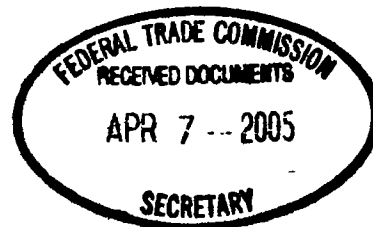


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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In the Matter of :
CHICAGO BRIDGE & IRON COMPANY N.V. :
a foreign corporation :
 :
 : Docket Number 9300
CHICAGO BRIDGE & IRON COMPANY :
a corporation :
 : Public
 :
PITT-DES MOINES, INC. :
a corporation :
 :
 :
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**PITT-DES MOINES, INC. BRIEFING ON
COMPLAINT COUNSEL'S MOTION FOR CLARIFICATION**

Respondent Ironbridge Corp., formerly known as Pitt-Des Moines, Inc. (“Pitt-Des Moines”), by and through its counsel, Brown Raysman Millstein Felder & Steiner LLP (“Brown Raysman”), files this brief in response to the Order of the Federal Trade Commission (the “Commission”) issued March 15, 2005 (the “Order”), requesting further briefing on Complaint Counsel’s Petition for Reconsideration to Clarify Respondents’ Obligations as to the Pitt-Des Moines and Chicago Bridge & Iron Company corporate names (“Counsel’s Petition to Clarify”).¹ The Order requests that Pitt-Des Moines and respondents Chicago Bridge & Iron Company N.V. and Chicago Bridge & Iron Company (collectively “Chicago Bridge”) address the feasibility of granting a transitional license that would allow a purchaser of Chicago Bridge

¹ By way of background, Pitt-Des Moines was previously represented by Winston & Strawn, which, until recently, also represented Chicago Bridge. Brown Raysman was retained by Pitt-Des Moines on or about March 22, 2005 to represent it in these proceedings and filed its Notice of Appearance on March 23, 2005. We understand that Counsel’s Petition was filed on January 31, 2005. Pitt-Des Moines’ former counsel may have been served with that document, but at that time had ceased actively to represent Pitt-Des Moines. Pitt-Des Moines filed no response to Counsel’s Petition to Clarify. The Order states that “PDM remains a party to this proceeding, but it has not objected or otherwise presented its views on the inclusion of the PDM name in assets of the divested entity.” However, because Pitt-Des Moines was not actively represented by counsel at that time and did not intend to waive any rights to a response, Pitt-Des Moines requests that statement be stricken from the Order and this brief be deemed Pitt-Des Moines’ response to both Counsel’s Petition To Clarify and the Order.

& Iron Company assets to use the Pitt-Des Moines name, and setting forth any consequences of granting such a license.

I. BACKGROUND

Pitt-Des Moines, initially known as “Pittsburgh-Des Moines Company,” was formally established in Pennsylvania in or about February, 1916. It changed its name to “Pittsburgh-Des Moines Steel Company” in 1955, to “Pittsburgh-Des Moines Corporation” in 1980, and to “Pitt-Des Moines, Inc.” in 1985. Pitt-Des Moines claimed to have begun using “PDM” as a trademark of the company in 1930. It first registered “PDM” as a trademark in the United States Patent and Trademark Office (the “USPTO”) in or about 1987 in international class 37 – construction and repair – for both construction of sewage treatment plants for others and construction of bridges, buildings, tanks and vessels for others. A trademark and trade name search of the records of the USPTO revealed that neither “Pitt-Des Moines, Inc.” nor “Pitt-Des Moines” were ever registered (although a registered mark, “PDM Corporation,” was obtained in 1982 and cancelled in 1989).

In or about 2000, Pitt-Des Moines commenced a plan to market for sale its several operating divisions as separate stand-alone businesses (the “Marketing Plan”) in an effort to maximize shareholder value. At the time, Pitt-Des Moines presumably possessed whatever common law rights would have attached to the “Pitt-Des Moines” name and the “PDM” mark and statutory rights in the “PDM” mark, as well as several other registered trademarks for a variety of goods and services. There is no evidence to suggest any competing use of “Pitt-Des Moines” or “PDM” at that time.

