

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION

Plaintiff,

V.

TRONOX LIMITED

NATIONAL INDUSTRIALIZATION
COMPANY

NATIONAL TITANIUM DIOXIDE
COMPANY LIMITED

and

CRISTAL USA INC.

Defendants.

CIVIL ACTION NO. 1:18-cv-01622 (TNM)

**INTERVENING THIRD PARTIES' JOINT MOTION AND STATEMENT OF POINTS
AND AUTHORITIES IN SUPPORT OF MOTION FOR PROTECTIVE ORDER**

Without giving any notice to the third parties involved in the administrative proceeding before the Federal Trade Commission (“FTC”), Defendants seek a protective order in this case that would undo protections previously afforded competitively sensitive and trade secret information of third parties in this case, thereby granting unfettered access by Defendants’ in-house counsel to some of the most highly sensitive business information of Defendants’ customers and other third parties. The intervening third parties: PPG Industries, Inc. (“PPG”), Benjamin Moore & Co., The Sherwin-Williams Company, BASF Corporation, and Masco

Corporation (together, “the Intervening Third Parties”) hereby oppose Defendants’ proposed protective order and move the Court to enter the FTC’s proposed protective order.

In the FTC administrative proceeding, the Intervening Third Parties, who are *customers* of Defendants for TiO₂, collectively produced thousands of pages of competitively sensitive information pursuant to government and third party subpoenas, including documents related to pricing, contracts, contract negotiations, product formulations, and TiO₂ supply strategy. They produced this information in the FTC administrative proceeding with the understanding that it would not be shared with any employee of Defendants, including their in-house counsel.¹ There, as here, Defendants sought to give designated in-house counsel access to confidential information. After full briefing on the issue, Judge Chappell, who presided over the administrative proceeding, denied Defendants’ request. Judge Chappell also took meticulous care to maintain the protections of this information during the course of the 16-day administrative hearing through designating certain portions of the evidentiary hearing as *in camera*, thereby restricting the proceedings to only those permitted to hear and see such highly sensitive information under the protective order.

Defendants now seek an end-run around the protective order entered in the FTC administrative proceeding without ever notifying third parties of their efforts.² Defendants offer no reasoned explanation for why their designated in-house counsel now need this information for

¹ The Intervening Third Parties also produced this information with the understanding, pursuant to Paragraph 8 of the Protective Order entered in the FTC administrative proceeding, that it would not be used outside the proceeding for any purpose. Ex. 1 (Protective Order), ¶ 8 (“Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever . . .”). The Intervening Third Parties object to any party’s use of their information outside of the FTC administrative proceeding.

² In accordance with Local Rule 7(m), counsel for PPG conferred with counsel for Tronox on behalf of the Intervening Third Parties. Defendants oppose the relief sought in this motion.

the more limited purpose of responding to a motion for preliminary injunction. A full trial on the merits has already taken place. Further, and more alarmingly, their designated in-house counsel are involved in competitive decision-making. Their own Linked-in profiles and declarations confirm that they advise on issues relating to, among other things, pricing, strategic initiatives, and competition among TiO₂ suppliers.

Allowing Defendants' in-house counsel access to the most competitively sensitive information the Intervening Third Parties produce raises an inappropriate risk of inadvertent disclosure. This would result in serious competitive harm to the Intervening Third Parties who are customers of Defendants for TiO₂. Among other things, Defendants may use information about the Intervening Third Parties' pricing, volume, and contract negotiations as leverage in TiO₂ supply negotiations, including to potentially demand higher prices than they otherwise would have. Because Defendants' need to share this information with their in-house counsel is substantially outweighed by the risks associated with inadvertent disclosure, the Intervening Third Parties respectfully request that the Court deny Defendants' proposed protective order and enter the FTC's proposed protective order.

