes final, until such time as the divestiture required by Paragraph II.A of this Order is completed, CB&I shall

> take all measures necessary to maintain all assets ordered to be divested in their accounted for condition and to prevent any further deterioration, except normal wear and tear, so as to not impair the assets' operating viability, marketability, or confidentiality, if applicable.

11. The Initial Decision of the ALJ is now on appeal to the FTC. Oral arguments were heard by the five commissioners of the FTC on November 12, 2003.

<u>The Threatened Closing of the Provo Facility</u>

12. The Provo facility was a fabrication plant for PDM's EC division. It is located on a 15 acre site with 30,000 square feet of building facilities. The facility fabricates the steel components utilized in the relevant products and other storage tank projects. The facility houses state-of-the-art Computer Aided Design and Computer Numerically Controlled equipment that enables CB&I to efficiently burn, cut and shape steel plate into complex three dimensional shapes and designs used for the construction of the relevant products and other storage tank projects. The fabrication facility also includes a paint shop capable of sophisticated multi-coat paint application and is staffed with trained personnel who have the experience to maintain the stringent quality control measures necessary to assure proper paint application. As of July 2000, the facility employed 56 craft workers. Prior to the acquisition, PDM estimated that a new fabrication facility would cost $9 million and take approximately nine months to construct.

13. On December 3, 2003, FTC staff received information that CB&I had initiated the process of suspending operations at the Provo facility. (Exhibit 3).

<u>Likelihood of Success on the Merits and Need for Relief</u>

14. Counsel supporting the FTC's administrative complaint has a strong likelihood of ultimate success in demonstrating, in the current administrative proceeding to adjudicate the

legality of the Acquisition, that the Acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act. An ALJ has already issued an Initial Decision holding that acquisition violates these statutes. In particular, counsel supporting the administrative complaint has a strong likelihood of ultimate success in demonstrating, *inter alia*, that:

2. Maintain the status quo until the administrative complaint issued by the Commission is dismissed by the Commission or set aside by a court on review, or until the order of the Commission made thereon has become final; and

3. Award such other and further relief as the Court may determine to be proper and just, including costs.

Respectfully submitted,

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CERTIFICATE OF SERVICE