Through a series of asset and stock sales, Pitt-Des Moines sold off all of its operating business units between 2000 and 2002. Generally, and as further discussed below, as part of each sale, Pitt-Des Moines conveyed rights to use either the name “Pitt-Des Moines” or

the “PDM” mark, or both, in connection with the business that was being sold. Some conveyances were of limited duration, while others were outright transfers. Section II below discusses each of the sales of business operating units and the accompanying transfers of trade names and trademark rights.

II. THE SALES OF PITT-DES MOINES’ BUSINESSES

A. Sale of PDM Strocal, Inc. and Candraft Detailing Inc. to David Long

1. Transaction

The first step in the Marketing Plan was the sale of two subsidiaries comprising the structural steel fabrication and erection business units of Pitt-Des Moines. Pursuant to the terms of a Stock Purchase Agreement dated November 3, 2000, by and among David L. Long (“Mr. Long”), PDM Strocal, Inc., Candraft Detailing, Inc. and Pitt-Des Moines (the “Strocal/Candraft Stock Purchase Agreement”)², Mr. Long purchased from Pitt-Des Moines all of the issued and outstanding capital stock of each of PDM Strocal, Inc. and Candraft Detailing, Inc.

2. Marks Transferred and Retained

Pursuant to Section 7.2.6 of the Strocal/Candraft Stock Purchase Agreement, Pitt-Des Moines licensed to Mr. Long and PDM Strocal the use of the name “PDM Strocal, Inc.” for a period of twelve (12) months beginning on November 3, 2000 and ending on November 3, 2001. This transaction does not affect the rights to the “PDM” and “PITT-DES MOINES” trademarks or the “Pitt-Des Moines” trade name, which remained assets of Pitt-Des Moines. In all events, the license expired on November 3, 2001. PDM Strocal now does business as Strocal, Inc. and Candraft Detailing, Inc. continues to do business under that name. Accordingly,

² Copies of the Strocal/Candraft Stock Purchase Agreement and each of the asset or stock purchase agreements and any trademark licenses or assignment agreements or similar agreements or instruments referred to herein will be provided to the Commission upon request.

this transaction should have no effect on Pitt-Des Moines' ability to convey any rights in its name or marks.

B. Sale of Oregon Culvert Co., Inc. to Contech Construction

1. Transaction

The second phase of the Marketing Plan involved the sale of a Pitt-Des Moines subsidiary that manufactured, marketed and sold corrugated culvert pipe and accessories (the "Oregon Culvert Business"). Pursuant to the terms of a Stock Purchase Agreement dated January 30, 2001, by and between Contech Construction Products, Inc. ("Contech") and Pitt-Des Moines (the "Oregon Culvert Stock Purchase Agreement"), Contech purchased from Pitt-Des Moines all of the issued and outstanding shares of capital stock of Oregon Culvert Co.

2. Marks Transferred and Retained

No rights to use of the "Pitt-Des Moines" name or "PITT-DES MOINES" or "PDM" trademarks were conveyed or licensed as part of this transaction. Further, Section 4.5 of the Oregon Culvert Stock Purchase Agreement excludes from the scope of the transaction the name "PDM" or "Pitt-Des Moines, Inc." or any derivative of either. Under Section 6.1 of the Oregon Culvert Stock Purchase Agreement, however, Pitt-Des Moines agreed not to directly or indirectly own, manage, operate, control, participate in, invest in or be connected in any manner with the management, financing, ownership, operation or control of, any business, venture or activity engaged anywhere in the world in the Oregon Culvert Business under the names "PDM Culvert", "Oregon Culvert", "Washington Culvert" or "Pitt-Des Moines, Inc." during the period beginning on January 30, 2001 and ending on January 31, 2006, in connection with the services sold.

This transaction does not appear to affect the rights to the "Pitt-Des Moines" trade name or the "PDM" and "PITT-DES MOINES" trademarks because no rights were conveyed or

licensed under the agreement. However, because the Oregon Culvert Stock Purchase Agreement includes the negative covenant cited above through January, 2006, any agreement with a potential purchaser from Chicago Bridge of assets as a result of any divestiture as contemplated by the Commission's Order in this matter dated December 21, 2004 ("Divestiture Order") may require a waiver, consent, or other clarification as to Contech's rights.