BACKGROUND

The Intervening Third Parties are customers of Defendants for titanium dioxide ("TiO₂"). TiO₂ is a raw material that provides whiteness, brightness, durability, and coverage or hiding capability and is a key ingredient in paint and other coatings products, which the Intervening Third Parties manufacture and distribute.

In December 2017, the Federal Trade Commission ("FTC") filed an administrative complaint against Defendants, seeking to block their proposed merger. Judge Chappell, who presided over the FTC administrative proceeding, immediately entered a standard protective

order, consistent with Commission Rule 3.31(d), which prohibits the disclosure of confidential information to “employees of a respondent,” including in-house counsel. *See* Ex. 1 (Protective Order) ¶ 7.

In the ensuing months, the FTC and Defendants served the Intervening Third Parties with subpoenas for documents and testimony. The subpoenas were far-reaching, demanding competitively sensitive and trade secret information on a variety of topics, including documents relating to the Intervening Third Parties’ purchasing, pricing, contract negotiations, projections, and supply strategy related to TiO₂ and documents related to their proprietary processes to qualify grades of TiO₂ for use. In response to these subpoenas, the Intervening Third Parties collectively produced significant amounts of confidential information. They produced this information with the understanding, pursuant to the Protective Order, that it would not be shared with Defendants’ employees, including their in-house counsel.

In response to Defendants’ subpoenas, some of the Intervening Third Parties also produced witnesses for depositions. Their employees sat for hours of testimony, providing answers to questions about competitively sensitive information related to pricing, contract negotiations, and supply strategy, among other things. Those Intervening Third Parties designated these transcripts confidential, later taking great pains to identify those portions that could be made public. At trial, those Intervening Third Parties also provided live testimony, much of which was conducted *in camera* because of the competitively sensitive nature of the testimony. In PPG’s case, its Director of Raw Material Purchasing provided two days of testimony, during which Defendants cross-examined the witness for more than five hours. Nearly all of this testimony was provided *in camera*.

At all stages of the administrative proceeding, the Intervening Third Parties took steps to protect their competitively sensitive information. In responding to the parties' burdensome subpoenas, they reviewed every document for confidentiality, and designated it accordingly. They also provided detailed declarations in support of motions for *in camera* treatment to protect their confidential information from being made public during the administrative trial. There, as here, Defendants asked the court to allow Mr. Steven Kaye and Mr. James Koutras, Tronox and Cristal's respective in-house counsel, to review confidential third party information. Concerned about two of its TiO₂ suppliers having access to competitively sensitive information about its pricing, contract negotiations, and supply strategy, PPG filed a brief with the FTC, opposing Defendants' request. After full briefing on the issue, Judge Chappell denied Defendants' request.

In this action, the FTC has moved to enter a protective order that is identical in substance to the protective order entered by Judge Chappell in the FTC administrative proceeding, and under which the Intervening Third Parties produced their information. *See* Pl.'s Mot. & Statement of Points and Authorities in Supp. of Mot. for Protective Order (Dkt. No. 4) at 2. Defendants concede that a protective order is warranted in this case, but oppose the FTC's motion because the proposed protective order does not grant Mr. Kaye and Mr. Koutras access to confidential information, including from third parties. *See* Defs.' Opp. to Pl.'s Mot. for Protective Order (Dkt. No. 32) ("Defs.' Opp.") at 1. In their opposition, Defendants propose an alternative protective order that would grant Mr. Kaye and Mr. Koutras access to all confidential information. *See id.* at Ex. A.

The Intervening Third Parties remain concerned about Mr. Kaye and Mr. Koutras having access to their competitively sensitive information. Accordingly, for this reason and those set

forth below, the Intervening Third Parties respectfully request that (1) the Court reject Defendants' proposed protective order and (2) enter the FTC's proposed protective order.

