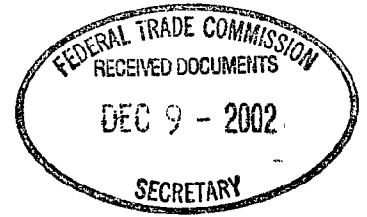


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



_____)
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

COMPLAINT COUNSEL'S
MOTION FOR LEAVE TO DEPOSE
MR. JEAN-PIERRE JOLLY FOR GOOD CAUSE

Pursuant to Rule 3.22 of the Federal Trade Commission's Rules of Practice ("FTC Rules"), 16 C.F.R. § 3.22, Complaint Counsel seeks leave to issue a subpoena for a deposition of Mr. Jean-Pierre Jolly ("Mr. Jolly") on December 17, 2002, after he arrives in the United States. Mr. Jolly is an employee of Societe Nouvelle Technigaz S.A. ("Technigaz") and lives in France.¹ Complaint Counsel could not have served a subpoena for a deposition prior to Mr. Jolly's arrival in the United States because it did not have a good faith belief that a discovery request pursuant to a subpoena issued by this tribunal could be

¹ Mr. Jolly is represented by Mr. David Hollrah, Esquire, of Morris, Lendais, Hollrah & Snowden in Houston, Texas.

served on Mr. Jolly or on his company in France. See FTC Rule 3.36(b)(4); see also infra note 2.

During discovery and throughout the period preceding trial, Respondents have represented that they intended to call Mr. Jolly by affidavit. However, on November 12, 2002, Respondents informed this tribunal that they expect to call Mr. Jolly, who has now volunteered to testify on behalf of Respondents. See Trial Transcript (“Tr.”) at 123:15-124:2. On December 6, 2002, Respondents informed Complaint Counsel that they intend to call Mr. Jolly as a live witness on December 18, 2002. Although this discovery request is past the September 6, 2002 discovery cut-off, these representations by Respondents are the first that we have learned that Mr. Jolly will be in the United States and hence, subject to service of a subpoena while he is here. Therefore, for good cause, we seek leave to issue a subpoena for Mr. Jolly’s deposition. Mr. Jolly and his counsel have refused to speak with us voluntarily. Without the opportunity to depose Mr. Jolly about relevant issues relating to this proceeding prior to his testifying at trial, Complaint Counsel will be unfairly prejudiced at trial. We have notified Respondents of our intent to file this motion.

I.

During the discovery phase of this proceeding this Court rejected Respondents’ application for foreign discovery, noting that they had not made the requisite showing that such discovery could issue in a foreign jurisdiction. See Order Denying Respondents’ Motion for Issuance of Subpoena, dated April 18, 2002. Thereafter, Respondents proceeded voluntarily to obtain information from Mr. Jolly in France. On June 4, 2002, Mr. Jolly voluntarily executed a declaration for Respondents (DX 202). On June 7, 2002, Respondents

notified Complaint Counsel that they “intend to include Mr. Jean-Pierre Jolly on our witness list to *the extent of presenting his testimony through the enclosed declaration, which he signed voluntarily.*” Letter to Steve Wilensky from Nada Sulaiman, June 7, 2002, emphasis added (“Attachment 1”).

Complaint Counsel also realized that it could not satisfy the requirements of FTC Rule 3.36(b) of the Commission’s Rules of Practice regarding the applications for subpoenas to be served in France, see Complaint Counsel’s Response to Respondents’ Motion for Foreign Discovery Pursuant to Rule 3.36, dated April 17, 2002, and therefore proceeded voluntarily to obtain information from Mr. Jolly. On August 22, 2002, Mr. Jolly provided Complaint Counsel with a declaration that clarified and explained many of the topics covered in the earlier declaration obtained by Respondents, CX 15, RX 738, and Complaint Counsel added him to its witness list to testify by declaration. See Complaint Counsel’s Final Witness List, dated September 19, 2002 (“Attachment 2”). Since that time, Complaint Counsel has had no further contacts with Mr. Jolly.

At the time of the close of discovery, it appeared that both parties would present the evidence obtained from Mr. Jolly through their respective declarations. Both parties appear to have had equal opportunity to secure information from Mr. Jolly on a voluntary basis, and neither party could compel discovery from him as long as he was outside the United States and voluntarily cooperating by executing declarations for both parties. In a series of correspondences in October 2002, over one month after the close of discovery, Respondents repeated their intention to call Mr. Jolly by his declaration and agreed that Complaint Counsel could use the declaration it obtained from Mr. Jolly “because both sides had ample

opportunity to interview Mr. Jolly and each side received an affidavit from the affiant” Letter from Greg Miarecki to Steven Wilensky, dated October 8, 2002 (“Attachment 3”); Letter from Jeffrey Leon to Steven Wilensky, dated October 18, 2002 (“Attachment 4”). Based on these discussions, the parties stipulated that the declarations would be entered into evidence without objection. See JX 3 (stipulating into evidence RX 202 and RX 738, declarations of Mr. Jolly obtained by Respondents and Complaint Counsel, respectively).

