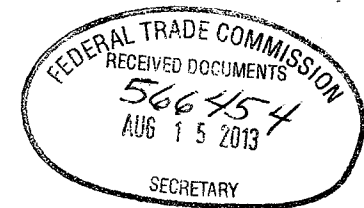


# Complaint Counsel's Oral Argument on Appeal August 22, 2013



In the Matter of McWane, Inc.  
Docket No. 9351

**From:** Mitchell Rona [mr1@sigmaco.com]  
**Sent:** Friday, August 22, 2008 12:23:01 AM  
**To:** OEM5  
**Subject:** MR to OEM5 Re: Should talk with Rick Tauman

GWS

Rick was upset by the numbers in Florida and California based on what he has seen from us and Star.

He said the 26 and 30 respectively were available from us both without any second thought.

Just FYI

*Mitchell Rona*  
P- 800-999-2550 x235  
C- 609-915-1694

Sigmaco  
Remedial  
F0213275

CX 1149-001

CX 1149-001

## Plus Factor: Fittings Market is Highly Susceptible to Collusion

High Concentration	✓	IDF 355-356
Price Transparency	?	IDF 560-561, 562-570
Homogeneous Products	✓	IDF 322-324
Inelastic Demand	✓	IDF 325-328
Few Rivals	✓	IDF 355-360, 481-492
Trade Association	✓	IDF 710-740
Information Exchange	✓	IDF 741-788
Unconcentrated buyers	✓	IDF 375
Barriers to Entry	✓	IDF 1044-1050
Industry Social Structure	✓	IDF 710-740, CCPF 699-841

**From:** Rick Tatman [RTatman@TylerPipe.com]  
**Sent:** Saturday, December 22, 2007 4:05 AM  
**To:** McCullough, Leon (McWane Executive Vice President)  
**Cc:** Wallon, Thomas (McWane Sr. Vice President)  
**Subject:** DIWF List Price Change

Given both the change in the Tyler/Union leadership structure and the accelerated inflation in China compared to Domestic cost, I believe we're in a unique position to help drive stability and rational pricing with the proper communication and actions.

I have a concept that I believe will work if properly executed. There are some additional data points to review, but I should be in a position to discuss with you in detail during the sales meeting or potentially before if needed. I don't believe with our silence and Star's push announcement that Sigma will hold to their Jan 2<sup>nd</sup> effective date so we have some time to get it right.

## Desired Message to the Market & Competitors

- ☐ Tyler/Union will be consistent and follow through with what we've formally communicated.
- ☐ T/U will encourage/drive both price stability and transparency.
- ☐ T/U will adjust multipliers as required to remain competitive within any given market area. (Consistent Job Pricing will be met with general market actions)
- ☐ For 2008, we will support net price increases but will do so in stepped or staged increments. A prerequisite for supporting the next increment of price is reasonable stability and transparency at the prior level.

Due to their now more desperate need for price, I believe that Sigma and Star will mimic and verbally follow any program we publish. However the keys to actual success are

1. T/U being consistent with what we say for an extended period (> 3 months)
2. Sigma & Star's not pulling price authority away from front line sales and customer service personnel to add discipline to the process
3. Support from our major customers to abandon the current process of branches calling multiple suppliers to auction for price. (We'll need face to face meetings)
4. The Big 3 not allowing 3<sup>rd</sup> tier suppliers like Serampore to disrupt the process

## Sigma and Star Should Agree to Stay Within Two to Three Points of McWane

- ...He [Mr. Pais] had a plan that if we -- that we should agree to stay within to two to three points, discount points, of McWane, and if we did, he felt that they would behave differently and not be so overbearing towards us. That if we were good, then they would be good -- they would treat us better and we could live happily ever after.
- ...he just said that they would treat us differently and it would firm up the market and that there was a lot of benefit to it.
  - CX 2538 (McCutcheon IHT at 227)

Health Plan and Group Long-Term Care

**Two  
Potential  
Versions**

We understand the need for this increase and that in general, higher price levels provide value to the industry. However, we don't believe the industry's your best interests are served by publishing increases at levels that are not supported, leading to instability and ultimately erosion of market level pricing.

While we acknowledge this increase is significantly lower than what has been communicated by another supplier. We don't believe your best interests are served by publishing increases that in turn are not supported, leading to instability and ultimately erosion of market level pricing.

If the current inflationary trends continue at the current rate, we may need to announce another multiplier increase within the next 6 months. However, we will only do so if both conditions remain and the increase can be supported within stability market conditions.

(b)(7)(D)

~~It is not our intention to provide job pricing.~~ In an effort to support Distribution and stable market conditions, we will continue to monitor the competitive environment and will adjust regional multipliers as required.

All annual municipal bid contracts will be honored per the terms of the contract. Jobs quoted prior to this announcement will be honored up to March 1<sup>st</sup>, with documentation provided to your local Tyler/Union sales representative.

If the current inflationary trends continue as forecasted, we anticipate the need to announce another multiplier increase within the next 6 months. However, we will only do so if conditions require and the ~~increase can be supported by stable market conditions~~.

CX 0375-001



CX 1178-001

TYLER UNION  
QUALITY WAREHOUSE

800-877-7777

11111 Tyler Union Way, Tyler, TX 75701

To help our distribution customers better manage their inventory valuations and compete on a more level playing field, it is our intention going forward to sell all products only off the newly published multipliers. We will continue to monitor the competitive environment and adjust regional multipliers as required to provide you with competitive pricing.

If the current inflationary trends continue as forecasted, we anticipate the need to announce another multiplier increase within the next six months. However, we will only do so as conditions require.

SIGLER  
JAN 1968  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

RECEIVED  
JAN 1968  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

EX-1173-000

CX 1178-001

# No Project Pricing: A Head Fake

- Q. What was McWane's intention as announced in this letter?
- A. Well, if you go back to what we really wanted to do, you go back to all the documents, we talked about I think ad nauseam about how we wanted to compress pricing, okay, so we could get better visibility. That's all very clear. **And then the other thing we wanted to do is we wanted to create, quite frankly, the perception that that's the only way we were going to compete. That's a head fake.** So that we'd like to compress that and if we got it compressed and we need to offer job pricing to get volume growth, I'll go in and offer job pricing....
- ...This is the core of what we want to do. We want to compress pricing, we want to put out a fair price out there, and then we are going to react as we see it to meet our competitive objectives.

Tatman, Tr. 386



FROM: [REDACTED]  
 TO: [REDACTED]  
 FROM: [REDACTED]  
 FROM: [REDACTED]  
 FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

- **All project pricing has to go through me.**

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

FROM: [REDACTED]

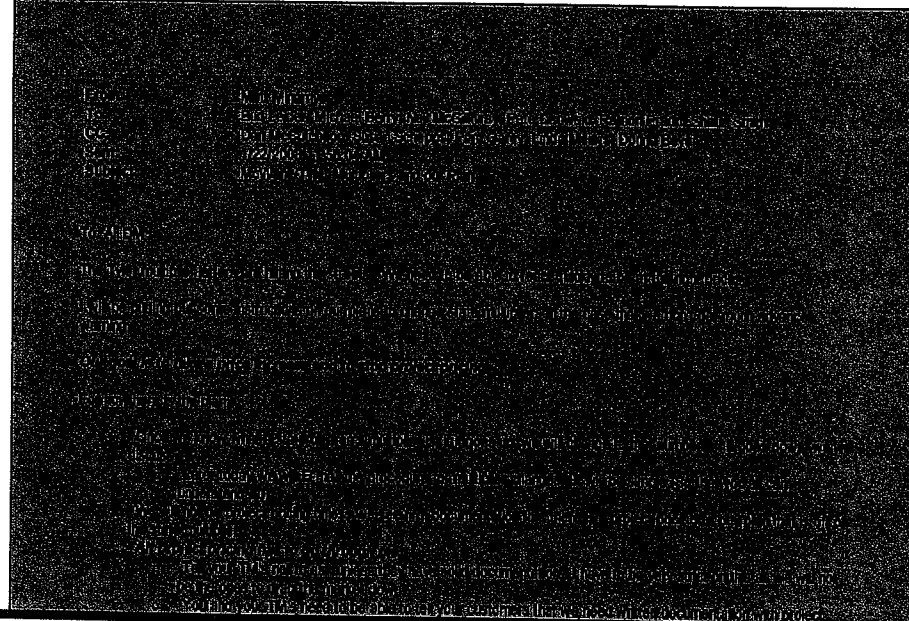
FROM: [REDACTED]