ARGUMENT

Under Rule 26(c) of the Federal Rules of Civil Procedure, a "court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," including by "requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed in only a specified way." Fed. R. Civ. P. 26(c)(1). There is good cause to issue a protective order in this case, as thousands of pages of competitively sensitive information have been produced in the FTC administrative proceeding by the Intervening Third Parties, who are Defendants' customers for TiO₂. The parties have put forth competing protective orders, but only the FTC's proposed protective order will protect the Intervening Third Parties from serious competitive harm. Defendants' proposed protective order would grant Defendants' in-house counsel unfettered access to competitively sensitive third party information, even though they are involved in competitive decision-making and pose a serious risk of inadvertent disclosure. The FTC's proposed protective order should be entered.

I. THE COURT SHOULD REJECT DEFENDANTS' PROPOSED PROTECTIVE ORDER.

A. Defendants' Designated In-House Counsel Are Involved in Competitive Decision-Making.

Good cause exists to enter the FTC's proposed protective order, and deny Defendants' proposed protective order, because there is significant risk that Defendants' in-house counsel will disclose confidential information through advice, discussions, or documents, because they are involved in competitive decision-making. *See United States v. Aetna Inc.*, No. 1:16-cv-

01494 (JDB), 2016 WL 8738420, at *5 (D.D.C. Sept. 5, 2016) (“Defendants have failed to demonstrate that in-house counsel designated by Defendants are not involved in competitive decision making.”).

In merger cases, courts routinely deny in-house counsel access to confidential material where they are involved in competitive decision-making because there is a “risk that such information will be used or disclosed inadvertently because of the lawyer’s role in the client’s business decisions.” *Id.* (quoting *Fed. Trade Comm’n v. Sysco Corp.*, 83 F. Supp. 3d 1, 3-4 (D.D.C. 2015)). “This is . . . because information, once learned, is impossible to forget.” *Aetna*, 2016 WL 8738420, at *5.³

While Defendants claim that their designated in-house counsel “are not competitive decision-makers,” Defs.’ Opp. at 2, their public profiles and declarations show otherwise. The profiles of Defendants’ in-house counsel confirm that they are regularly involved in competitive decision-making and strategy. For example, according to the Linked-in profile of James Koutras, Director – Senior Corporate Counsel and Secretary at Cristal USA, Inc., he has “[e]xtensive experience” in “commercial transactions” and “[a]dvises on various regional and global *strategic initiatives*.” Ex. 2 (Koutras Linked-in profile) (emphasis added). Steven Kaye, Deputy General Counsel for Tronox Limited, similarly touts in his Linked-in profile that he “[m]anages *all legal aspects of the Company’s corporate activity and Titanium Dioxide business*, including *M&A*, corporate finance, regulatory, labor and employment, environmental *and commercial matters*.” Ex. 3 (Kaye Linked-in profile) (emphases added).

³ Defendants themselves argue that “[t]he objective of the protective order should be to prevent the disclosure of confidential material to those who are ‘competitive decision-makers’ or ‘involved in competitive decision-making.’” Defs.’ Opp. at 2 (quoting *Fed. Trade Comm’n v. Whole Foods Market, Inc.*, No. 07-1021 (PLF), 2007 WL 2059741, at *3 (D.D. C. July 6, 2007)).

The declarations submitted in support of Defendants’ proposed protective order – which are the same declarations submitted in the administrative proceeding – confirm that Mr. Koutras and Mr. Kaye are involved in competitive decision-making. In stunningly similar declarations, Mr. Koutras and Mr. Kaye admit to providing advice and participating in decisions relating to “competition with other titanium dioxide suppliers” and “pricing strategies.” Defs.’ Opp. at Ex. B (Kaye Decl.) ¶ 8; *id.* at Ex. C (Koutras Decl.) ¶ 8. Mr. Kaye states that he “sporadically participate[s] in meetings where potentially competitive sensitive issues are discussed.” *Id.* at Ex. B ¶ 9. Mr. Koutras, for his part, attests to “sporadically participat[ing] in matters involving Cristal’s price increase announcements and contractual disputes.” *Id.* at Ex. C ¶ 9.