C. Sale of Engineered Construction and Water Divisions to Chicago Bridge & Iron Company

1. Transaction

In February, 2001, the Pitt-Des Moines Marketing Plan resulted in the sale of its engineered construction and water divisions to Chicago Bridge & Iron Company N.V. and CBI Constructors, Inc. (collectively "CBI"). Pursuant to the terms of the Asset Purchase Agreement dated February 7, 2001, by and among CBI and Pitt-Des Moines (the "CBI Asset Purchase Agreement"), CBI purchased from Pitt-Des Moines the assets of Pitt-Des Moines' businesses of engineering, fabricating and erecting (i) tanks and systems for liquid and cryogenic storage through its Engineered Construction Division and (ii) water storage systems through its Water Division (collectively, the "Engineered Construction/Water Division Business").

2. Marks Transferred and Retained

Pursuant to Section 2.1.6 of the CBI Asset Purchase Agreement, CBI acquired all:

" . . . copyrights and registrations therefor, trademarks and registrations and applications therefor, service marks and registrations and applications therefor and trade names and registrations and applications therefor, all computer software, all product registrations and licenses, and all translations, adaptations, derivations and combinations of the foregoing, including those set forth in Schedule 5.1.10 of the PDM Disclosure Schedule; any and all data, know-how, trade secrets, proprietary processes and formulae, designs, drawings and inventions (including all registrations, licenses and similar agreements and research, analysis and supporting documentation in respect of the foregoing), unregistered trademarks, service marks, tradenames and trade dress of Pitt-Des Moines used by the [Engineered Construction Division and the Water Division] in the conduct of the Engineered Construction/Water Division] Business [emphasis

added]; and all income, royalties, damages and payments which accrued as of the closing of the transaction or thereafter with respect to any of the foregoing items, including damages and payments for past, present or future infringements or misappropriation thereof, the right to sue and recover for past infringements or misappropriation thereof and any and all corresponding rights that may be secured anywhere in the world; and all goodwill associated with any of the foregoing items.”

Schedule 5.1.10 of the PDM Disclosure Schedule that accompanied the CBI Asset Purchase Agreement concerned itself only with the registered trademarks “Tubeseal” and Buoyroof” and related intellectual property. A Trademark Assignment Agreement dated February 7, 2001 between Pitt-Des Moines and CBI Constructors, Inc. formalized certain aspects of the foregoing assignment. To the extent the conveyance provided by the foregoing covered more than the items in the PDM Disclosure Schedule, it was limited by Section 2.2.8 of the CBI Asset Purchase Agreement, which provides that except as granted pursuant to a separate Trademark License Agreement of even date with the CBI Asset Purchase Agreement (the “CBI Trademark License”), Pitt-Des Moines retained all rights to the names “Pitt-Des Moines” or “PDM” and any variation materially derived therefrom.

However, Section 7.8 of the CBI Asset Purchase Agreement sets forth certain restrictions on Pitt-Des Moines’ ability to use its tradenames and marks that were not conveyed. Specifically, Pitt-Des Moines agreed that it would not, directly or indirectly, use, or allow any successor or person which in competition with CBI or its affiliates, sells, markets, distributes or deals in all or any portion of the Engineered Construction/Water Division Business to use, the names “Pitt-Des Moines” or “PDM”, or any variation materially derived therefrom, in connection with any business which is competitive to all or any portion of the Engineered Construction/Water Division Business.

Further the CBI Trademark License extended to CBI the right to use the “PDM” trademark, but only in the Engineered Construction/Water Division Business, and only for one

year. It expressly acknowledges Pitt-Des Moines' continuing ownership of the trademark and of all associated goodwill, and CBI's agreement not to use the licensed trademark except transitionally in connection with the Engineered Construction/Water Division Business, and not to permit any third party to do so without the prior written consent of Pitt-Des Moines.

As a result of the foregoing, although CBI obtained no rights to the Pitt-Des Moines tradenames, or the "PITT-DES MOINES" or "PDM" marks, any effective transfer of rights to use the name or marks in a business competitive with CBI would require a waiver by CBI of the provisions of Section 7.8 of the CBI Asset Purchase Agreement, which expressly survives. (See CBI Asset Purchase Agreement Section 8.1(b).)