FROM: [REDACTED]

CX 0752-001

00000000

CX 0752-001



- Your TM's need to start cleaning up their existing project pricing. *The Tyler letter states that they will honor their existing project pricing only until March 1<sup>st</sup>. We will do the same.* If we go past that it will cause disruptions and may result in the increases to be soft or not hold at all.
  - o Start preparing yourselves and your TM's to hold strong and get their projects ordered and shipped before March 1<sup>st</sup>.
  - o *Train them that this is what is best for the industry and that we need to be part of the effort to help out the industry. We will not part of damaging the industry due to lack of discipline.* We all need to be able to explain this to our customers and to take it to whatever level of management within that customer's organization that is required.
  - o I'm all good with you guys using me as the bad guy. (Stop snickering! J)

You need to know that we are strong in revenue and profit. We will have no problems weathering any price wars, even if they are prolonged. What we are doing is what is right for the industry. So, don't think we need the price increases, as that is not the case. A price increase will be good for us on the short and long term profit situation but are not vital to our strength. The truth is that we would come out of a price war stronger than ever and with a bigger market share, but we don't think the industry needs that right now.

I HAVE URGED LARRY TO INITIATE A NEW COMMITTED AND SERIOUS EFFORT TO NORMALIZE ALL PRICING FOR FITTINGS -- AT SAME LEVELS -- PW AS WELL AS OTHER ORDERS, TO ELIMINATE THE CONFUSION WE ARE CREATING WITH CUSTOMERS AND COMPETITORS, LEADING TO LOWER OVERALL PRICING

Though Tyler's NEW multipliers are discouraging, this is both a lesson and an opportunity for SIGMA and Star to develop a patient and disciplined Marketing approach and demonstrate to Tyler that we are capable of being part of a stable and profitability conscious industry. This is the 'leadership capital' we created when we

**From:** jansent Tyler@aol.com [mailto:jansent Tyler@aol.com]

**Sent:** Monday, February 09, 2009 6:08 PM

**To:** Rick Tatman

**Subject:** Fw: Rick

Fyi

[From: jansent Tyler@aol.com [mailto:jansent Tyler@aol.com]]

[Consequence = Lost market share due to competitors playing pricing games and having distributors keep it

**Present Pricing Actions:**

**Stayed Firm on Pricing** = for better part of 2008 held pricing to try to stabilize market pricing

\* Consequence = Lost market share due to competitors playing pricing games and having distributors keep it quiet either on the front and/or backside.

\* Customer Reaction = Customers had large scale reduction in inventory which is what we were getting and were relying more on regional distribution yards to supply jobs and support inventory.

**Job Pricing** = Gave out pricing on jobs in few territories late 2008

\* Consequences = started to get some support from customers that wondered where we had been. Too little to late since the jobs were few and far between.

\* Customer Reaction = Numbers are dropping rapidly and they had been long before we started to move. They know it's ugly but they are in survival mode and have very little loyalty. They would like to work with us but need to know we will support them.

**From:** Matt Minamy  
**Sent:** Saturday, February 02, 2008 6:17 AM  
**To:** 'Rick Fairbanks'  
**Subject:** Multiplier Increase

Hi Rick,

As we spoke, I wanted to make sure you and your members are comfortable with the current effort to adjust fitting multipliers across the country.

Our intent is to adjust multipliers to be on an even playing field with other contractors.

We will adjust various multipliers across the country to be effective on 2-08-08 and all existing special projects before March 1<sup>st</sup> and have no more projects after March 1<sup>st</sup>. Municipal contracts will be honored through the length of the contract.

We will begin sending "Multiplier letters" to all of our customers beginning Monday, Feb. 4<sup>th</sup> and our outside and inside sales people are currently talking to our customers to explain the effort.

We are working extremely hard to bring stability to the lifting market and we are asking for your support in this effort.

Please have any member contact me, their Star Divisional Manager, or Territory Manager if they have any questions or requests.

Thanks for your support.

Matt

ESR000001

CX 23000001

CX 2300-001



CX1124

CX1124-002

**From:** Mitchell Rona

**Sent:** Monday, March 10, 2008 10:55 PM

**To:** VP (Victor Pais - CRM)

**Cc:** SB1 (Siddharth Bhattacharji-CRM); GR1 (Gopi Ramanathan-CRM); SS1; CS1 (Craig Schapiro - CRM); SB2 (Stuart Box - CRM)

**Subject:** FW: 3"-8" DIWF from Tyler/Union

Guys,

Please see what below from Kirk

From: Mitchell Rona

He said he hears that some of the new prices in the market are being compromised with deals. He hopes the market will improve and hopes do our part.