While Mr. Koutras and Mr. Kaye try to downplay their involvement in some of these decisions by stating that they only provide “legal advice,” that does not absolve them from being involved in competitive decision-making. As this Court has explained: “the . . . test is not strictly limited to decision-making responsibility; it more broadly encompasses a lawyer’s activities, associations, and relationship with a client and its competitive decision-making activities.” *Sysco Corp.*, 83 F. Supp. 3d at 3 (internal quotation marks and citation omitted). Indeed, the problem with “granting in-house counsel access to confidential information” is that it puts counsel “in the untenable position of having to refuse his employer legal advice on a host of contract, employment, and competitive marketing decisions lest he improperly or indirectly reveal a competitor’s trade secrets.” *Aetna*, 2016 WL 8738420, at *5 (internal quotation marks, alterations, and citation omitted). Allowing Mr. Kaye and Mr. Koutras to access competitively sensitive information from their customers would put them in this very untenable position.

B. The Risk of Inadvertent Disclosure by Defendants' Designated In-House Counsel Is Substantial.

Courts recognize that where, as here, “in-house counsel are involved in competitive decision-making . . . the risk of inadvertent disclosure is obviously higher than for retained counsel.” *Fed. Trade Comm’n v. Advocate Health Care Network* (“*Advocate*”), 162 F. Supp. 3d 666, 669 (N.D. Ill. 2016). “The inescapable reality” is that once a lawyer “learns the confidential information that is being sought, that individual cannot rid himself of the knowledge he has gained.” *Id.* at 670. As this Court has recognized, “[i]t is very difficult for the human mind to compartmentalize and selectively suppress information once learned, no matter how well-intentioned the effort may be to do so.” *Aetna, Inc.*, 2016 WL 8738420, at *5 (internal quotation mark and citation omitted).

While Defendants are purportedly “willing to put in place extensive safeguards to protect against inadvertent disclosure,” Defs.’ Opp. at 3, their proposed safeguards are insufficient and pale in comparison to what this Court often requires. This Court routinely imposes severe financial penalties (among other protections) for violations of protective orders in merger cases, which Defendants notably do not suggest. *See, e.g., United States v. Sungard Data Sys., Inc.*, 173 F. Supp. 2d 20, 21 (D.D.C. 2001) (imposing \$250,000 fine); *Sysco Corp.*, 83 F. Supp. 3d at 5 (same); *Whole Foods Mkt., Inc.*, 2007 WL 2059741, at *3 (same). Instead, Defendants propose giving their designated in-house counsel access to a “secure electronic data room or document review platform (such as Relativity)” to review confidential information. Defs.’ Opp. at 3. In other words, Defendants want to give their in-house counsel unfettered access to a searchable database that contains competitively sensitive and proprietary information from third parties. The only safeguard they propose is a password. Passwords can be shared or inadvertently disclosed. Further, Defendants offer no explanation as to why their in-house counsel needs this

type of unbridled access to confidential third party information about pricing, contract negotiations, supply strategy, and other topics. *See infra* Section III.

Defendants claim that their proposed protective order is “based closely” on the protective order entered in *Federal Trade Commission v. Wilhelmsen*, No. 1:18-cv-00414-TSC (D.D.C.), but this is incorrect. In *Wilhelmsen*, the protective order granted designated in-house counsel access to two narrow categories of confidential third party information, which included “(1) the identities of declarants who submitted or will submit a declaration to the FTC . . . and (2) redacted versions of these declarations that redact out confidential information.” *See* Defs.’ Opp. at Ex. D, ¶ 8. Defendants, by contrast, want their in-house counsel to have access to *all* confidential information produced by third parties with limitless search capabilities and no financial penalties for disclosure.