D. Sale of Steel Service Centers Division to Reliance Steel

1. Transaction

The next component of the Pitt-Des Moines Marketing Plan led to the sale of its steel service centers operated in the Midwestern and Western United States pursuant to the terms of an Asset Purchase Agreement dated May 18, 2001, by and between Reliance Steel & Aluminum Co. ("Reliance Steel") and Pitt-Des Moines (the "Reliance Asset Purchase Agreement"). The assets purchased by Reliance Steel from Pitt-Des Moines included the seven Pitt-Des Moines distribution and service centers whose businesses consisted of processing and distributing a general line of steel products for use in construction, including plates, sheets, bars, tubes, pipe and miscellaneous metal products (the "Service Business") and the shares of stock of General Steel Corporation ("General Steel"), a Washington corporation and a wholly-owned subsidiary of Pitt-Des Moines that owned one of such service centers.

2. Marks Retained and Transferred

Pursuant to Section 1.01(g) of the Reliance Asset Purchase Agreement, Reliance Steel acquired, inter alia:

- (i) tangible indicia including all United States and foreign trademarks and trademark registrations and trademark applications, trade names, copyrights, United States and foreign patents, patent applications, invention disclosures and drawings embodied or represented by the names “PDM Steel” or “PDM Steel Service Centers,” including the logo incorporating the PDM registered trademarks;
- (ii) certain rights to use the names “PDM”, “PDM STEEL CENTERS”, “PDM STEEL CENTERS CORP.”, “PDM STEEL SERVICE CENTERS INC.”, “PDM SERVICE CENTER”, “PDM SERVICE CENTERS” and “PDM STEEL” as provided in a separate license agreement (the “Reliance License Agreement”); and
- (iii) all right, title and interest of Pitt-Des Moines in and to the Internet domain name “pdmsteel.com”.

Pursuant to the terms and conditions of the Reliance License Agreement, Pitt-Des Moines granted Reliance Steel a perpetual, worldwide, exclusive, royalty free license to use the trade names “PDM”, “PDM STEEL CENTERS”, “PDM STEEL CENTERS CORP.”, “PDM STEEL SERVICE CENTERS INC.”, “PDM SERVICE CENTER”, “PDM SERVICE CENTERS” and “PDM STEEL” in connection with the Service Business. Notwithstanding the foregoing, the license granted does not include the “PDM” mark separate or apart from its use in the “PDM STEEL CENTERS”, “PDM STEEL CENTERS CORP.”, “PDM STEEL SERVICE CENTERS INC.”, “PDM SERVICE CENTER”, “PDM SERVICE CENTERS” and “PDM STEEL” marks. Moreover, pursuant to Section 1.02(j) of the Reliance Asset Purchase Agreement, except as expressly granted therein or in the Reliance License Agreement, Pitt-Des Moines retained all rights to the names “Pitt-Des Moines, Inc.,” “PDM” and all similar, derivative or related names, provided that such names are “not used in connection with a metals service center or the processing and distribution of metals.”

While the permission granted under the Reliance License Agreement was not limited in duration as the prior licenses, it is clear that the scope of the license to use the “PDM”

mark is limited to the Service Business and accordingly, should not present any impediments to granting a transitional license to a buyer in connection with the Divestiture Order.

E. Merger into Ironbridge and Subsequent Name Change

On February 1, 2002, Pitt-Des Moines entered into a Merger Agreement (the “Merger Agreement”) with Ironbridge Acquisition Corp. (“Ironbridge Acquisition”) and Ironbridge Holding LLC (“Ironbridge Holding”) pursuant to which Ironbridge Acquisition commenced a tender offer (the “Offer”) to purchase all of the issued and outstanding shares of common stock of Pitt-Des Moines, whereupon Ironbridge Acquisition would merge into Pitt-Des Moines such that Pitt-Des Moines would become a wholly-owned subsidiary of Ironbridge Holding (the “Merger”). The Offer was successfully completed and the Merger effectuated on March 13, 2002.