SIO - 0054025  
Confidential  
FOIA Exempt

CX 1124-001

SIO - 0054528  
Confidential  
FOIA Exempt

CX 1124-002

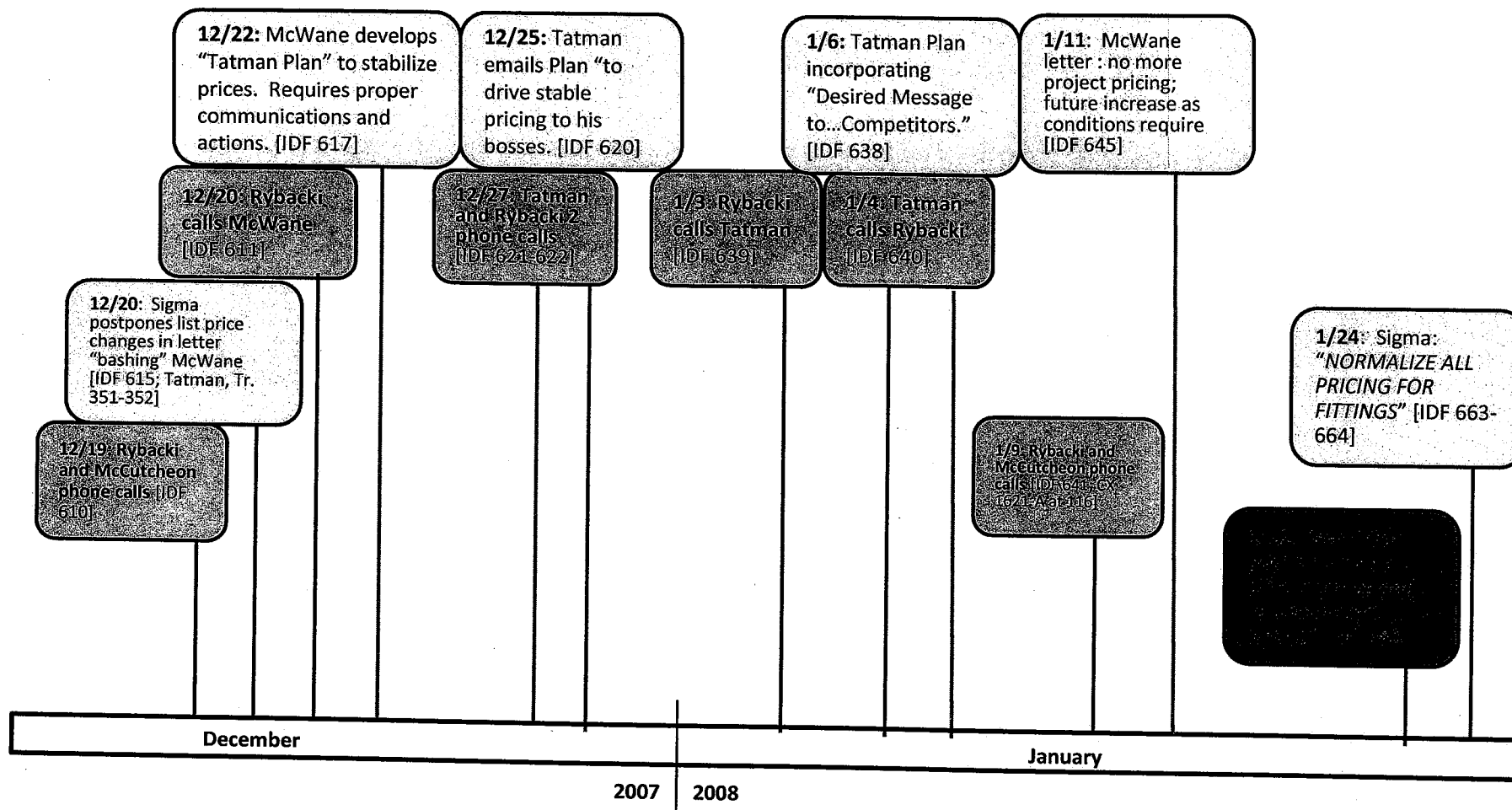
CX 1124-002

# Tyler/Union Executive Report for 1<sup>st</sup> Quarter 2008

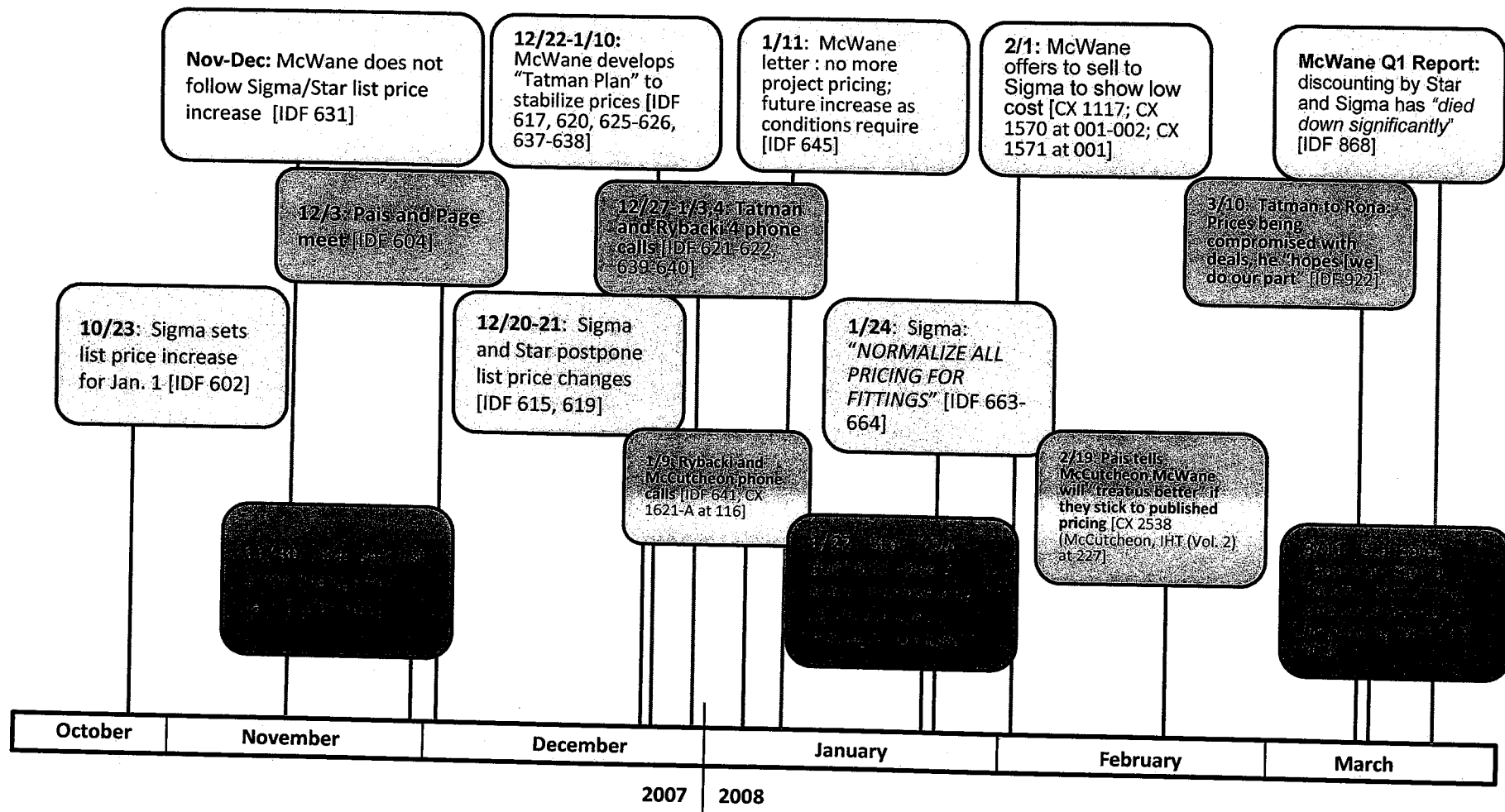
## Sales/Market/Competitive Environment

Based upon our competitive feedback log, the level of multiplier discounting by both Star and Sigma appears to have died down significantly. As we understand it, both have removed pricing authority from the front line sales team and pushed it up higher within their organizations. Discounting is still available, but it now requires a more structured decision process. In an effort to drive some volume, they also both selectively honored prior job pricing beyond their published March 1<sup>st</sup> cut-off date. Our hard stance on that date certainly appears to have cost us some short term tonnage.

# Plus Factor: High Level Communications



# Plus Factor: High Level Communications



As you have been updated, we now have a Ductile Iron Fittings Research Association (DIPRA) in place -- thanks to the leadership and initiative of LR and a yeoman effort by TB. Thru various meetings in person and conference calls, byelaws and articles of association were drafted and approved, all under the watchful eyes and expedited guidance of Bradley, Arrant, Rose and While, a reputed law firm. They also have been part of the successful DIPRA for the 4 DI Pipe manufacturers.

This is a huge step by SIGMA and Star, in being able to demonstrate our willingness and commitment to strengthen our industry and signal our willingness to grow in an responsible manner. Though most of the initial benefit is intangible such as increased trust and respect between members, it is also the first step for more substantial economic benefits in the future.

CONFIDENTIAL (S) (N) (P) (R) (S)  
CONFIDENTIAL (S) (N) (P) (R) (S)

EX-1092-001

CX 0137-001

CX 0137-002

Attach: May Price Increase Draft C.doc; sigma increase.pdf; Current Map 4 14 08.ppt; Map #4  
Conservative.ppt; Map #5 Aggressive.ppt

Leon,

Per your request, attached is the draft letter I was working on when you called. Also, as a reference I have attached the Sigma letter as well as several multiplier maps.

This draft would align with the approach of waiting until the DIFRA data is available before announcing any price actions. I have other draft letters developed in the event we'd elect to announce something sooner.

Although the  
lead regardless

Attach:

May Price Increase Draft C.doc; sigma increase.pdf; Current Map 4 14 08.ppt; Map #4  
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Leon,

Per your request, attached is the draft letter I was working on when you called. Also, as a reference I have attached the Sigma letter as well as several multiplier maps.

This draft would align with the approach of waiting until the DIFRA data is available before announcing any price actions. I have other draft letters developed in the event we'd elect to announce something sooner.

Although the Sigma announcement represented an increase range of 20% to 40%, I don't believe we would follow that lead regardless of the DIFRA data as it would lead to instability.



CONFIDENTIAL

May 6, 2008

To: All Tyler Union Utility Customers

RE: Pricing for Utility Fittings and Accessories

*Jerry Jansen*

Jerry Jansen  
National Sales Manager

Confidential

TU-FTC-0255006

CX 0137-001

CX 0137-002

**From:** Rick Tatman [rtatman@tylerunion.com]  
**Sent:** Saturday, May 24, 2008 1:50 PM  
**To:** McCullough, Leon (McWane Executive Vice President); Walton, Thomas (McWane Sr. Vice President)  
**Subject:** Agree on Waiting until Data is available : DIFRA Data not available

Leon,

I would agree with your approach as does Thomas based upon our discussions in China.

