



## I. INTRODUCTION

On June 30, 2005, Respondents filed a Motion for *In Camera* Treatment of Material Previously Designated as Confidential (the "Motion"). Respondents explained that the materials at issue contained confidential, sensitive information regarding CB&I's business, the disclosure of which would substantially harm CB&I's current operations.

On August 24, 2005, the Commission issued its *In Camera* Order. The Commission granted most of the materials in question two-year *in camera* protection. However, the Commission granted Attachment B to the Response only a six-month protection period. The Commission noted that "[a]t the end of this period, CB&I may move to have the *in camera* period extended or, in the absence of such a motion, the material will be unsealed."

Petitioners now move for such an extension. As stated previously, and as demonstrated by the Declaration of Walter G. Browning, attached hereto as Exhibit B ("Browning Declaration"), Attachment B to the Response is still highly confidential, and should be treated as such and remain on file under seal.

## 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 cites the FTC decisions that 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, ALREADY GRANTED *IN CAMERA* TREATMENT,  
SHOULD BE ACCORDED AN EXTENSION, BECAUSE ITS DISCLOSURE WOULD  
RESULT IN SERIOUS COMPETITIVE INJURY**

The public disclosure of Attachment B of the Response would damage CB&I's business. Competitors and [ ] privy to [ ] would have a competitive advantage over CB&I. In fact, detailed 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 detailed information is not known

publicly outside of CB&I's and PDM's business. *See* Browning Declaration. Second, within CB&I's business, this detailed information is known to only a handful of high level executives. *See id.* Third, CB&I has taken all precautions to safeguard the confidential nature of this detailed information, including filing the information *in camera*. *See id.* Fourth, this detailed information is of great value to CB&I and its competitors and [

], as it represents an [

] *See id.* Fifth, CB&I expended a significant amount of money and effort to negotiate Attachment B to the Response. Finally, CB&I would not allow this detailed information to be obtained by anyone outside of its organization, nor could the information be duplicated by anyone outside of CB&I. *See id.* In sum, the public disclosure of Attachment B to the Response would cause CB&I to lose business advantage because it would expose [

] to its competitors and [

], who would otherwise have no way to know the information. *See id.*

**IV.**  
**THE MATERIAL AT ISSUE SHOULD RECEIVE *IN CAMERA* TREATMENT**  
**FOR A PERIOD OF TWO 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). In its *In Camera* Order, the Commission granted most of the materials for which Respondents requested *in camera* treatment such treatment for the duration of two years.

WHEREFORE, CB&I respectfully requests that the Commission enter an Order extending the *in camera* treatment for Attachment B to the Response for a period of two years.

Dated: February 20, 2006



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

**CERTIFICATE OF SERVICE**

I, Sara L. Bensley, hereby certify that on February 21, 2006, true and correct copies of the foregoing Respondents' Motion for Extension of *In Camera* Treatment of Material Previously Afforded Such Treatment were served as follows:

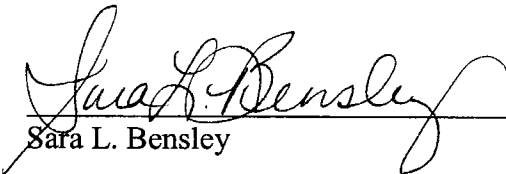
One original and twelve copies served by hand delivery upon:

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

One copy served by hand delivery upon each of:

Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Room NJ-6120  
Washington, D.C. 20001

Steven L. Wilensky, Esq.  
Federal Trade Commission  
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Room NJ-6120  
Washington, D.C. 20001

  
Sara L. Bensley

# **EXHIBIT A**

**MATERIAL REDACTED PURSUANT TO  
SECTIONS 6(f) AND 21(c) OF THE FEDERAL  
TRADE COMMISSION ACT**



## **EXHIBIT B**

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

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

**DECLARATION OF WALTER G. BROWNING**

1. I am the Secretary of Chicago Bridge & Iron Company N.V. and the Vice-President, General Counsel and Secretary of Chicago Bridge & Iron Company (collectively, "CB&I").
2. On Aug. 24, 2005, the Commission issued its Order Granting in Part and Denying in Part Respondents' Motion for *In Camera* Treatment of Material Previously Designated as Confidential ("*In Camera* Order"), granting six-month *in camera* treatment to Attachment B to Complaint Counsel's Response to Respondents' Further Briefing on Specific Remedy Issues ("Response"). The Commission noted that at the end of this period, CB&I may move to have the *in camera* period extended.
3. Attachment B to the Response is CB&I's and PDM's Post-Closing Risk Allocation Agreement (the "Agreement"). CB&I views the details of the Agreement as confidential and sensitive business information, the release or publication of which would substantially harm CB&I's business.

4. To CB&I's knowledge, the details of the Agreement are not known publicly outside of CB&I's and PDM's business.

5. Only a small number of high level executives at CB&I are privy to the details of the Agreement.

6. CB&I has taken, and continues to take, all due precautions to safeguard the confidential nature of the details of the Agreement.

7. The details of the Agreement are of great value to CB&I because it concerns an [

]

8. CB&I expended a significant amount of money and effort to negotiate the details of the Agreement.

9. The details of the Agreement are 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.


10. CB&I is particularly concerned that release of the details of the Agreement would disadvantage CB&I in relation to its competitors and [

] because such release would give those entities inside information concerning [

] when such entities would otherwise have no way to know the information.

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

Executed on February 20, 2006

  
\_\_\_\_\_  
Walter G. Browning