Pursuant to a Plan of Merger filed as required by the Merger Agreement, Pitt-Des Moines changed its name to Ironbridge Corp. and caused Pitt-Des Moines, as the entity surviving the Merger, to agree to “use the words ‘Pitt-Des Moines’ and the initials ‘PDM’ . . . only for purposes of managing the remaining assets of [Pitt-Des Moines] and identifying itself as the appropriate business entity in dealing with third parties to facilitate the sale of any of such assets and not for any other purpose, including, without limitation, use of ‘Pitt-Des Moines’ or ‘PDM’ as a trademark for the purpose of marketing or promoting any product or service. . . .”

F. Sale of Steel Bridge Division to Steel Bridges

1. Transaction

Simultaneously with the execution of the Merger Agreement, Pitt-Des Moines cemented the last aspect of the Marketing Plan, the sale of its only remaining operating business, the steel bridge division. By Agreement dated February 1, 2002 (the “Bridge Asset Purchase Agreement”) among Pitt-Des Moines, Steel Bridges, LLC (now known as PDM Bridge, LLC)

(“Steel Bridges”) and PDM Bridge Corp., a wholly-owned subsidiary of Pitt-Des Moines (“PDM Bridge”), Steel Bridges agreed to purchase from Pitt-Des Moines all of the assets of Pitt-Des Moines related to its steel bridge engineering and design, procurement and fabrication business (the “Bridge Business”) immediately following the Merger. Both transactions closed on March 13, 2002.

2. Marks Transferred and Retained

Pursuant to Section 1.1(j) of the Bridge Asset Purchase Agreement, Steel Bridges acquired all of Pitt-Des Moines’ and PDM Bridge’s:

trademarks, service marks, trade names, trade secrets, Internet domain names, copyrights, designs, patents (and all applications relating thereto), licenses (as licensee or licensor) used in or relating to the [Bridge Business] and all goodwill and other agreements and applications with respect to the foregoing....[used in or relating to the Bridge Business]...

Thus, pursuant to Section 1.1(j) Pitt-Des Moines conveyed to Steel Bridges its tradenames and trademarks used in the Steel Bridge Business. This conveyance was accompanied by a Trademark Assignment Agreement dated March 13, 2002 by which Pitt-Des Moines assigned to Steel Bridges:

“ . . . [its] entire right, title, and interest in and to its trademark used in the [Bridge Business] in the United States and in all foreign countries, whether or not such trademarks have been registered prior to, on or after the date of this Assignment, including the [two surviving trademarks set forth on Schedule A attached]. . . and any and all renewals and extensions thereof, together with the goodwill of the [Bridge] Business carried on in connection with such [t]rademarks.”

Trademark Assignment Agreement, Section 1A. Schedule A to the Trademark Assignment Agreement identified two registered trademarks for “PDM” dealing with the construction of sewage treatment plants and the construction of bridges, buildings, tanks and vessels, and the unregistered trademarks “PDM Bridge” and “PDM Bridge Corp.”

Although it appears that Pitt-Des Moines only conveyed trademarks and tradename rights “used in the Bridge Business,” one of the covenants in the Bridge Asset Purchase Agreement includes a restriction on Pitt-Des Moines’ ability to use its tradenames and marks outside of the Bridge Business in language that parrots that in the Plan of Merger noted above:

[Steel Bridges] is purchasing all of [Pitt-Des Moines’ and PDM Bridge’s] rights to the names of [Pitt-Des Moines and PDM Bridge] in the [Bridge Business] and therefore the Sellers shall not be entitled to use the name “PDM Bridge” or variations thereof as corporate or business names or titles anywhere in the world from and after the closing. [PDM Bridge] shall, simultaneously with the Closing, undertake and promptly pursue all necessary action to change its business and corporate names to new names bearing no resemblance to its present name so as to permit the use of such name by the [Steel Bridges], provided that for a period of 180 days after such time as the name of [PDM Bridge] is so amended, Pitt-Des Moines shall have the right to use the words “Pitt-Des Moines” and the initials “PDM” as its tradename, but only for purposes of managing the remaining assets of [Pitt Des-Moines and PDM Bridge] and identifying itself as the appropriate business entity in dealing with third parties to facilitate the sale of any such assets and not for any other purpose, including without limitation, use of “Pitt-Des Moines” or “PDM” as a trademark for the purpose of marketing or promoting any product or service. Notwithstanding anything to the contrary in the forgoing, any subsidiary of [Pitt-Des Moines], other than [PDM Bridge] may continue to use the initials “PDM” in its corporate name or in any tradename in the conduct of its business for a period of one year from the Closing Date.