Although somewhat painful to the bottom in the short term, that would re-enforce the message we've been trying to drill in which when successful will pay long term dividends.

The timing presented was just for a reference point.

**From:** McCullough, Leon (McWane Executive Vice President) [mailto:lmccullough@dowvalve.com]  
**Sent:** Saturday, May 24, 2008 1:14 PM  
**To:** rtatman@tylerunion.com; Walton, Thomas (McWane Sr. Vice President)  
**Subject:** RE: DIFRA Data not available

I still believe we stand pat until market share info is available.

Leon

CX 1091

CX 0138

From: Dan McCutcheon [danm@starpipelineproducts.com]  
 Sent: Thursday, June 05, 2008 12:48:43 PM  
 To: Tom Brakefield  
 Cc: lryb446150@aol.com  
 Subject: DIFRA numbers

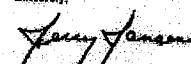
Good morning Mr. President. I just sent our info in. Sorry it took us so long, but we were carefully analyzing all factors including domestic and global inflation, market and competitive conditions within each region, as well as performance against our own internal metrics. (Does that look familiar?)

You have likely heard or read about continued increases in factors of production impacting both domestic and global operations. The foundry industry has been hit particularly hard with sharp increases in scrap iron, alloys and transportation costs. While the financial impact to our business is real, we also recognize there are restrictions as to the level and timing at which pricing can be accommodated in the market.

We are sending this pertinent communication to our waterworks distribution customers to give them the opportunity to discuss pricing with their representatives.

Before announcing any price actions, we carefully analyzed all factors including domestic and global inflation, market and competitive conditions within each region, as well as performance against our own internal metrics. We anticipate being able to complete our analysis by the end of May. At that point, we will send out letters to each specific region detailing changes, if any, to our current pricing policy.

Sincerely,



Jerry Jensen  
 National Sales Manager

360 - 0034424  
 Confidential  
 FOIA Exempt

CX 1091-001

Confidential

TU-FTC-0010321

CX 1091-001, CX 0138-001

CX 0138-001



**From:** Bree Holland  
**To:** rtatman@tylerunion.com; tb2@sigmaco.com; gcrawford@uspipe.com; Dan McCutcheon  
**CC:** Herren, K. Wood; Long, Thad G.; Margaret Powell; Rick Haley  
**Sent:** 8/17/2008 2:41:28 PM  
**Subject:** DUEFA Report  
**Attachments:** DUEFA Report.pdf

I have attached an Adobe Pdf document that contains the following reports:

1. Schedule of Ductile Iron Waterworks Fittings (Trade Tons Shipped) for the year ended December 31, 2006.
2. Schedule of Ductile Iron Waterworks Fittings (Trade Tons Shipped) for the year ended December 31, 2007.
3. Schedule of Ductile Iron Waterworks Fittings (Trade Tons Shipped) Comparison for the four months ended April 30, 2008.

Please let me know if you have any questions.

Thanks,

**Bree Holland, CPA**

Sellers, Richardson, Watson, Haley & Dunn, LLP

CONFIDENTIAL

00008-000000  
CX 0052-001

CX 0052-001

# 

From: Rick Tatman [mailto:rtatman@tylerunion.com]  
 Sent: Tuesday, June 17, 2008 3:20 PM  
 To: McCullough, Leon (McWane Executive Vice President); Walton, Thomas (McWane Sr. Vice President); 'Jerry Jansen'  
 Subject: DIFRA Output Reports

Attached is the DIFRA report along with a simple summary and comparison file I threw together in Excel for your reference.

DIFRA Observations  
 1. 2006 baseline total DIFRA tonnage tracks very well with what we would have expected based upon walking the 2001 market data from the 421 hearings forward using the change in VMA units  
 2. Our share loss for 2007 and Apr YTD 2008 is actually larger than what I expected. Note the DIFRA tonnage is not down as much over those period as the VMA unit data  
 3. The "backed into" non DIFRA tonnage appears to be on the lower end of what we would have expected  
 4. All points above suggest that data is accurate within reason which was probably the resistance to sending it out before we announced any price.  
 5. The larger than expected share loss will make the task of getting it back more difficult, but of course will make victory all the more sweeter in terms of the incremental financial benefits.

From: Rick Tatman [mailto:rtatman@tylerunion.com]

Sent: Tuesday, June 17, 2008 3:20 PM

To: McCullough, Leon (McWane Executive Vice President); Walton, Thomas (McWane Sr. Vice President); 'Jerry Jansen'

Subject: DIFRA Output Reports

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3. The "backed into" non DIFRA tonnage appears to be on the lower end of what we would have expected
4. All points above suggest that data is accurate within reason which was probably the resistance to sending it out before we announced any price.
5. The larger than expected share loss will make the task of getting it back more difficult, but of course will make victory all the more sweeter in terms of the incremental financial benefits.

Rick Tatman

Vice President  
 DIFRA Output Reports  
 10/15/2008

CX 2068-001

CX 2068-001

**From:** Rick Tatman <rtatman@tylerunion.com>  
**Sent:** Tuesday, June 17, 2008 6:24 PM  
**To:** butch.doane@ferguson.com  
**Cc:** Bill.Thees@ferguson.com  
**Subject:** Tyler/Union July 14th Price announcement  
**Attach:** Util Mult Map-BLENDED-7-14-08.pdf; TylerUnion price announcement July 14 - FEI.doc; Util Mult Map-ACCESSORIES-7-14-08.pdf

---

Butch,

For the attached documents we are announcing a price increase effective July 14th.

Individual letters are being sent to the branches, but I wanted to provide you with an overall view for the entire market.

The increase is significantly smaller than what I believe others have proposed, but we believe this level is rational given all factors considered.

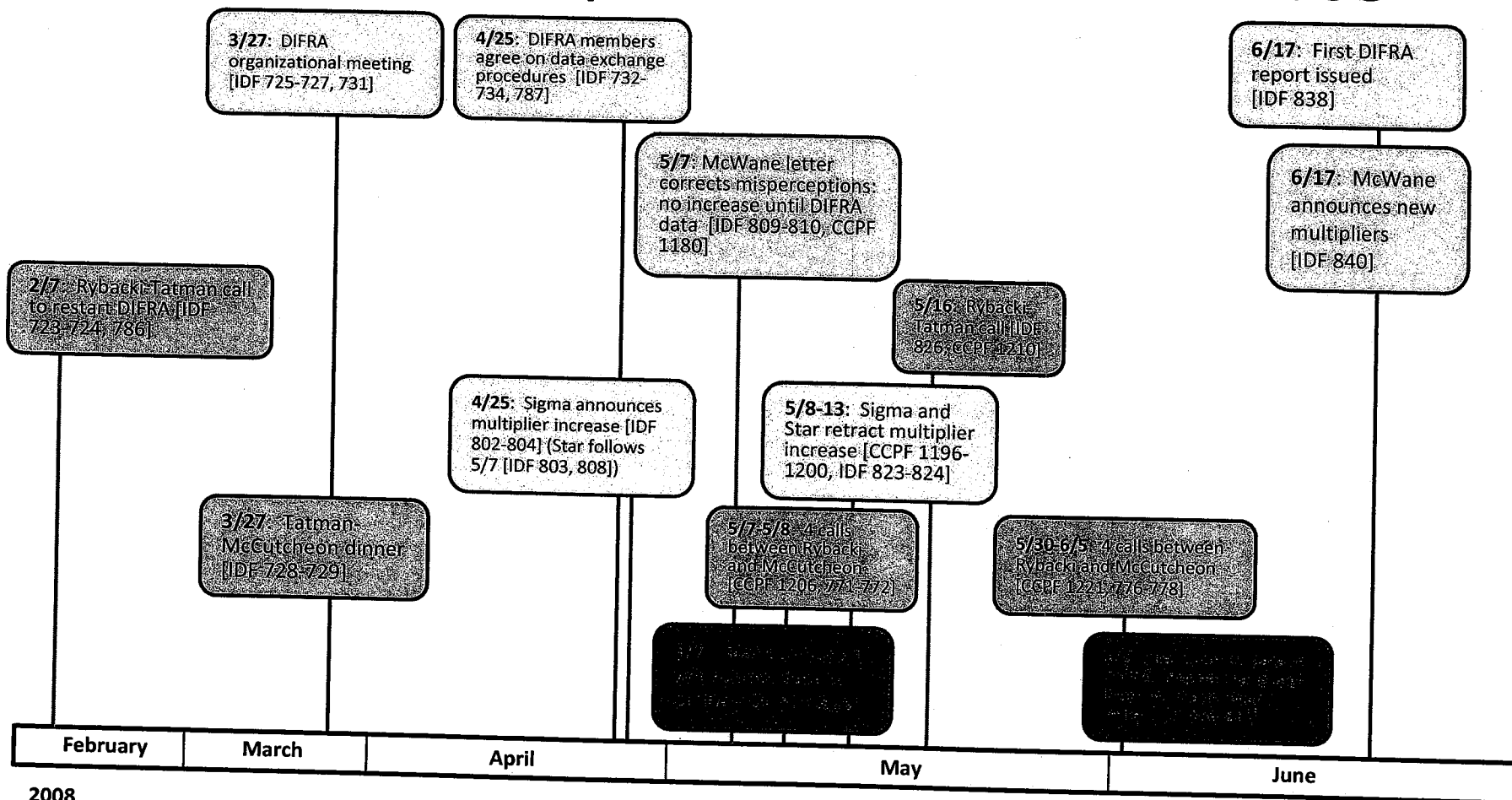
I'll try to call tomorrow to address any questions.