C. Defendants’ Need is Substantially Outweighed by the Risks Associated with Inadvertent Disclosure.

Defendants urge the Court to adopt their proposed protective order because “[t]he core antitrust issues in dispute involve intertwined business and legal issues which require the input of in-house counsel.” Defs.’ Opp. at 1. Aside from this generic statement, Defendants offer no reasoned explanation for why they need to share confidential third party information with their in-house counsel. In *Advocate*, the court rejected a similar *ipse dixit* explanation for granting in-house counsel access to confidential information: “The defendants never get around to explaining that, other than to cite, very general, boilerplate language regarding attorneys needing to share facts with their clients in order to adequately represent them.” 162 F. Supp. 3d at 671;

see also id. at 674 (“There is only the *ipse dixit* of the defendants to sustain their position. And that is not enough.”).⁴

Tellingly, a full trial on the merits has already taken place without Defendants’ in-house counsel having access to confidential third party information. Out of the thousands of documents produced by the Intervening Third Parties, Defendants used only a handful at trial. Defendants cannot now credibly argue their in-house counsel *needs* access to *all* confidential third party documents to defend against a motion for preliminary injunction on the same exact issues.

Whereas Defendants have little to gain, the Intervening Third Parties have much to lose. Defendants demanded and received the most competitively sensitive and trade secret information that the Intervening Third Parties generate, including information related to pricing, contract negotiations, sourcing strategy, and product formulations. If Defendants’ in-house counsel are allowed to access this information, the Intervening Third Parties are likely to suffer severe financial harm and competitive disadvantage. For example, it would cause serious harm to the Intervening Third Parties’ negotiating position if Defendants were aware of their volume, pricing, and negotiations with other TiO₂ suppliers. It would also put the Intervening Third Parties at a serious competitive disadvantage if Defendants knew detailed information about their sourcing strategies, including the viability of alternative TiO₂ suppliers. To the extent

⁴ Defendants try to analogize this case to *United States v. Sungard Data Systems, Inc.*, but this case is not analogous. As a threshold matter, the procedural posture was different. In *Sungard*, a full trial on the merits had not yet taken place. The parties agreed to an aggressive schedule in which they had only two weeks from the date the complaint was filed to complete discovery and three weeks to prepare for the evidentiary hearing. 173 F. Supp. 2d at 21. Here, by contrast, the parties had months to complete discovery and prepare for trial. In *Sungard*, the court also held a hearing at which it permitted cross examination of in-house counsel to assess defendants’ need for sharing confidential information with in-house counsel. *Id.* Based on that hearing, the court was “convinced that it would be extremely difficult, if not impossible, for the defendants’ outside counsel to prepare this case for trial without the assistance of in-house counsel.” *Id.*

Defendants gain access to any documents relating to how the Intervening Third Parties may respond to Defendants' merger, this would also put them at a significant competitive disadvantage if Defendants are allowed to consummate the transaction.

In *Aetna*, this Court denied in-house counsel access to confidential third party information under similar circumstances. In *Aetna*, the merging parties were health insurance companies that negotiated rates with healthcare providers for in-network status. The Court found that "[k]nowing what reimbursement rates these providers have negotiated with other insurers, a provider's enrollment projections, or cost and profitability data for a provider could provide the Defendants with a significant advantage in future negotiations with these providers. *Aetna*, 2016 WL 8738420, at *6.

In *Advocate*, the court similarly rejected a request by the merging parties to give in-house counsel access to confidential third party information. 162 F. Supp. 3d at 669-70, 674 (N.D. Ill. 2016). The court found "the only sure way to protect the [third parties'] confidential information is to carve out a special category of Highly Confidential information for them that is ***not accessible*** to in-house designees." *Id.* at 674 (emphasis added). There, as here, Defendants "seem to put out of the equation that we are not talking about an exchange of documents between two sides in a lawsuit. We are talking about a . . . third part[y], not [a] target[] of any FTC action, who had to give up exceedingly confidential information in response to a government subpoena," and even broader subpoenas from Defendants. *Id.* at 671-72.

As in these cases, Defendants' purported need to share confidential third party information with its in-house counsel does not outweigh the significant risk associated with its inadvertent disclosure.