Bridge Asset Purchase Agreement, Section 10.3 (emphasis added). While unclear, this provision, as well as that in the Plan of Merger, arguably contains an undertaking by Pitt-Des Moines not to use its tradename or its trademarks for any purpose following the name change of PDM Bridge. Such an intent would appear to be inconsistent with the fact that the Bridge Asset Purchase Agreement and Trademark Assignment Agreement dealt only with trademarks and tradenames used in the Bridge Business, and the fact that the clause preceding the restriction appears to deal only with PDM Bridge. Nevertheless, an argument could be made that the underscored provision creates a broad restriction on use of words “Pitt-Des Moines” and the mark “PDM” by Pitt-Des Moines for any purpose.

Further, in connection with the Bridge Asset Purchase Agreement, Steel Bridges entered into a Trademark Security Agreement with Heller Financial, Inc. (now General Electric Capital Corporation) (the “Bridge Lender”) which granted to Bridge Lender a continuing security interest in the same property that is the subject of the Trademark Assignment Agreement, and restricts Steel Bridge’s rights to grant any license, sell or assign any interests therein, or enter into any agreement with respect thereto without the prior written consent of the Bridge Lender.

The USPTO records reflect both the outright assignment of the registered trademarks (i.e. “PDM” for use in connection with construction of sewage treatment plants, bridges, buildings, tanks and vessels) to Steel Bridges, as well as the security interest in both the registered and unregistered marks in favor of the Bridge Lender (although the USPTO has in such registration misidentified the Bridge Lender under the name by which Steel Bridges is now known, PDM Bridge, LLC)³. Even though the assignment of the trademark registrations beyond the Bridge Business may have been an oversight and not the intent of the parties, and even though in the case of a conflict between the rights conveyed by contract and the scope of an active trademark registration, the express term of the contract most likely should govern, the “PDM” mark or marks are currently held by Steel Bridges, subject to the rights of the Bridge Lender. Accordingly, the consent of Steel Bridges to any license in connection with the Divestiture Order is advisable, and to that extent the Bridge Lender’s consent would also be required.

³ The USPTO recently cancelled the registration for “PDM” in connection with “construction of bridges, buildings, tanks and vessels for others.” Steel Bridges cannot successfully claim rights to the “PDM” mark broader than the Bridge Business based upon the cancelled federal trademark registration. Steel Bridges remains the record owner of the PDM active registration in connection with “construction of sewage treatment plants for others.”

III. FEASIBILITY OF A TRANSITIONAL LICENSE TO DIVESTITURE BUYER

The Commission has asked for an assessment of the feasibility of granting a transitional license to any acquirer of the assets conveyed to CBI as the result of the Divestiture Order. An initial review would suggest that Pitt-Des Moines currently owns the right to use the tradename "Pitt-Des Moines" and the marks "PITT-DES MOINES" and "PDM" in the Engineered Construction/Water Division Business, and thus, would be in a position to sell or license, for reasonable consideration, such rights, either for a limited or unlimited period of time. Specifically, such rights would encompass the right to use the tradename "Pitt-Des Moines" and the trademarks "PITT-DES MOINES" and "PDM" in connection with the Engineered Construction/Water Division Business, subject in all respects, however, to each of the existing licenses and other rights extended to all of the foregoing asset purchasers from Pitt-Des Moines as a result of its implementation of the Marketing Plan.

As already noted, however, the Commission should be aware of a number of factors affecting, as well as the necessity or advisability of obtaining third-party consents to, any license or sale to a purchaser of divested assets from Chicago Bridge and/or CBI.

1. The Name and Mark May be Deemed "Abandoned"

A trade name and/or mark is considered "abandoned" when it has not been used in commerce for a period of time and the owner has demonstrated an intent to abandon such name or mark. There is a presumption under the Lanham Act (Trademark Act), 15 U.S.C.A. §1127 that a mark that has not been used commercially for three years in the ordinary course of trade has been abandoned.