Regards,

*Richard (Rick) Tatman*

VP&GM Tyler/Union  
McWane Waterworks Fittings Division  
(903) 882-2440  
[rtatman@tylerunion.com](mailto:rtatman@tylerunion.com)  
[www.tylerunion.com](http://www.tylerunion.com)

# Price Fixing Event 2: DIFRA Participation And Price Increase



**From:** Matt Minamyer  
**To:** Bud Leider; Michael Berry; Neil McGillivray; Pete Lisowski; Ramon Prado; Shaun Smith  
**Cc:** Susan Schepps; Dan McCutcheon; Pam Garey  
**Sent:** Tuesday, November 25, 2008 01:42:00 PM  
**Subject:** FW: Pricing Strategy Changes  
**Importance:** HIGH

TO: All

We have all been extremely diligent in protecting the stability of our market pricing. So much so that we have earned the reputation of being the best at protecting the market pricing and at times, to the extent that some think us inflexible in that area. You have all done a great job and deserve credit for the effort and results.

However, some of our competition has not performed as admirably nor are we now certain that it was ever part of their strategy. Considering that, we need to change our plan in how we are setting our multipliers. We have many instances where we have documented the competition being irresponsible (Mostly Sigma) and selling under our multipliers in almost every market with varying strategies. We have lost too much revenue to tolerate it any longer.

Please get with your teams to be sure we are all clear on the following plan.

*We will take every order we can after exhausting all avenues to document the competitors pricing. Please be diligent while talking to your customers that we want to continue being good stewards in the market but we will no longer tolerate the competition being irresponsible in the market and being undersold as a result. The reason is that we have documented so much under market pricing that we have to react to protect our partners', and our own market shares. Do it with a combination of buy plans, short term buys, and project pricing. Do this quietly and selectively and as much under the radar as you can but if it is necessary, be sure to do it. Good on every order!!!*

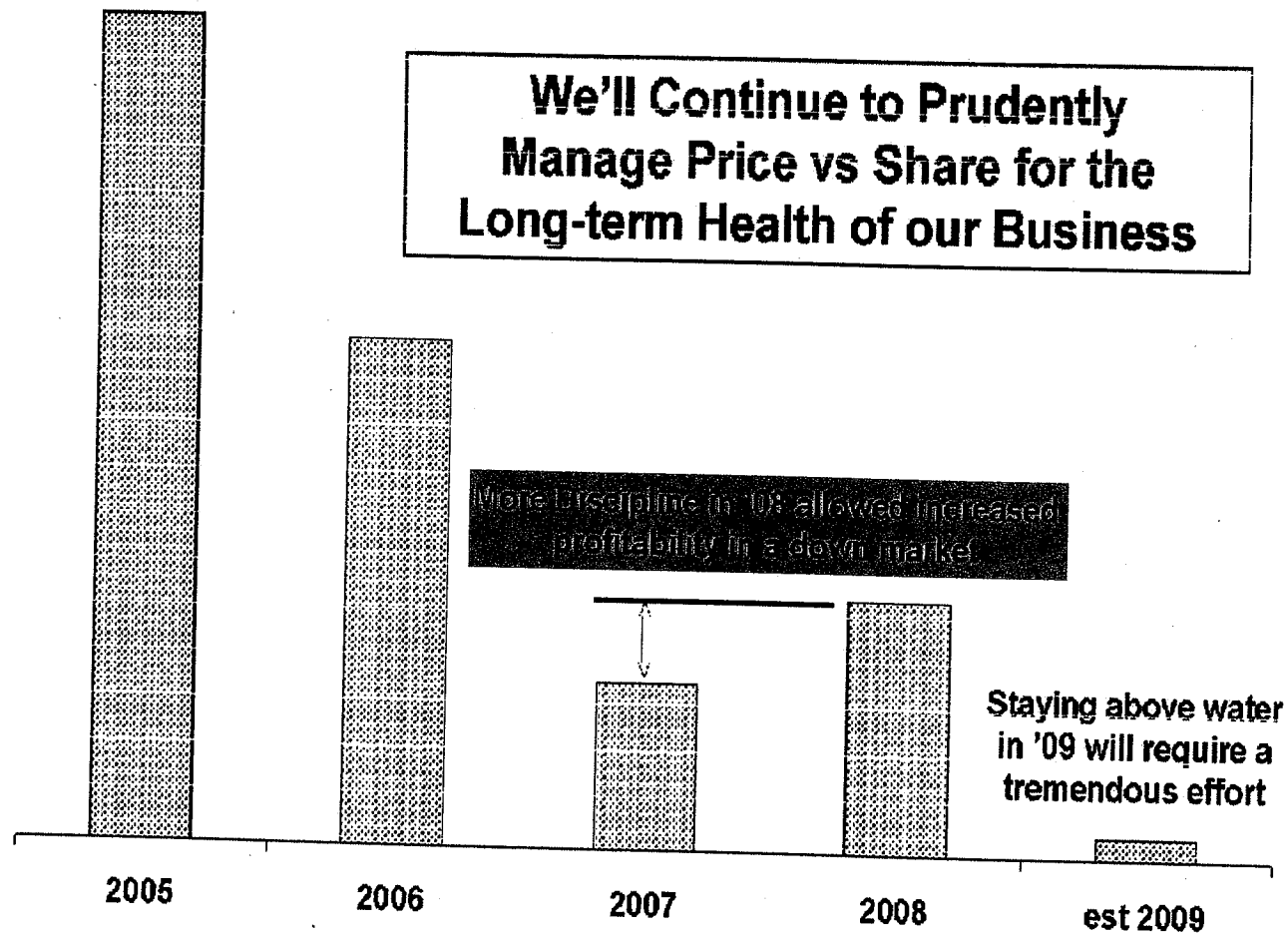
CX 0831-001

CX 0831-001



## Profits

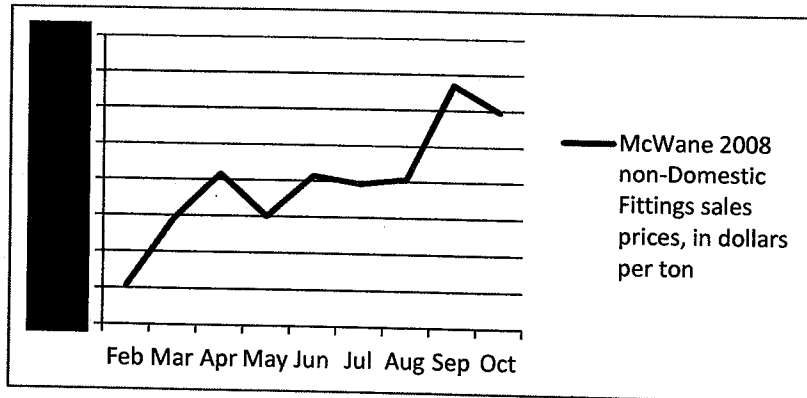
**We'll Continue to Prudently  
Manage Price vs Share for the  
Long-term Health of our Business**



