

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

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

To: Commission

**COMPLAINT COUNSEL’S RESPONSE TO CB&I RESPONDENTS’
APPLICATION FOR APPROVAL OF PROPOSED MONITOR TRUSTEE
AND MONITOR TRUSTEE AGREEMENT**

Complaint Counsel submit this response to the May 26, 2005, Application for Approval of Proposed Monitor Trustee and Monitor Agreement (“Monitor Trustee Application”) filed by Respondents Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company (collectively, “CB&I Respondents”) pursuant to the requirements of Paragraph II of the Final Order.

In the Monitor Trustee Application, CB&I Respondents request that the Commission: (1) appoint Mr. Paul J. Varello, President of Commonwealth Engineering and Construction Company LLC (“Commonwealth”), to act as the Monitor Trustee; and (2) approve the Monitor Trustee Agreement related to Mr. Varello’s service in such capacity. After consultation with staff of the Commission, CB&I Respondents retained Mr. Varello on April 14, 2005, subject to

Commission approval.¹

Complaint Counsel have interviewed Mr. Varello and reviewed his credentials and that of Commonwealth.² Based on Complaint Counsel's review and the representations made by Mr. Varello and CB&I Respondents, Complaint Counsel believe that Mr. Varello has the requisite experience to serve as a Monitor Trustee. In addition, Complaint Counsel's review has not revealed any conflict of interest of either a financial or personal nature that Complaint Counsel believe would inhibit Mr. Varello's ability to comply with his duties owed to the Commission and carry out his responsibilities as a Monitor Trustee under the Final Order in a fair, credible, and unbiased manner.³ Accordingly, Complaint Counsel concur with CB&I Respondents' request that the Commission appoint Mr. Varello to act as the Monitor Trustee.

Complaint Counsel have also reviewed the Monitor Trustee Agreement and believe it fully vests Mr. Varello with all rights and powers necessary to enable him effectively to monitor CB&I Respondents' compliance with the terms of the Final Order, consult with Commission staff, and report to the Commission regarding CB&I Respondents' compliance with the Final Order in a manner consistent with purposes of the Final Order, as required under Paragraph

¹ Paragraph II.A became final on March 21, 2005, and requires, *inter alia*, that "[w]ithin thirty (30) days after this Order is final, Respondents shall retain a Monitor Trustee, acceptable to the Commission, to monitor Respondents' compliance" Accordingly, CB&I Respondents' retention of Mr. Varello, the proposed Monitor Trustee, occurred within the time prescribed under the Final Order.

² See Commonwealth Engineering and Construction Web site at www.commonwealthandc.com/aboutus.htm.

³ Mr. Varello has explained to Commission staff that he is acquainted with certain executives and employees of CB&I, in some cases having met them during overlapping periods of employment at Fluor Corporation, but that his relationships with them are all "arms-length." See Monitor Trustee Application at Exhibit C.

II.C.2.⁴ Furthermore, the Monitor Trustee Agreement properly reflects the duties owed by the Monitor Trustee to the Commission in this capacity. It specifically states that the Monitor Trustee shall “carry out the duties and responsibilities of the Monitor Trustee pursuant to the terms of the Final Order and in a manner consistent with the Final Order, in consultation with the Commission.”⁵ The other provisions of the Monitor Trustee Agreement do not appear to circumscribe the Monitor Trustee’s primary duty owed to the Commission. Moreover, the Agreement provides that any dispute between the Monitor Trustee and CB&I Respondents concerning CB&I Respondents’ obligations under the Final Order may be submitted to the Commission’s Compliance Division for resolution.⁶ Overall, it comports with the requirements for such an agreement under the Final Order. Accordingly, Complaint Counsel concur with CB&I Respondents’ request that the Commission approve the related Monitor Trustee Agreement.

⁴ Paragraph II.C.2. requires, *inter alia*, that:

[w]ithin ten (10) days after Commission’s approval of the Monitor Trustee, Respondents shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondents’ compliance with the terms of this Order

CB&I Respondents request that the Commission approve the Monitor Trustee *in tandem* with the Monitor Trustee Agreement. Accordingly, CB&I Respondents’ execution of the Monitor Trustee Agreement is within the time prescribed under the Final Order.

⁵ Monitor Trustee Agreement ¶ 2.

⁶ Monitor Trustee Agreement ¶ 17.

DATED: June 3, 2005

Respectfully submitted,



Rhett R. Krulla

Elizabeth A. Piotrowski

Naomi Licker

David von Nirschl

Counsel Supporting the Complaint

Bureau of Competition

Federal Trade Commission

Washington, D.C. 20580

CERTIFICATE OF SERVICE

I hereby certify that I today caused:

One original and twelve copies of Complaint Counsel's Response to CB&I Respondents' Application for Approval of Proposed Monitor Trustee and Monitor Trustee Agreement to be served, by hand delivery, and one copy to be served, by electronic mail, upon:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

And one copy to be served, by first-class mail, upon each of the following:

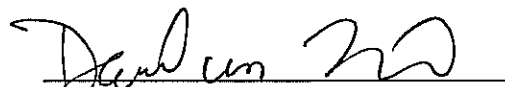
Clifford H. Aronson
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522
(212) 735-2644

Charles W. Schwartz
Skadden, Arps, Slate, Meagher & Flom LLP
1600 Smith, Suite 4400
Houston, TX 77002-7348
(713) 655-5160

Counsel for Respondents Chicago Bridge & Iron Company N.V. and Chicago
Bridge & Iron

Jennifer L. Gray
Robert M. Unger
Brown Raysman Millstein Felder & Steiner LLP
900 Third Avenue
New York, NY 10022
(212) 895-2130

Counsel for Respondent Pitt-Des Moines, Inc.



David von Nirschl
Counsel Supporting the Complaint

Dated: June 3, 2005