However, in their Opening Statement on November 12, 2002, over two months after the close of discovery, Respondents’ counsel stated that they “expect” to call Mr. Jolly “hopefully” the week before Christmas. Tr. at 123:15-124:2. This appears to be the first time Respondents mentioned that Mr. Jolly may appear live as a witness in their defense case. It was mentioned only as a possibility in opening statements, and it was mentioned only after the parties stipulated to the entry into evidence of Mr. Jolly’s declarations. On December 6, three months after the close of discovery, Respondents finally notified Complaint Counsel that Mr. Jolly, an employee of one of CB&I’s biggest competitors outside the U.S., would voluntarily testify on behalf of Respondents on December 18.

Shortly after learning that Mr. Jolly may appear as a witness, Complaint Counsel requested an opportunity to interview Mr. Jolly prior to his possible trial appearance. Letter to David Hollrah from Cecelia Waldeck, dated November 26, 2002 (“Attachment 5”). This request was denied. Letter to Cecelia Waldeck from David Hollrah, dated December 3, 2002 (“Attachment 6”). Because Complaint Counsel has not been afforded the opportunity to speak with Mr. Jolly since August 22, 2002, it has been unable to discover the contours of Mr. Jolly’s knowledge relating to the topics about which he may testify, including his

company's apparent failed bid to supply LNG tanks to Dynegy, which occurred *after* he provided his voluntary declarations.

II.

Good cause is demonstrated if a party seeking to extend a deadline demonstrates that a deadline cannot reasonably be met despite the diligence of the party seeking the extension. Bradford v. Dana Corp., 249 F.3d 807, 809 (8th Cir. 2001); Sosa v. Airprint Systems, Inc., 133 F.3d 1417, 1418 (11th Cir. 1998). Complaint Counsel did not seek issuance of subpoenas to Mr. Jolly or his employer Technigaz prior to the close of discovery for two primary reasons. First, significant obstacles exist for obtaining foreign discovery, particularly in France.² Due to these obstacles relating to the service of compulsory process in France, Complaint Counsel obtained information from Mr. Jolly and his company only on a voluntary basis.

Second, each side had interviewed Mr. Jolly, and he voluntarily provided each party with a declaration that memorialized those discussions. Because neither party could compel

² France has limited its participation in the Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters, 23 U.S.T. 2555, T.I.A.S. No. 7444 (Mar. 18, 1970), codified at 28 U.S.C. § 1781, which provides for the transmittal of Commission subpoenas through letters rogatory. France has taken reservations under Article 23 of the Hague Convention providing that they will not execute letters of request issued for the purpose of obtaining pre-trial discovery as known in Common Law countries. Declarations and Designations by Member States Under the Hague Evidence Convention, France at A-88-90. Additionally, France has enacted a blocking statute that can limit or prohibit subpoenaed parties from producing evidence in connection with a foreign legal proceeding. Law Relating to the Communications of Economic, Commercial, Industrial, Financial, or Technical, Documents or Information to Foreign Natural or Legal Persons, Law No. 80-530, (1980) Journal Officiel, reprinted in 1 Bruno Ristau, International Judicial Assistance Civil and Commercial (1990 Revision), §5-1-4, citing, n.10 at C1-80.

Mr. Jolly's trial testimony,³ the parties agreed to use those declarations as testimony. See supra at 3- 4. Now that Respondents have obtained an agreement by Mr. Jolly to appear voluntarily at trial for Respondents, Complaint Counsel wishes to use the discovery tools available to it to learn of any information Mr. Jolly possesses that is relevant to this matter and that is not otherwise known to it. With leave of this Court, Complaint Counsel will be able to avail itself of a discovery deposition, as Mr. Jolly will become subject to service of process under FTC Rule 3.34 once he enters the United States to testify at this hearing.⁴

III.

Complaint Counsel will be unduly prejudiced if it does not have the opportunity to depose Mr. Jolly prior to his trial testimony. Mr. Jolly's sudden reluctance to cooperate with Complaint Counsel suggests that recent developments, occurring after August 22, 2002, may have affected Mr. Jolly's position with respect to this litigation. One of these developments is Technigaz's apparent loss of Dynegy's LNG tank project. Without the opportunity to depose Mr. Jolly about these recent developments, Complaint Counsel will be unduly prejudiced at trial.

In addition, during the past telephone discussions with Mr. Jolly, he was reluctant to provide Complaint Counsel with specific information about Technigaz's bids on U.S. LNG tank projects. Because Respondents argue that competition from Technigaz replaces the competition lost from CB&I's acquisition of PDM, information on Technigaz's pricing and

³ Respondents' counsel in his opening statement confirmed that Mr. Jolly is not subject to the service power of subpoena in this proceeding. Tr. at 123.

⁴ Mr. Hollrah informed us that Mr. Jolly will be traveling to Washington D.C. from Asia. Attachment 6.

estimated costs for LNG tank projects is a material issue that will likely be addressed by Mr. Jolly at trial. Without the opportunity to depose Mr. Jolly on these subjects prior to his trial testimony, Complaint Counsel will be unduly prejudiced at trial because it will not be able to prepare its examination relating to these pricing and cost issues.

IV.

The opportunity to depose Mr. Jolly prior to his trial testimony will likely benefit the court proceedings during Mr. Jolly's appearance. By conducting a discovery deposition prior to trial, Complaint Counsel can more readily develop a concise cross examination of Mr. Jolly at trial and can limit any direct examination that it may decide to present while Mr. Jolly is available.⁵ Additionally, advance knowledge of the issues that will be discussed at trial will permit Complaint Counsel to identify with Mr. Hollrah and Mr. Jolly the portions of the testimony for which Mr. Jolly may seek in camera treatment. Finally, the deposition may expedite Mr. Jolly's trial testimony by giving Complaint Counsel the opportunity to determine if the services of a translator are necessary.