CONCLUSION

For the foregoing reasons, the Intervening Third Parties respectfully request that (1) the Court reject Defendants' proposed protective order and (2) enter the FTC's proposed protective order.

DATED: July 19, 2018

Respectfully submitted,

/s/ Justin W. Bernick

Justin W. Bernick
Kimberly D. Rancour
HOGAN LOVELLS U.S. LLP
555 13th Street NW
Washington, DC 20004
Tel: (202) 637-5600
Fax: (202) 637-5910
justin.bernick@hoganlovells.com
kimberly.rancour@hoganlovells.com

Attorneys for PPG Industries, Inc.

/s/ Ryan A. Shores

Ryan A. Shores
William J. Haun (*pro hac vice*)
SHEARMAN & STERLING LLP
401 9th Street, NW
Washington, DC 20004
Tel: (202) 508-8056
Fax: (202) 508-8100
ryan.shores@shearman.com
william.haun@shearman.com

Attorneys for Benjamin Moore & Co.

/s/ Steven Newborn

Steven Newborn
Megan Granger
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Tel: (202) 682-7000
Fax: (202) 857-0940
steven.newborn@weil.com
megan.granger@weil.com

Attorneys for The Sherwin-Williams Company

s/ Michael E. Lackey

Michael E. Lackey
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006
Tel: (202) 263-3000
Fax: (202) 263-3300
mlackey@mayerbrown.com

Andrew S. Marovitz
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
Tel: (312) 782-0600
Fax: (312) 701-7711
amarovitz@mayerbrown.com

Attorneys for BASF Corporation

/s/ John Taladay

John Taladay
Nathan Chubb (*pro hac vice*)
BAKER BOTTS L.L.P.
1200 Pennsylvania Ave., NW
Washington, DC 20004
Tel: (202) 639-7700
Fax: (202) 639-7890
john.taladay@bakerbotts.com
nathan.chubb@bakerbotts.com

Attorneys for Masco Corporation

EXHIBIT 1



UNITED STATES OF AMERICA
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,)

Respondents.)

DOCKET NO. 9377

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: December 7, 2017

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9377" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9377" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

EXHIBIT 2

James Koutras

Director - Senior Corporate Counsel and Secretary at Cristal USA Inc.

Summary

Experienced corporate counsel, currently managing North American legal department of major global chemical company headquartered in Jeddah, Saudi Arabia. Extensive experience in various areas of the law, including corporate governance and compliance, commercial transactions and licensing, litigation management, insurance and risk management, immigration, employment and labor law, intellectual property management.

Experience

Director - Senior Corporate Counsel and Secretary

August 2007 - Present

Manage corporate legal function and staff for Cristal USA Inc., North American subsidiary for \$ 2 billion global chemical company based out of Jeddah, Saudi Arabia. Lead counsel for the negotiation of \$ 250 million ABL Financing; Implemented and Manage Corporate Compliance Program; Manage Outside Counsel Relationships and Budgets; Lead Internal Counsel for implementation of corporate affiliate in Baar, Switzerland; Negotiate and Manage Global Corporate Insurance Program; Secretary for numerous corporate entities with reporting responsibilities to Board of Directors; Manage numerous Employment and Labor Law matters; Manage various Immigration matters, including negotiating of visa requests for individuals located in numerous European, Middle Eastern and Asian countries; Advises on various regional and global strategic initiatives; Manage Global IP Portfolio, including advising on patent filings and prosecutions.

Senior Litigation Counsel at JLG Industries

February 2006 - December 2006 (11 months)

Managed Corporate Litigation and Outside Counsel Relationships and Budgets for major aerial work platform manufacturer. Negotiated and Managed Global Corporate Insurance Program. Reported to management and Board of Directors on significant litigation matters.

Partner/Associate at McCarter & English, LLP

2000 - 2006 (7 years)

Attorney in Products Liability Practice Group. First chaired in excess of 30 jury and 100 bench trials during career. Member of firm E-Discovery Group.