Pitt-Des Moines merged with Ironbridge Acquisition and changed its name to Ironbridge Corp., in April 2002. Since then it has used the tradename "Pitt-Des Moines" and the

marks “PITT-DES MOINES” and “PDM” only in connection with winding up its business, including the sales of non-operating assets (primarily real property and pension plan assets with respect to former employees) and the settlement of claims on behalf of or against Pitt-Des Moines. Although Pitt-Des Moines remains a licensor of the “PDM” mark as described above, it derives no ongoing revenue from such uses and it is not clear that such status is a sufficient commercial use to avoid a claim of abandonment. Similarly, it is not clear that a bona fide intention to license the name and mark to any acquirer as the result of the Divestiture Order would constitute sufficient intention of commercial use to save the name and marks from a claim of abandonment at this point, since Pitt-Des Moines itself has neither the intention of using the name or mark commercially nor, as a contractual matter, the clear right to do so.

The issue of abandonment could be of concern if there is an entity that wishes to preclude or prevent the use of the Pitt-Des Moines name and “PITT-DES MOINES” or “PDM” marks in the business of the divested assets. However, given that barely three years have lapsed since the last commercial use of the tradename or marks by Pitt-Des Moines, and Pitt-Des Moines is not aware of any currently competing use, it is unlikely that there is any entity standing by that would press an abandonment argument to gain control of the tradenames or trademarks.

2. Ambiguity of Steel Bridges Transactions and Overbreadth of its Trademark Registrations

As noted above, the Bridge Asset Purchase Agreement is ambiguous in that, while it conveys only marks used in the Bridge Business, it attempts to limit Pitt-Des Moines from using its tradename and marks for any purpose other than winding up its affairs. Further, the trademark registrations filed by Steel Bridges for the PDM mark relate to “construction of

sewage treatment plants for others” and “construction of bridges, buildings, tanks and vessels,” which descriptions are arguably broader than the business that was actually conveyed.

In order to avoid any doubt or later litigation, Pitt-Des Moines would need to secure Steel Bridges’ consent to a conveyance or license of the name and marks to any purchaser of divested assets, as well as the consent of the Bridge Lender, plus a waiver of any rights it acquired in these marks in businesses outside of that purchased from Pitt-Des Moines. Steel Bridges may resist providing consent or may seek compensation for such consent.

Additionally, it may be necessary to correct the remaining active “PDM” trademark registrations in the names of Steel Bridges and the Bridge Lender so as to narrow their scope consistent with the related agreements.

3. Consent of CBI

Because the CBI Asset Purchase Agreement also included language limiting Pitt-Des Moines’ use of the name “Pitt-Des Moines” or “PDM” in connection with any competitive business (see discussion at Section II.C.2 above), CBI’s waiver or consent under the CBI Asset Purchase Agreement would also be required.

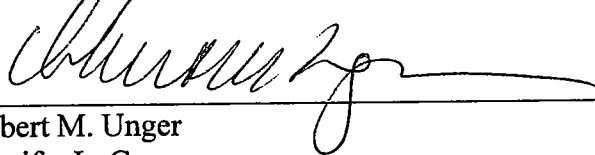
4. Other Third Party Rights.

Any acquirer should also be required to acknowledge the existence of all pre-existing licenses and uses by Pitt-Des Moines’ transferees, including Reliance Steel and Contech, in order to avoid any dispute concerning marketplace confusion resulting from multiple uses of the

“PDM” mark, logo or name and the “PITT- DES MOINES” mark and business name in a variety of businesses related to the design, manufacture and distribution of steel products.

Dated: April 6, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I TODAY CAUSED:

One original and twelve copies of Pitt-Des Moines, Inc.'s Briefing on Complaint Counsel's Motion for Clarification to be served by Federal Express, one copy to be served by electronic mail, and one copy to be served by facsimile upon:

Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580
Fax: 202 326-3227 and 202 326-2543

One copy thereof to be served by Federal Express upon:

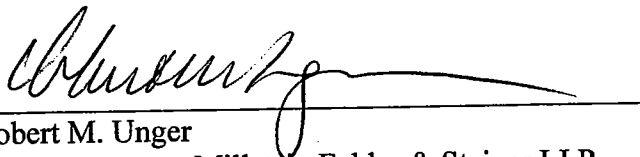
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