⁵ Both parties reserved the right to conduct direct examination of any of the individuals named on the opposing parties' witness list.

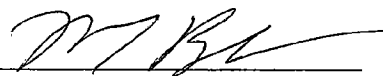
Conclusion

For the reasons stated herein, Complaint Counsel has demonstrated good cause to seek leave to issue a subpoena for the deposition testimony of Jean-Pierre Jolly.

Respectfully submitted,

Morris Bloom
Cecelia Waldeck
Commission Counsel
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

By:



Morris Bloom
Attorney for Plaintiff
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580
(202) 326-2707

December 9, 2002

CERTIFICATE OF SERVICE

I, Cecelia Waldeck, hereby certify that I caused a copy of Complaint Counsel's to be delivered this day by facsimile and by first-class mail to:

Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Avenue, N.W.
Room H-104
Washington, D.C. 20580

Jeffrey A. Leon, Esquire
Duane M. Kelley
Winston & Strawn
35 W. Wacker Drive
Chicago, IL 60601-9703

Cecelia Waldeck
Cecelia Waldeck
Complaint Counsel

12/9/02

Dated: December 9, 2002

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
CHICAGO BRIDGE & IRON COMPANY N.V.)
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a foreign corporation,)
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CHICAGO BRIDGE & IRON COMPANY)
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a corporation,)
)
and)
)
PITT DES-MOINES, INC.)
)
a corporation.)
_____)

Docket No. 9300

ORDER

UPON CONSIDERATION of Complaint Counsel's Motion for Leave to Depose Mr. Jean-Pierre Jolly for his deposition testimony filed on December 9, 2002, and any opposition thereto, and being fully advised in the premises, Complaint Counsel has satisfied the requirements of Rule 3.34 of the FTC Rules of Practice.

IT IS HEREBY ORDERED that Complaint Counsel's motion is GRANTED and that Complaint Counsel be given leave to issue a subpoena to Mr. Jean-Pierre Jolly.

ORDERED:

D. Michael Chappell
Administrative Law Judge

ATTACHMENT 1

WINSTON & STRAWN

35 WEST WACKER DRIVE
CHICAGO, ILLINOIS 60601-9703

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CONFIDENTIAL

June 7, 2002

BY HAND DELIVERY

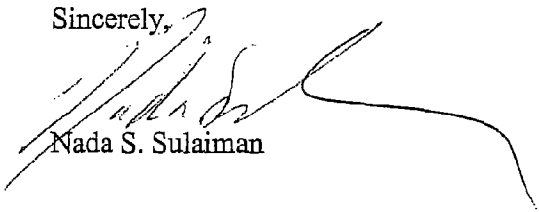
Steven L. Wilensky, Esq.
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Room S-3618
Washington, D.C. 20580

**Re: In the Matter of Chicago Bridge & Iron Company, N.V., et al.
Docket No. 9300**

Dear Steve:

We intend to include Mr. Jean-Pierre Jolly on our witness list to the extent of presenting his testimony through the enclosed declaration, which he signed voluntarily.

Sincerely,



Nada S. Sulaiman

NSS:tdd
Enclosure

cc: Duane Kelley, Esq.
Jeffrey Leon, Esq.
Gregory Miarecki, Esq.

ATTACHMENT 2



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

MERGERS II

STEVEN WILENSKY
ATTORNEY

Direct Dial
202-326-2650

September 16, 2002

Jeff Leon, Esq.
Winston & Strawn
35 W. Wacker Drive
Chicago, IL 60601-9703

Re: *Chicago Bridge & Iron Co. N.V., et. al.*, Docket 9300

Dear Jeff:

Enclosed please find Complaint Counsel's Final Proposed Witness List and Complaint Counsel's Final Proposed Exhibit List, and a copy of all final proposed exhibits. Complaint Counsel designates these as "Confidential" pursuant to ¶ 2(a) of the March 5, 2002 protective order.

Sincerely,

A handwritten signature in black ink, appearing to read "S.L. Wilensky", written over a horizontal line.

Steven L. Wilensky

cc: The Honorable D. Michael Chappell (without exhibits)

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

COMPLAINT COUNSEL'S FINAL PROPOSED WITNESS LIST

Pursuant to the Third Revised Scheduling Order of September 10, 2002, Complaint Counsel hereby designates those persons whom we currently contemplate calling to testify as witnesses, by deposition or through live testimony, at the hearing in this matter. Unless specifically noted, we intend to call witnesses to testify live. We reserve the right to call any witness to testify by deposition in lieu of live testimony, and we reserve the right not to call any of the persons listed herein to testify at the hearing, as circumstances may warrant. We reserve the right to call any of the individuals named on Respondents' Revised Witness List of June 3, 2000. We have also entered into evidence designated portions of testimony from investigational hearings and depositions of party and third party witnesses, which may be found on Complaint Counsel's Exhibit List.