Associate

1996 - 2000 (5 years)

Attorney in Insurance Defense and Product Liability law firm.

Judicial Law Clerk for the Honorable James C. Cacheris, U.S.D.Ct. for Eastern District of Virginia at United States Government

1995 - 1996 (2 years)

Federal Law Clerk

Education

University of Baltimore School of Law

JD, Law, 1992 - 1995

University of Aberdeen

1993 - 1993

American University - Kogod School of Business

BS, Finance, 1988 - 1990

Indiana University Bloomington

Business, 1986 - 1988

Activities and Societies: Lambda Chi Alpha

James Koutras

Director - Senior Corporate Counsel and Secretary at Cristal USA Inc.



[Contact James on LinkedIn](#)

EXHIBIT 3

Steven Kaye

Deputy General Counsel

Summary

N/A

Experience

Deputy General Counsel, Tronox Limited; General Counsel, Tronox Titanium Dioxide at Tronox Limited

July 2014 - Present

Tronox is the world's largest fully integrated producer of titanium feedstock and TiO₂ pigment and the world's largest producer of natural soda ash. Over 1,200 customers in 90 countries; 4,400 employees worldwide; 2015 revenue of \$2.1 billion; and operations in North America, Europe, South Africa, Australia and Asia (NYSE: TROX).

Manage all legal aspects of the Company's corporate activity and Titanium Dioxide business, including M&A, corporate finance, regulatory, labor and employment, environmental and commercial matters.

Manage daily operations of the global legal department, including selection of outside counsel worldwide and budgetary matters.

Advise the CEO, CFO and other senior management on the Company's public filings and related securities law issues, including earning releases, 10-Ks, 10-Qs, proxy statements, Section 16 filings, NYSE filings and SOX compliance.

Lead attorney on the Company's successful acquisition of FMC Corporation's soda ash business for \$1.6 billion.

Director - Americas Head of ECM and Equity Syndicate Compliance at Barclays Investment Bank

June 2010 - June 2014 (4 years 1 month)

Corporate Associate at Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates

October 2002 - June 2010 (7 years 9 months)

Education

The George Washington University Law School

Doctor of Law (JD), 1999 - 2002

Activities and Societies: Member of The George Washington Law Review

Emory University

Bachelor of Arts (BA), 1994 - 1998

Newark Academy

1990 - 1994

Steven Kaye

Deputy General Counsel



[Contact Steven on LinkedIn](#)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION

Plaintiff,

V.

TRONOX LIMITED

NATIONAL INDUSTRIALIZATION
COMPANY

NATIONAL TITANIUM DIOXIDE
COMPANY LIMITED

and

CRISTAL USA INC.

Defendants.

CIVIL ACTION NO. 1:18-cv-01622 (TNM)

[PROPOSED] ORDER

Upon consideration of Intervening Third Parties' Joint Motion for Protective Order, it is hereby:

ORDERED that Intervening Third Parties' Joint Motion for Protective Order is GRANTED and Plaintiff Federal Trade Commission's [Proposed] Protective Order, attached hereto, is hereby entered.

SO ORDERED.

DATED: _____

Hon. Judge Trevor N. McFadden
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil Action No. ____-cv-____

**TRONOX LTD.,
NAT'L INDUSTRIALIZATION CO.
NAT'L TITANIUM DIOXIDE CO. LTD.,
and
CRISTAL USA, INC.,**

Defendants.

[PROPOSED] PROTECTIVE ORDER

For the purposes of protecting the interests of the parties and third parties in the above-captioned matter against the improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order shall govern the handling of all confidential material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged information, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than

year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.