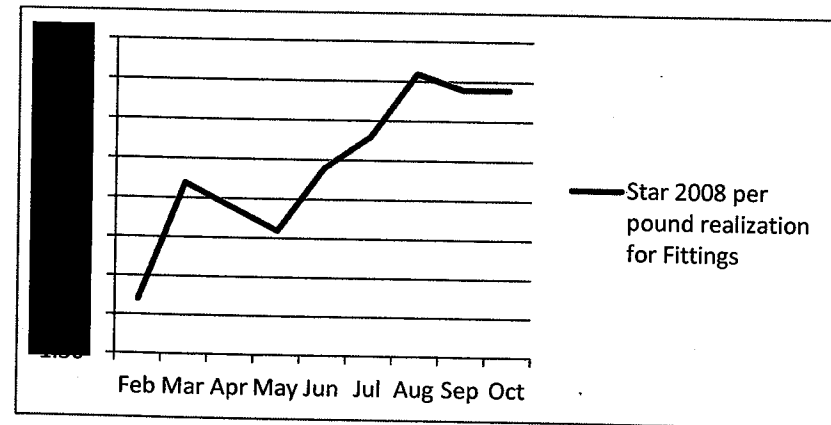
RST 1/19/09

CX 0622-005

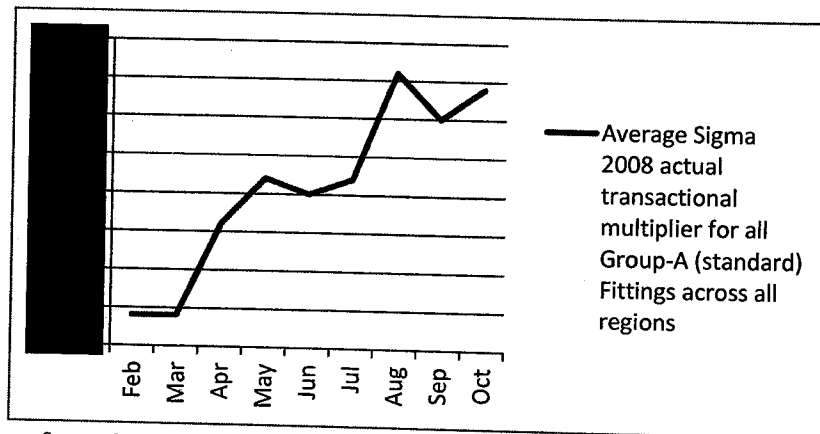
# McWane's, Sigma's, and Star's Fittings Prices Increased in 2008



Source: CX 2416 at 043, *in camera* (McWane Blue Book for year end 2008).



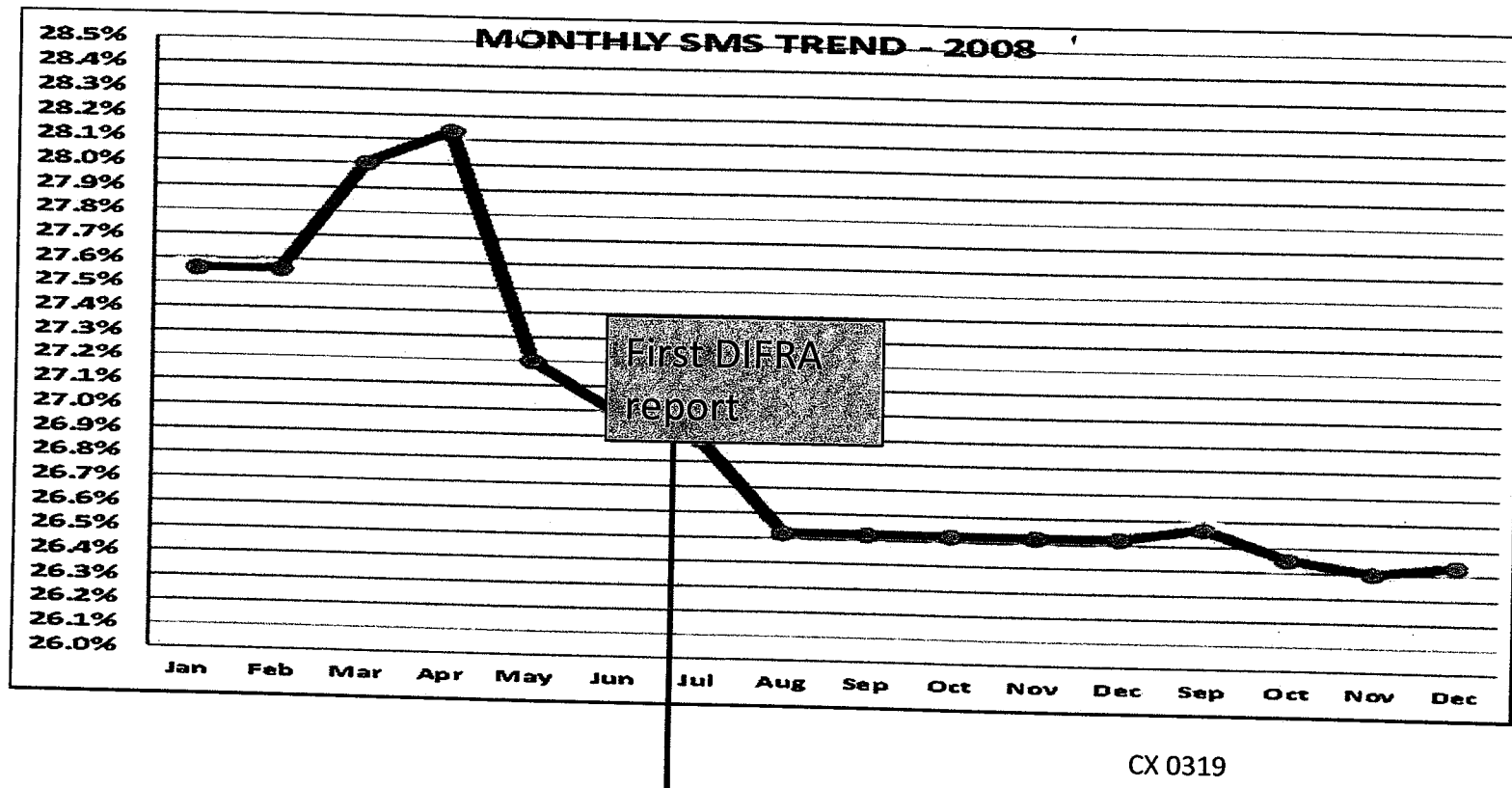
Source: McCutcheon, Tr. 2656-2657, *in camera*; CX 2470 at 004, *in camera*.



Source: CX 1002 at 004, *in camera* (providing monthly figures for each of five regions, the simple average of which is reflected in the above chart); see also Rybacki, Tr. 3601-3603, 3652, 3737-3739, *in camera*.

# DIFRA Helps Maintain The Pricing Discipline

- Sigma could see that, once DIFRA reporting commenced, its market share stabilized, despite declining volume overall.