CASE-IN-CHIEF

1. **Eckhard Blaumueller, Director (retired), Peoples Energy Corporation**

Peoples Energy Corporation is an energy and utility company located in Chicago, Illinois. Mr. Blaumueller was involved in the consideration of a cryogenic processing facility designed to separate refinery gas into its components, a variant of which would have included LNG storage tanks. Mr. Blaumueller will testify regarding the subjects contained in his affidavit and deposition. In addition, Mr. Blaumueller will testify regarding LNG storage tanks and facilities, including but not limited to, the importance of experience and reputation for firms constructing LNG storage tanks and facilities, and the potential anticompetitive effects of Chicago Bridge & Iron Company N.V.'s ("CB&I") acquisition of Pitt-Des Moines, Inc. ("PDM").

2. **Dan Britten, President, Fairbanks Natural Gas, LLC**

Fairbanks Natural Gas provides natural gas to the Fairbanks, Alaska area. Fairbanks Natural Gas is currently considering constructing an LNG tank to enlarge its service capacity. Mr. Britten will testify about the subjects contained in his deposition. He will also testify regarding the company's experiences in trying to locate a constructor of the LNG tank.

3. **William T. Cutts, Vice President, American Tank & Vessel, Inc.** by deposition

American Tank & Vessel is a small tank constructor located in Mobile, Alabama. Mr. Cutts will testify about competition and entry barriers in LNG tanks and facilities and LIN/LOX tanks.

4. **Robert Davis, General Manager, Air Products & Chemicals, Inc.**

Air Products & Chemicals, Inc. is an international supplier of industrial gases and related equipment and technology, including LNG liquefaction units used in LNG peak shaving plants. Mr. Davis formerly worked with CB&I and has experience in the construction of LNG tanks and peak shaving plants. Mr. Davis will testify regarding the subjects contained in his affidavit and deposition. In addition, Mr. Davis will testify regarding LNG storage tanks and LNG peak shaving plants, including competition in the design and construction of LNG storage tanks and LNG peak shaving plants in the U.S., selection of a supplier of LNG storage tanks and LNG peak shaving plants, entry barriers into LNG tanks and LNG peak shaving plants, and the potential anticompetitive effects of CB&I's acquisition of PDM. Mr. Davis will also testify about competition in the bidding for LNG tanks as a component of LNG peak shaving plants and in the bidding for LNG peak shaving plants overall.

5. Kerry Errington, Project Manager, Black & Veatch Pritchard, Inc.

Black & Veatch Pritchard, Inc. is one of the largest engineering and construction firms located in the U.S. Mr. Errington managed a project which employed American Tank & Vessel, Inc. ("ATV") for the construction of three field-erected pressure spheres. Mr. Errington will testify regarding ATV's performance on this project.

6. Chung Fan, Purchasing Agent, Linde Process Plant, Inc.

Linde is one of the world's largest suppliers of industrial gases. Mr. Fan is responsible for purchasing LIN/LOX tanks for Linde in the U.S. Mr. Fan will testify about the subjects contained in his deposition. Mr. Fan will also testify about competition in the market for LIN/LOX tanks, factors relevant to the selection of a LIN/LOX supplier, and the potential anticompetitive effects of CB&I's acquisition of PDM

7. Cleve Fontenot, Vice President of Supply Management (retired), Air Liquide Process & Construction, Inc.

Air Liquide is one of the world's largest suppliers of industrial gases. Mr. Fontenot was formerly responsible for procurement of LIN/LOX tanks at Air Liquide. Mr. Fontenot will testify about the subjects contained in his affidavit and deposition. Mr. Fontenot will testify about the characteristics and uses of LIN/LOX tanks, the lack of substitute products for LIN/LOX tanks, the historical lack of foreign competition in the design and construction of LIN/LOX tanks in the U.S., the importance of experience and reputation in choosing a supplier of LIN/LOX tanks, and the potential anticompetitive effects of CB&I's acquisition of PDM.

8. John Gill, Owner, Howard Fabrication, Inc.

Howard Fabrication, Inc. is a small manufacturer of shop-built industrial storage tanks and thermal vacuum chambers. Mr. Gill will testify about the subjects contained in his affidavit and deposition. Mr. Gill will testify to the differences between field-erected and shop-manufactured thermal vacuum chambers, the importance of experience and reputation for firms supplying thermal vacuum chambers, entry barriers in the thermal vacuum chamber market, and the potential anticompetitive effects of CB&I's acquisition of PDM.

9. James Clay Hall, Memphis Light, Gas & Water Division

Memphis Light, Gas & Water Division is a municipal utility serving the Memphis, Tennessee area. Mr. Hall is a senior engineer at Memphis Light, Gas & Water Division and was project manager for an LNG peak shaver that the company constructed in 1995. Mr. Hall will testify about subjects relating to the bidding of that project.

10. Kent Higgins, President, Process Systems Division, Chart Industries, Inc.

Chart Industries, Inc. is a diversified manufacturer of equipment for various cryogenic systems, including shop-manufactured cryogenic tanks. Prior to CB&I's acquisition of PDM, Chart provided thermal control systems for thermal vacuum chambers in partnership with PDM. Mr. Higgins will testify regarding thermal vacuum chambers. Mr Higgins will testify to the differences between field-erected and shop-manufactured thermal vacuum chambers, the lack of substitute products for thermal vacuum chambers, factors affecting selection of a supplier of thermal vacuum chambers, competition in the design and construction of thermal vacuum chambers in the U.S., and the potential anticompetitive effects of CB&I's acquisition of PDM. Mr. Higgins will also testify to differences between field-erected and shop-manufactured cryogenic tanks.