2. Any document or portion thereof submitted by a Defendant or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any other federal statute or regulation, or under any federal court or Commission precedent interpreting such statute or regulation, as well as any information that discloses the substance of the contents of any confidential materials derived from a document subject to this Order, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.
6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC v. Tronox/Cristal, Case No. __,” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated confidential by placing the designation “CONFIDENTIAL – FTC v. Tronox/Cristal, Case No. __,” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.
7. Confidential material shall be disclosed only to: (a) the Court presiding over this proceeding, personnel assisting the Court, the Commission and its employees, and

- personnel retained by the Commission as experts or consultants for this proceeding;
- (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any Defendant, their associated attorneys and other employees of their law firm(s), provided they are not employees of a Defendant; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a Defendant and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.
8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; of any legal obligation imposed upon the Commission.
9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall be so informed by the Party filing such papers, and such papers shall be filed under seal. To the extent that such material was originally submitted by a third party, the party including the material in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall remain under seal until further order of the Court, provided, however, that such papers may be furnished to

- persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.
10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wished *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Court within five days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.
11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least ten business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitted of its rights

hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to discovery request in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda, or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 C.F.R. § 4.12.
13. The provision of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Court, continue to be binding after the conclusion of this proceeding.

SO ORDERED:

Dated: _____

United States District Court Judge

NAMES OF PERSONS TO BE SERVED

Dominic Vote
Deputy Assistant Director
Federal Trade Commission
Bureau of Competition
400 Seventh Street, S.W.
Washington, D.C. 20024
dvote@ftc.gov

Counsel for Plaintiff Federal Trade Commission

Michael F. Williams
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, D.C. 20005
michael.williams@kirkland.com

Counsel for Defendant Tronox Ltd.

Peter Levitas
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, D.C. 20001
peter.levitas@arnoldporter.com

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

NAMES OF PERSONS TO BE SERVED

Dominic Vote
Deputy Assistant Director
Federal Trade Commission
Bureau of Competition
400 Seventh Street, S.W.
Washington, D.C. 20024
dvote@ftc.gov

Counsel for Plaintiff Federal Trade Commission

Michael F. Williams
Kirkland & Ellis LLP
655 Fifteenth Street, NW
Washington, D.C. 20005
michael.williams@kirkland.com

Counsel for Defendant Tronox Ltd.

Peter Levitas
Arnold & Porter Kaye Scholer LLP
601 Massachusetts Avenue, NW
Washington, D.C. 20001
peter.levitas@arnoldporter.com

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

Justin W. Bernick
Kimberly D. Rancour
HOGAN LOVELLS U.S. LLP
555 13th Street NW
Washington, DC 20004
Tel: (202) 637-5600
Fax: (202) 637-5910
justin.bernick@hoganlovells.com
kimberly.rancour@hoganlovells.com

Counsel for PPG Industries, Inc.

Ryan A. Shores
William J. Haun (*pro hac vice*)
SHEARMAN & STERLING LLP
401 9th Street, NW
Washington, DC 20004
Tel: (202) 508-8056
Fax: (202) 508-8100
ryan.shores@shearman.com
william.haun@shearman.com

Counsel for Benjamin Moore & Co.

Steven Newborn
Megan Granger
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Tel: (202) 682-7000
Fax: (202) 857-0940
steven.newborn@weil.com
megan.granger@weil.com

Counsel for The Sherwin-Williams Company

Michael E. Lackey
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006
Tel: (202) 263-3000
Fax: (202) 263-3300
mlackey@mayerbrown.com

Andrew S. Marovitz
MAYER BROWN LLP
71 S. Wacker Drive
Chicago, IL 60606
Tel: (312) 782-0600
Fax: (312) 701-7711
amarovitz@mayerbrown.com

Counsel for BASF Corporation

John Taladay
Nathan Chubb (*pro hac vice*)
BAKER BOTTS L.L.P.
1200 Pennsylvania Ave., NW
Washington, DC 20004
Tel: (202) 639-7700
Fax: (202) 639-7890
john.taladay@bakerbotts.com
nathan.chubb@bakerbotts.com

Attorneys for Masco Corporation