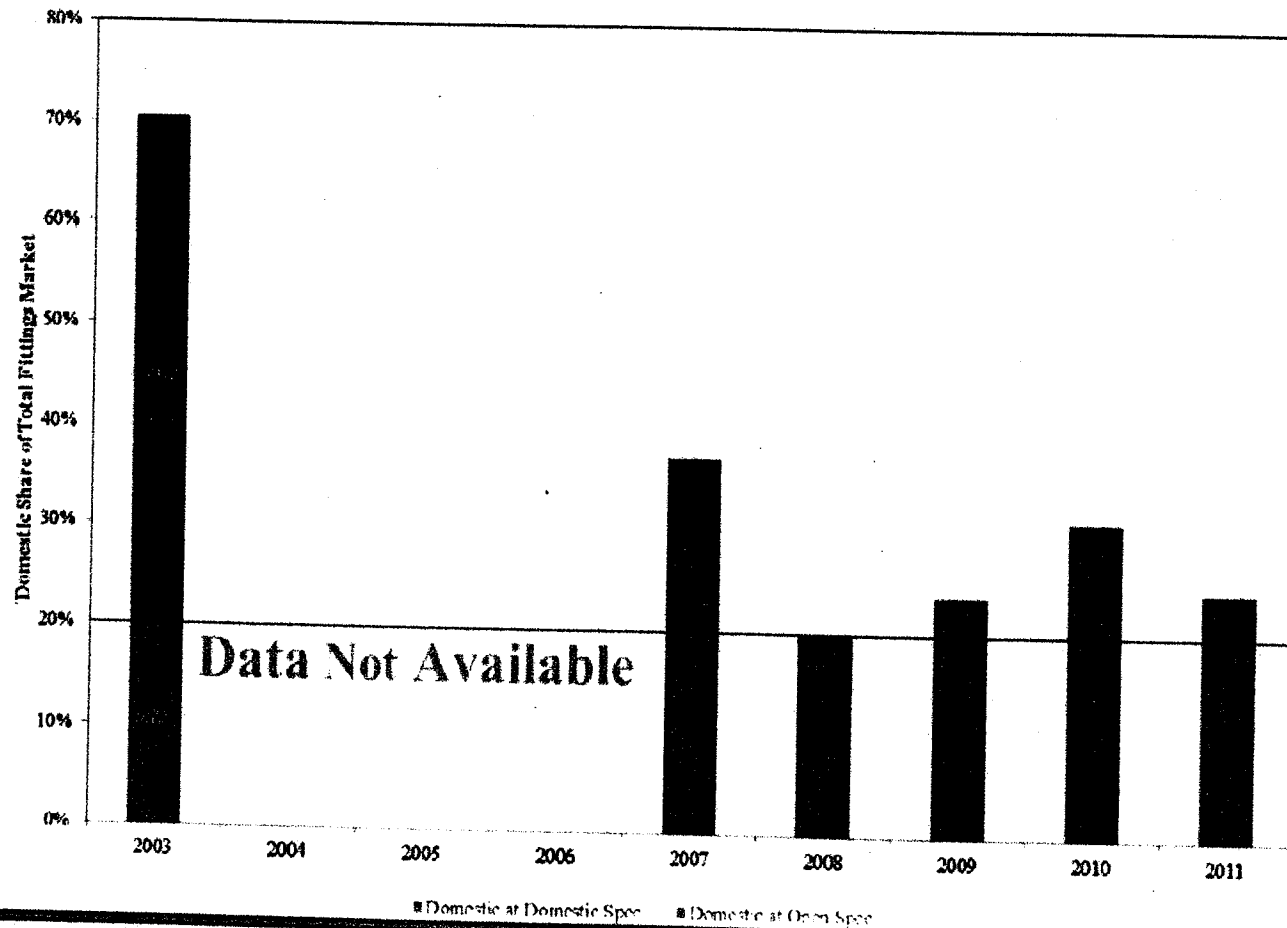




One of the advantages we enjoy in our competitive environment is what we had achieved in the past few years – a consolidation in each of the product ranges. In Fittings, there are effectively 3 – McWane, SIGMA and Star – and all suffer from the same challenges and there seems to be a great desire to improve the pricing and each one has demonstrated thru a reasonable amount of discipline, even being protective of our respective market share. This is where the monthly market size data produced by DIFRA, an industry association that SIGMA helped to form, with 4 supplier members from Fittings (one, US Pipe, actually is not a producer anymore, but a small player buying almost all their needs from SIGMA), helps maintain the pricing discipline, as the market and market share data point to a relatively consistent and stable market pattern. It has helped all of us not to allow the sharp market decline to be mistaken as a loss of market share, which mostly caused price reaction. Our GMs have continued to be strong, throughout the year, even as the volumes have been weak. In fact, the recent reduction in our GMs is more due to the increase in the raw material prices which finally caught up with our blended inventory cost in Q3 and Q4, rather than the pricing swings!

**FIGURE 7**

**DOMESTIC SHARE OF TOTAL FITTINGS SALES VOLUME 2003 - 2011**



CXD 3089-001

**From:** Vince Napoli  
**Sent:** Monday, August 16, 2010 5:20 PM  
**To:** Sheila Sullivan  
**Cc:** Greg Fuller  
**Subject:** RE: WILSON MILLS JOHNSTON COUNTY

No. We are the only one who makes the full line of 24' and down. No need to drop the price unless Star is an issue.

**From:** Sheila Sullivan  
**Sent:** Monday, August 16, 2010 10:19 AM  
**To:** Vince Napoli  
**Cc:** Greg Fuller  
**Subject:** FW: WILSON MILLS JOHNSTON COUNTY

Can we give any special on these for the quantities??

**From:** Wall, Loretta [HDS] [mailto:Loretta.Wall@hdsupply.com]  
**Sent:** Monday, August 16, 2010 7:45 AM  
**To:** Sheila Sullivan  
**Subject:** WILSON MILLS JOHNSTON COUNTY

Can you please quote the following asap-

These are compact domestic fittings less accessories

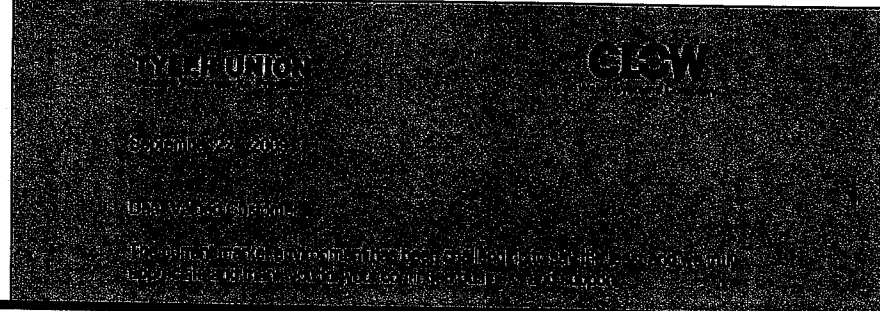
Condensed

Page 1 of 2

CX 2199-001

CX 2199-001

CX 1190

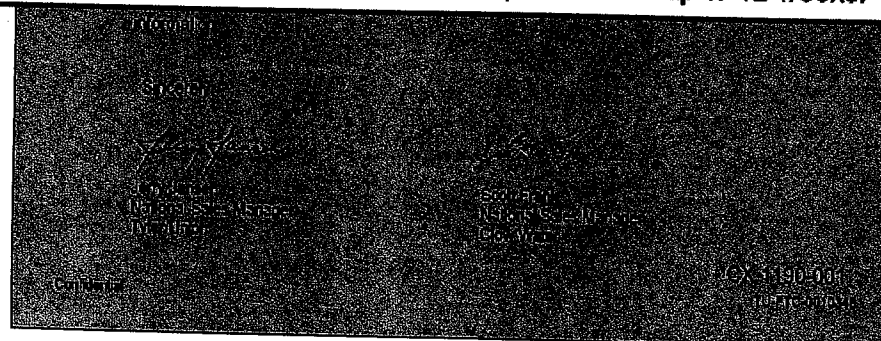


In support of increased demand for domestic products, we are pleased to announce that McWane's domestic fittings and accessories sold under the Tyler Union or Clow Water brand names will now be available through Sigma.