11. Joseph Hilgar, Purchasing Manager, Air Products and Chemicals, Inc. by deposition

Air Products & Chemicals, Inc. is an international supplier of industrial gases, including liquid oxygen, nitrogen, hydrogen, and argon, and related equipment. Mr. Hilgar has held several positions relating to the procurement of LIN/LOX storage tanks and facilities. Mr. Hilgar will testify regarding the subjects contained in his affidavit and deposition and to other issues relating to LIN/LOX tanks. Mr. Hilgar will testify about difficulties faced by foreign LIN/LOX tank constructors in attempting to compete for projects in the U.S., the importance of reputation and experience for firms constructing LIN/LOX storage tanks, and the potential anticompetitive effects of CB&I's acquisition of PDM.

12. Jean-Pierre Jolly, Vice President of Marketing for SN Technigaz by affidavit

Jean Pierre Jolly, a resident of France, is Vice President of Marketing for SN Technigaz, a French company with experience in constructing LNG tanks and facilities outside of the U.S. Mr. Jolly will testify about the subjects contained in his affidavit, including disadvantages that Technigaz may experience in trying to compete against CB&I on LNG projects in the U.S.

13. David Kamrath, CEO, Air Liquide Process and Construction, Inc.

Air Liquide is one of the world's largest suppliers of industrial gases. Mr. Kamrath is currently CEO of Air Liquide Process and Construction, Inc. Mr. Kamrath will testify about the subjects contained in his deposition. Mr. Kamrath will also testify about competition in the market for LIN/LOX tanks, factors relevant to the selection of a LIN/LOX supplier, and Air Liquide's current plans relating to LIN/LOX tank projects.

14. Dr. Hans Kistenmacher, Senior Vice President, Linde Process Plant, Inc.

Linde is one of the largest industrial gas suppliers in the world. Linde Process Plant

builds turnkey processing plants, such as natural gas and air separation plants, on a global basis. Dr. Kistenmacher was involved in an unsuccessful bid for an LNG peak shaving plant that Linde made in conjunction with a foreign LNG tank supplier in 1994. Dr. Kistenmacher will testify regarding the subjects contained in his affidavit and deposition. Dr. Kistenmacher will testify regarding LNG storage tanks and facilities, including but not limited to, the characteristics and uses of LNG storage tanks and facilities, the lack of substitute products for LNG storage tanks and facilities, competition in the design and construction of LNG storage tanks and facilities in the U.S., selection of a supplier of LNG storage tanks and facilities, and the potential anticompetitive effects of CB&I's acquisition of PDM.

15. Zoher Meratla, CDS Research Ltd.

by affidavit

Zoher Meratla, a resident of Canada, is a principal at CDS Research Ltd., a consulting firm in Vancouver, British Columbia, Canada, that provides engineering services relating to liquid natural gas ("LNG") and liquid petroleum gas ("LPG") facilities on a world-wide basis. Mr. Meratla will testify about the subjects contained in his affidavit, including his experiences in advising Fairbanks Natural Gas LLC on an LNG project.

16. Barry Millet, Fluor Corporation

Fluor Corporation is one of the largest engineering and construction firms located in the U.S. Mr. Millet was involved in the construction of an LPG import facility for Sea-3, Inc. in Tampa, Florida. Mr. Millet will testify about the subjects contained in his deposition. Mr. Millet will testify about the characteristics and uses of LPG tanks, the lack of substitute products for LPG tanks, difficulties faced by foreign LPG tank constructors trying to compete in the U.S., the importance of reputation and experience for firms constructing LPG storage tanks, and the potential anticompetitive effects of CB&I's acquisition of PDM.

17. Patrick Neary, Technical Manager, TRW Space and Electronics

TRW sells advanced technology products, including satellites, for the aerospace, electronics, communications and information systems markets. Mr. Neary is Technical Manager at TRW's satellite manufacturing facility. Mr. Neary will testify about the subjects contained in his affidavit and deposition. Mr. Neary will testify regarding the characteristics and uses of thermal vacuum chambers, the lack of substitute products for thermal vacuum chambers, the importance of experience and reputation for firms supplying thermal vacuum chambers, and the potential anticompetitive effects of CB&I's acquisition of PDM.

18. John Newmeister, Vice President, Matrix Services Company

Matrix Services Company is the second largest competitor in the U.S. industrial storage tank market. Mr. Newmeister will testify regarding the subjects contained in his investigational hearing and deposition. Mr. Newmeister will also testify regarding LNG

storage tanks and facilities, LPG storage tanks, LIN/LOX/LAR storage tanks, and thermal vacuum chambers, including the characteristics and uses of these products, the lack of substitute products for these products, competition in the design and construction of these products in the U.S., the inability of foreign constructors of these products to compete economically in the U.S., the importance of reputation and experience for firms constructing these products, and entry barriers into these products.

19. Patricia Outtrim, President, Project Technical Liason Associates, Inc.

Project Technical Liason Associates, Inc. is a consulting firm that specializes in working on LNG projects. Mrs. Outtrim will testify about the subjects discussed in her deposition. She will also testify regarding LNG storage tanks and facilities, including but not limited to, the characteristics and uses of LNG storage tanks and facilities, the lack of substitute products for LNG storage tanks and facilities, competition in the design and construction of LNG storage tanks and facilities in the U.S., selection of a supplier of LNG storage tanks and facilities, and the potential anticompetitive effects of CB&I's acquisition of PDM.

