

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

**Tronox Limited**  
a corporation,

**National Industrialization Company**  
(TASNEE)  
a corporation,

**National Titanium Dioxide Company**  
**Limited (Cristal)**  
a corporation,

And

**Cristal USA Inc.**  
a corporation.

**Docket No. 9377**

**PUBLIC**

**EXPEDITED TREATMENT**  
**REQUESTED**

**COMPLAINT COUNSEL’S MOTION TO COMPEL RESPONDENTS TO IDENTIFY**  
**THE INFORMATION FROM UPCOMING WITNESSES FOR WHICH THEY WILL**  
**CONTINUE TO SEEK *IN CAMERA* TREATMENT**

Complaint Counsel respectfully requests that the Court issue an order compelling Respondents to identify the information from upcoming trial witnesses for which they will continue to seek *in camera* treatment.

**BACKGROUND**

During the June 1, 2018 examination of Complaint Counsel’s expert witness, Dr. Nicholas Hill, the Court directed that more of the trial be conducted in public session going forward, with *in camera*

examination questions about such documents should be in public session so long as they relate to underlying information that is not *in camera*.<sup>2</sup>

Complaint Counsel has two remaining fact witnesses to call at trial: Tronox executive John Romano and Cristal executive Mark Stoll. Mr. Stoll is scheduled to testify on June 6, 2018, which Respondents have represented is the only day he is available. Mr. Romano is scheduled to testify immediately after Mr. Stoll. Respondents requested *in camera* treatment of Mr. Stoll's and Mr. Romano's deposition and investigational hearing ("IH") transcripts in their entirety.<sup>3</sup> Respondents also requested *in camera* treatment of the deposition and IH transcripts for the eleven Tronox and Cristal employees on their final witness list,<sup>4</sup> in their entirety, as well as for the reports and depositions transcripts of their three expert witnesses, again in their entirety.<sup>5</sup> The Court granted Respondents' *in camera* requests.<sup>6</sup>

In order to prepare examinations that separate properly public information from properly *in camera* information, Complaint Counsel asked Respondents to designate portions of Mr. Stoll's and Mr. Romano's IH and deposition transcripts that actually contain *in camera* material as soon as possible, but no later than June 5, 2017.<sup>7</sup> Complaint Counsel further requested that Respondents notify Complaint Counsel of the information in each of Respondents' expert reports

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<sup>2</sup> Trial Tr. at 1749-50 (June 1, 2018) (discussing this issue in the context of Dr. Hill's expert reports, for which Respondents sought and obtained *in camera* treatment in their entirety).

<sup>3</sup> Respondent Tronox Limited's Motion for *In Camera* Treatment of Trial Exhibits, May 1, 2018; Respondents National Industrialization Company, The National Titanium Dioxide Company Limited, and Cristal USA Inc.'s Motion for *In Camera* Treatment of Proposed Trial Exhibits, May 1, 2018.

<sup>4</sup> Respondents' final witness list consists of nine Tronox employees, two Cristal employees, and two third parties. The only witness who appears on both Complaint Counsel'





provide the designated transcripts on a rolling basis, so long as Complaint Counsel receives them at least 72 hours before each witness is called.<sup>13</sup>

### **CONCLUSION**

Complaint Counsel respectfully requests that the Court order Respondents to (1) provide Complaint Counsel with designated versions of the IH and deposition transcripts for Mr. Stoll and Mr. Romano by June 5, 2018, and (2) identify the information in each of Respondents' expert reports that needs to remain *in camera*, and provide designated versions of the IH and deposition transcripts of any witnesses Respondents intend to call at trial, at least 72 hours before each witness is called.

Dated: June 5, 2018

By: Dominic Vote

Dominic Vote  
Bureau of Competition  
Federal Trade Commission  
400 7th Street, S.W.  
Washington, D.C. 20024

*Counsel Supporting the Complaint*

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<sup>13</sup> Moreover, as noted above, Respondents filed extremely broad *in camera* motions. Unlike many of the third parties, Respondents designated the entirety of their employees' IH and deposition transcripts for *in camera* treatment. Prior to filing their *in camera* motions, Respondents should have identified the portions of their employees' transcripts and their experts' reports that would truly result in a "clearly defined, serious injury" if publicly disclosed. 16 C.F.R. § 3.45(b). They should not now be heard to complain that it is burdensome to do work that they should have done in the first instance.

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FEDERAL TRADE COMMISSION  
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National Titanium Dioxide Company )  
Limited (Cristal) )  
 a corporation, and )  
 )  
Cristal USA Inc. )  
 a corporation, )  
 )  
 Respondents. )  

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**[PROPOSED] ORDER**

Having carefully considered Complaint Counsel’s Motion to Compel Respondents to Identify the Information from Upcoming Witnesses for Which They Will Continue to Seek *In Camera* Hal

**STATEMENT REGARDING MEET AND CONFER**

I certify that before filing Complaint Counsel's Motion to Compel Respondents to Identify the Information from Upcoming Witnesses for which They Will Continue to Seek *In Camera* Treatment ("Motion"), Complaint Counsel and Respondents' counsel met and conferred in good faith in an effort to resolve the issue raised in the Motion, and were unable to reach an agreement.

Specifically, on June 4, 2018, at 11:00 a.m., Dominic Vote, on behalf of Complaint Counsel, emailed Michael Williams and Karen DeSantis, counsel for Tronox, and James Cooper and Peter Levitas, counsel for Cristal, requesting that Respondents designate the portions of the investigational hearing and deposition transcripts of upcoming trial witnesses Mark Stoll and John Romano that actually contain *in camera* material as soon as possible, but no later than June 5, 2017. Complaint Counsel further requested that Respondents notify Complaint Counsel of the information in each of Respondents' expert reports that needs to remain *in camera*, as well as designate the true *in camera* portions of the investigational hearing and deposition transcripts of

Respondents continue to assert *in camera* treatment. Instead, Mr. Williams broadly stated that he “expect[s] Complaint Counsel is familiar enough with this case at this point to understand that we are seeking *in camera* treatment of information internal to the respective respondents or third parties.” As set forth in the Motion, this does not resolve Complaint Counsel’s concerns. On June 5, 2018, at 11:15 a.m., Mr. Vote responded to Mr. Williams via email, stating that Complaint Counsel is not in a position to guess about what information Respondents actually believe meets the standard for *in camera* treatment.

Chuck Loughlin, Joonsuk Lee, Simone Oberschmied, and Caitlin Durand, representing Complaint Counsel, were also copied on all of the above-described emails.

Dated: June 5, 2018

By: Dominic Vote

Dominic Vote  
Bureau of Competition  
Federal Trade Commission  
400 7th Street, S.W.  
Washington, D.C. 20024

*Counsel Supporting the Complaint*



**CERTIFICATE OF SERVICE**

I hereby certify that on June 5, 2018, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
[ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov)

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I hereby certify that on June 5, 2018, I caused a copy of the foregoing document to be served via email on:

Michael F. Williams  
Karen McCartan DeSantis  
Matthew J. Reilly  
Travis Langenkamp

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Carlamaria Mata

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*Counsel for Respondent  
Tronox Limited*

*Counsel for Respondents National  
Industrialization Company (TASNEE),  
The National Titanium Dioxide Company  
Limited (Cristal), and Cristal USA, Inc.*

/s/ Blake Risenmay  
Blake Risenmay

*Counsel Supporting the Complaint*

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

June 5, 2018

By: /s/ Blake Risenmay  
Blake Risenmay