

**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."

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

organization and which could not be duplicated by anyone outside of CB&I. *See id.*

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
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
4 Times Square
New York, NY 10036-6522
Telephone No.: 212-735-2644
Facsimile No.: 917-777-2644

Charles W. Schwartz
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
1600 Smith, Suite 4400
Houston, TX 77002-7348
Telephone No.: 713-655-5160
Facsimile No.: 888-329-2286

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

Certificate for Electronic Filing

I, Sara L. Bensley, hereby certify that the electronically appended Corrected Public Version of *Respondents' Motion for In Camera Treatment of Material Previously*