20. Greg Proulx, Manager, Boeing Satellite Systems, Inc.

The Boeing Company is one of the world's leading manufacturers of aircraft and satellites. Mr. Proulx is responsible for procuring, constructing and monitoring equipment used for testing satellites. Mr. Proulx will testify about the subjects contained in his affidavit and deposition. Mr. Proulx will also testify to characteristics and uses of thermal vacuum chambers, the lack of substitute products for thermal vacuum chambers, the importance of experience and reputation for firms supplying thermal vacuum chambers, competition between CB&I and PDM for a thermal vacuum chamber project for Boeing, and the potential anticompetitive effects of CB&I's acquisition of PDM.

21. Michael Patterson, M.G. Industries, Inc.

M.G. Industries is a supplier of industrial gases. Mr. Patterson is responsible for purchasing LIN/LOX tanks for M.G. Industries. Mr. Patterson will testify about the subjects contained in his deposition. Mr. Patterson will also testify about competition in the market for LIN/LOX tanks, factors relevant to the selection of a LIN/LOX supplier, and his experiences relating to a LIN/LOX project recently completed by CB&I.

22. Michael Poli, Contracts Manager for Global Procurement and Materials Management, Praxair, Inc.

Praxair, Inc. is one of the world's largest suppliers of industrial gases and a former owner of Chicago Bridge Company, N.V. Mr. Poli is in charge of procuring LIN/LOX tanks and hydrogen and helium spheres for Praxair. Mr. Poli will testify regarding LIN/LOX tanks

and hydrogen and helium spheres, including the characteristics and uses of these products, the lack of substitute products for these storage vessels, competition in the design and construction of these products in the U.S., the importance of reputation and experience for firms constructing these products, and the potential anticompetitive effects of CB&I's acquisition of PDM.

23. Brian Price, Vice President of LNG Technology, Black & Veatch Pritchard, Inc.

Black & Veatch Pritchard, Inc. is one of the largest engineering and construction firms in the U.S. Mr Price was involved in a bid for an LNG peak shaving facility that Black & Veatch made jointly with a foreign constructor of LNG tanks. Mr Price will testify generally regarding the subjects contained in his affidavit. Mr. Price will testify regarding LNG storage tanks and facilities, including but not limited to, the characteristics and uses of LNG storage tanks and facilities, the lack of substitute products for LNG storage tanks and facilities, competition in the design and construction of LNG storage tanks and facilities in the U.S., selection of a supplier of LNG storage tanks and facilities, and the potential anticompetitive effects of CB&I's acquisition of PDM.

24. Bill Puckett, Vice President, Dynegy Corporation by deposition

Dynegy Corporation is a diversified energy company located in Houston, Texas. Mr. Puckett has management responsibility for an LNG import facility that Dynegy may build in Hackberry, Louisiana. Mr. Puckett will testify generally regarding LNG storage tanks and facilities. Mr. Puckett will testify about competition in bidding for LNG tanks and in bidding for overall turn-key management of the project.

25. Errol Rapp, Project Director, Bechtel Overseas Inc. by deposition

Bechtel Group is one of the world's largest engineering and construction firms. Mr. Rapp is Project Director for the Atlantic LNG export facility, located in Point Fortrin, Trinidad and Tobago. Mr. Rapp will testify generally regarding the subjects contained in his affidavit and deposition. In addition, Mr. Rapp will testify regarding LNG storage tanks and facilities, including but not limited to, competition in the design and construction of LNG storage tanks and facilities in the U.S. and factors affecting selection of a supplier of LNG storage tanks and facilities. Mr Rapp will also testify as to problems associated with Whessoe International's construction of the original LNG tanks at the facility.

26. Ronald Skully, XL Technology Systems, Inc.

Ronald Skully is President of XL Technology Systems, Inc. XL Technology Systems, Inc. provides thermal control systems for thermal vacuum chambers. Mr. Skully will testify about the subjects contained in his deposition. Mr. Skully will also testify to CB&I's purchase and sale of XL Technology Systems, the differences between field-erected and shop-

manufactured thermal vacuum chambers, the lack of substitute products for thermal vacuum chambers, factors affecting selection of a supplier of thermal vacuum chambers, and competition in the design and construction of thermal vacuum chambers in the U.S.

27. W. David Thompson, President, Spectrum Astro, Inc.

Spectrum Astro, Inc. is a manufacturer of low cost, high performance satellites. Spectrum Astro has recently contracted with CB&I to build a thermal vacuum chamber. Mr. Thompson will testify regarding the subjects contained in his affidavit and deposition. Mr. Thompson will also testify to characteristics and uses of thermal vacuum chambers, the lack of substitute products for thermal vacuum chambers, factors affecting selection of a supplier of thermal vacuum chambers, and competition between CB&I and PDM in the bidding for Spectrum Astro's thermal vacuum chamber.

28. Douglas Thorneycroft, Engineer, Westcoast Energy

Mr. Thorneycroft is an engineer for Westcoast Energy, a large Canadian natural gas pipeline company. Mr. Thorneycroft was project manager for an LNG peak shaving facility that Westcoast proposed to build in Port Mellon, British Columbia. CB&I, PDM, and two foreign companies submitted bids for the LNG tank for the project. Mr. Thorneycroft will testify to issues regarding this project, including but not limited to the identity of the bidders and to the level of their bids.

29. Amy Warren, Contract Management, Fluor Corporation

Fluor Corporation is one of the largest engineering and construction firms located in the U.S. Ms. Warren was involved in the construction of an LPG import facility for Sea-3, Inc. in Tampa, Florida. Ms. Warren will testify about the subjects contained in her deposition. Ms. Warren will testify about the characteristics and uses of LPG tanks, the lack of substitute products for LPG tanks, difficulties faced by foreign LPG tank constructors trying to compete in the U.S., the importance of reputation and experience for firms constructing LPG storage tanks, and the potential anticompetitive effects of CB&I's acquisition of PDM.

EXPERT WITNESS

30. Dr. John Simpson, Ph.D.

Dr. Simpson is a staff economist with the Bureau of Economics at the Federal Trade Commission. Dr. Simpson will testify about the product market, geographic market, level of concentration, efficiencies or lack thereof, and anticompetitive effects of the acquisition in each of the relevant markets.

REBUTTAL WITNESSES

31. Scott Colby, BOC Group, Inc.

BOC is one of the largest suppliers of industrial gases in the U.S. Mr. Colby was project manager for a LIN/LOX project constructed by American Tank & Vessel, Inc. for BOC in North Carolina. Mr. Colby will testify as to experiences in using American Tank & Vessel, Inc. for this project.

32. Moon Fahel, Zachry Construction Corp.

Zachry Construction Corp. is a major U.S. construction firm that has partnered with SN Technigaz, a French company experienced in the construction of LNG tanks and facilities, to construct LNG facilities in the U.S. Mr. Fahel is an engineer who has responsibilities for LNG projects on behalf of Zachry. Mr. Fahel will testify about the subject contained in his deposition. Mr. Fahel will testify to entry barriers in the LNG storage tank and facilities markets and to competitive disadvantages that Zachry may experience in competing against CB&I for U.S. LNG projects.

33. Devon Hart, Raytheon, Inc. by deposition

Raytheon is one of the largest defense contractors in the U.S. Mr. Hart was responsible for purchasing a shop-built thermal vacuum chamber for Raytheon. Mr. Hart will testify about the subjects contained in his deposition. Mr. Hart will testify regarding the project, including factors Raytheon considered in choosing a constructor of the project.

34. Sam Kumar, Consultant to SN Technigaz

Mr. Kumar is a consultant to SN Technigaz for potential LNG projects in the U.S. Mr. Kumar formerly worked for both CB&I and PDM. Mr. Kumar will testify about the subject contained in his deposition. Mr. Kumar will also testify to entry barriers in the LNG storage tank and facilities markets and to competitive disadvantages that SN Technigaz may experience in competing against CB&I for U.S. LNG projects.

35. Dr. John Simpson, Ph.D.

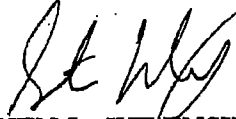
Dr. Simpson is a staff economist with the Bureau of Economics at the Federal Trade Commission. Dr. Simpson will provide rebuttal testimony about the product market, geographic market, level of concentration, efficiencies or lack thereof, and anticompetitive effects of the acquisition in each of the relevant markets.

36. Brad Vetal, President, Matrix Services Company by deposition

Matrix Services Company is the second largest competitor in the U.S. industrial storage

tank market. Mr. Vetal will testify to his interest, prior to February 7, 2002, in acquiring the EC Division of PDM.

Respectfully submitted,



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September 16, 2002

ATTACHMENT 3

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October 8, 2002

VIA FACSIMILE

Steven L. Wilensky, Esq.
Mergers II – Federal Trade Commission
Bureau of Competition
601 Pennsylvania Ave., N.W.
Room 3618
Washington, D.C. 20580

Re: In the Matter of Chicago Bridge & Iron Company, N.V., et al.
Docket No. 9300

Dear Steve:

As promised, I write to provide additional information regarding our current intentions with respect to third-party trial witnesses named in the above-referenced matter:

- We intend to call the following third-party witnesses by deposition: Marc Andrukiewicz; Rob Bryngelson; W.T. Cutts; Joseph Hilgar; John Kelly; Norman Kelley; Victor Kelley; William Puckett; Errol Rapp; Jeffrey Sawchuck; Peter Scheman; Jerry Stetzler; Matt Swift; Brad Vetal; and Robert Yowell. Further, we plan to call Jean-Pierre Jolly by affidavit.
- We understand that you plan to call, *inter alia*, the following third-party witnesses live during your case-in-chief: Robert Davis; Moon Fabel; Chung Fan; David Kamrath; Hans Kistenmacher; John Newmeister; Patricia Outtrim; Michael Patterson; and Ron Scully. As you will note, these individuals are also on our witness list. We plan to elicit our affirmative testimony from them immediately after we cross-examine them during your case-in-chief. Should you decide not to call any of these witnesses, we will read in testimony from their depositions during our case-in-chief.

WINSTON & STRAWN

Steven L. Wilensky, Esq.

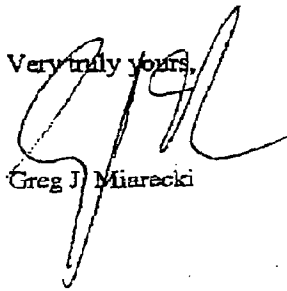
October 8, 2002

Page 2

- We plan to call the following third-party witnesses live, subject to their availability: Rich Byers; Nigel Carling; Jim Crider; Volker Eyermann; and Larry Izzo.
- With respect to Scott Colby, currently listed as one of your rebuttal witnesses, we plan to elicit our affirmative testimony from him immediately after we cross-examine him during your rebuttal case. Should you decide not to call Mr. Colby, we may call him live during our case-in-chief.

Please contact me if you have any questions in this regard.

Very truly yours,


Greg J. Miarecki

GJM:

ATTACHMENT 4

WINSTON & STRAWN

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October 18, 2002

VIA FACSIMILE

Steven L. Wilensky, Esq.
Mergers II
Federal Trade Commission
Bureau of Competition
601 Pennsylvania Ave., N.W.
Room 3618
Washington, D.C. 20580

Re: In the Matter of Chicago Bridge & Iron Company N.V., et al.
Docket No. 9300

Dear Steve:

We are in receipt of your Stipulation delivered October 15. We have the following observations:

First, with respect to paragraph 1 (the use of depositions pursuant to FTC Rule of Practice 3.33), the parties, by exchange of your letter to me on October 6 and our response on October 7 (attached hereto), agreed that the testimony of Messrs. Rapp, Puckett, Hilgar, Cutts, Hart and Vetal may be presented at trial by deposition. By letter of October 8 (attached hereto), CBI then proposed to present testimony of several more witnesses by way of deposition. Paragraph 1 of your Stipulation covers several, but not all, of those who are covered by our previous agreement; and adds one witness, Mr. Scheman, who was part of our proposal to you. We presume therefore that you now have agreed to the use of Mr. Scheman's deposition. Since you apparently do not agree to our use of depositions of Messrs. John Kelly, Norman Kelley, Victor Kelley, Jeffrey Sawchuck, Jerry Stetzler, Matt Swift and Robert Yowell, we will promptly make an appropriate motion pursuant to Rule 3.33 in order to present their testimony by way of deposition.

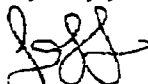
Second, with respect to paragraph 2 of your Stipulation, we do not at this time agree to waive any objections to testimony offered by way of deposition, or deposition exhibits thereto.

Steven L. Wilensky, Esq.
October 18, 2002
Page 2

Third, with respect to paragraph 3, we are still reviewing the Scheman exhibits you have asked us to waive objections on, and will get back to you with our decision.

Fourth, with respect to paragraph 4, we agree to the use of Mr. Jolly's affidavit only because both sides had ample opportunity to interview Mr. Jolly and each side received an affidavit from the affiant, thereby arguably comporting with Rule 3.43(b). We under no circumstances agree to your use of the other affidavits for any purpose.

Very truly yours,



Jeffrey A. Leon

JAL:pn

Enclosures

ATTACHMENT 5 .



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition

November 26, 2002

Mr. David C. Hollrah, Esq.
Morris, Lendais, Hollrah & Snowden
1980 Post Oak Blvd., Suite 700
Houston, TX 77056

By FAX: (713) 966-7229

Re: Chicago Bridge & Iron, Docket 9300

Dear Mr. Hollrah:

We would like to talk with you and Mr. Jolly of Technigaz regarding his upcoming testimony in the subject litigation. Mr. Jolly is on our witness list and we plan to ask him questions about Technigaz's activity in the U.S. Per our past conversation, I understand that Technigaz is concerned about the disclosure of its confidential business information on the public record. We need to identify any confidential information that we may elicit from Mr. Jolly at trial in advance of his appearance. Judge Chappell has requested third parties to file a motion for in camera treatment of trial testimony in advance of the scheduled appearance of the witness.

We can assist you in filing this motion. I can be reached at (202) 326-3669 or via e-mail at cwaldeck@ftc.gov.

Very truly yours,

Cecelia Waldeck
Cecelia Waldeck

cc: Morris Bloom

ATTACHMENT 6

MORRIS, LENDAIS, HOLLRAH & SNOWDEN

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December 3, 2002

Cecilia Waldeck, Esq.
FEDERAL TRADE COMMISSION
Bureau of Competition
601 N.J. Avenue, NW
Washington DC

VIA FAX (202) 326-2071

Re: Chicago Bridge & Iron Docket 9300

Dear Ms. Waldeck:

I have spoken to Jean Pierre Jolly of Technigaz about your request to have further time with him on the telephone. He is unwilling to take any more time with FTC on this matter, he mentioned that he had spent more than 4 ½ hours on the telephone with the FTC on the two prior occasions that agency lawyers spoke to him. I concur in his opinion that such time should have been adequate.

It is my understanding that Mr. Jolly will be in Asia until he come to Washington for his testimony later this month.

Many thanks for your understanding.

Very truly yours,



DH/de

Morris, Lendais, Hollrah & Snowden

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Attorneys at Law

1980 Post Oak Blvd., Suite 700

Houston, Texas 77056

FACSIMILE TRANSMITTAL

TO: Cecilia Waldeck
COMPANY: FEDERAL TRADE COMMISSION
FAX: 12023262071

FROM: Dolores Ramirez
FAX: 713-966-7225
VOICE: 713-966-7222

RE: Our File #: 0157-012

MESSAGE:

DATE: Tuesday, Dec 3, 2002 01:42PM
PAGES: 2 (Including this transmittal page)

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