In light of this investment, effective October 1, 2009, McWane will adopt a program whereby our domestic fittings and accessories will be available to customers who elect to fully support McWane branded products for their domestic fitting and accessory requirements. This applies whether these products are purchased through Tyler Union, Clow Water or through Sigma. Exceptions are where Tyler Union or Clow Water products are not readily available within normal lead times or where domestic fittings and accessories are purchased from another domestic pipe and fitting manufacturer along with that manufacture's ductile iron pipe.

Customers who elect not to support this program may forgo participation in any unpaid rebates for domestic fittings and accessories or shipment of their domestic fitting and accessory orders of Tyler Union or Clow Water products for up to 12 weeks.



CX 1190-001

↳ e.g. if USP strays and purchases any of these fittings from Har Can't come back to Union and expect Union to sell any of the AWWA 4" - 24" fittings to USP

**From:** Rick Tatman <rtatman@tylerunion.com>  
**Sent:** Wednesday, June 24, 2009 10:56 PM  
**To:** Walton, Thomas (McWane Sr. Vice President) <twalton@MH-Valve.com>  
**Subject:** RE: Competition

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I agree that at this stage the chance for profitable cohabitation with Star owning a pc of the Domestic market is slim. Their actions in self pipe are a good indication.

We still need to better gage the extent and breath of their program. If their claims are ahead of their actual capabilities we need to make sure that they don't reach any critical market mass that will allow them to continue to invest and receive a profitable return. The difficulty and expense of doing so is somewhat proportional to their product availability and supply costs both of which we have yet to get hard data on.

I don't sense that Sigma is yet fully committed and they will be watching our response very closely to assess their strategy and probability of financial success.

CX 0074-001

From: Rick Tatman  
Sent: Wednesday, June 24, 2009 3:41 PM  
To: Leon McCullough  
Subject: RE: Competition

**From:**

**Sent:** Wednesday, June 24, 2009 3:41 PM

**To:** Rick Tatman

**Cc:** McCullough, Leon (McWane Executive Vice President)

**Subject:** RE: Competition

Rick,

Whether we end up with Star as a complete or incomplete domestic supplier, my chief concern is that the domestic market gets creamed from a pricing standpoint just like the non-domestic market has been driven down in the past. That would dramatically effect our profit potential. Further, I have a sense there is a slim to none possibility that we would ever be able to sell Star domestic product at this point, one I do not think they would ever trust us and, two they seem to be so far down the road that I do not think they will be willing to turn back. I do agree whole heartedly that we need to evaluate our options and plot a comprehensive strategy going forward.

I look forward to your thoughts.

Thanks,

Thomas

CX 0074-001

## Response Options

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### 1. Wait and See approach

- + Allows time to more accurately assess Star or Sigma's game plan & true competitive strengths and weaknesses
- Gives them time to continue building their business model

### 2. Handle on a Job by Job basis

- + All parties will understand the other's price floor
- Sends negative pricing signals to distribution

### 3. Protect the Brand through Exclusive Distribution

- + Avoids the job by job auction scenario within a particular distributor
- + Potentially raises the level of supply concern among contractors
- + Forces Star/Sigma to absorb the costs associated with having a more full line before they can secure major distribution
- Managing relationship issues with customers – Old Loyalty Program
- Potential collateral damage to ND product line sales
- If they indeed have the fortitude to invest this would force them to speed that process up

6/29/09 RST



## "Protecting the Brand" via exclusivity

### **Soft Approach – Rebates @ 100% or 0%**

- ☐ Domestic rebate would require exclusivity
- ☐ Rebates would be earned and paid annually
- ☐ Applied on a corporate not branch by branch basis
- ☐ McWane rebate could also be tied to exclusivity?

### **Hard Approach – Full Line or No Line**

- ☐ Access to Tyler/Union's Domestic product line requires exclusivity for Domestic fitting items we manufacture
- ☐ Applied on a corporate not branch by branch basis
- ☐ Distribution would not be allowed to back door product to non participating entities

? How to handle all non-Domestic product lines

We'd Need Clow Water to Play by the Same Rules



## Key Market Communications

Sept 22, 2009

McWane has made significant investments in its domestic manufacturing facilities to maintain an extensive fitting and accessory product line, produced in safe and environmentally compliant foundries. We are continuing to invest in our domestic business and will soon be announcing additional fitting and accessory items in the 36" – 48" size range.

In light of this investment, effective October 1, 2009 McWane will adopt a program whereby our domestic fittings and accessories will be available to customers who elect to fully support McWane branded products for their domestic fitting and accessory requirements. This applies whether these products are purchased through Tyler Union, Clow Water or through Sigma. Exceptions are where Tyler Union or Clow Water products are not readily available within normal lead times or where domestic fittings and accessories are purchased from another domestic pipe and fitting manufacturer along with that manufacture's ductile iron pipe.

Customers who elect not to support this program [REDACTED] forgo participation in any unpaid rebates for domestic fittings and accessories [REDACTED] shipment of their domestic fitting and accessory orders of Tyler Union or Clow Water products for up to 12 weeks.

Although the words "may" and "if" were specifically used, the market has interpreted the communication in the more hard line "will" sense.

Confidential

CX 0119-002

TU-FTC-0255189  
CX 0119-002

**From:** Rick Tatman <Rick.Tatman@tylerunion.com>  
**Sent:** Monday, November 23, 2009 3:19 PM  
**To:** Leon G. McCullough <Leon.McCullough@clowvalve.com>; Thomas Walton  
<Thomas.Walton@mh-valve.com>  
**Subject:** Halco on hold

---

We have put all Halco orders on hold for domestic fittings and accessories

Signe has been advised to do the same per the terms of our LMDA

Jeff Otterstedt and Scott Frank have also been advised

*Richard S Tatman*

VP & GM - Tyler/Union  
(903) 882-2440  
[rick.tatman@tylerunion.com](mailto:rick.tatman@tylerunion.com)  
[www.tylerunion.com](http://www.tylerunion.com)



MANAGE THE BRAND

100% AMERICAN MADE

100% AMERICAN MADE FITTINGS

100% AMERICAN MADE

100% AMERICAN MADE

100% AMERICAN MADE

As most of you are aware Union-Tyler issued a letter this week outlining their affiliation with Sigma as an effort to provide two sources for their American manufactured products. In addition they established their position to not support any company purchasing American made fittings. Primary source

Due to the "Buy American" requirements in the ARRA funded jobs and with the expectation that the flow of money to these projects will pick up the latter part of 2009 through 2010; we need to adhere to this mandate and purchase all of our American made fittings through Union-Tyler or Sigma. This will ensure that we have a full line of product to service our customers as well as continued compliance with the Federal requirements. This does not affect your source for import fittings.

Please take the necessary action to ensure compliance in your District/Branch. If you need further information contact your Regional Vice President.

Thank you for your prompt attention to this matter.

[REDACTED]

Remember, we have commitments from several of the big players so when you have someone say that we need to match pricing due to the other guys we need to take a firm stance and ask who is going to use them. There can be a price out there but if no one uses it then it becomes a mute point. You need to stand up for our position. Sigma will not support someone using Star either.

[REDACTED]

CX 0108-001

# Sigma Was Ready To Enter At The Flip Of A Switch

- Q. What I'm trying to get a sense of, Mr. Bhattacharji, is how far down the path were you? In other words, were you sitting here in the U.S. with 700 or 800 patterns, you had contracts with foundries, and if somebody said, flick a switch, you could make the patterns, have them ready in a month, or were you really in the beginning process of this sort of brainstorming and saying, this is going to be so complicated and so difficult and so expensive, it's just not worth pursuing at this point?
- A. We were more than brainstorming. We had identified the items. We had actual production drawings made for all of the items. We had given them out to pattern shops to quote. We had got back quotations from the pattern shops, what it would cost, how long it would take. We had seen what the pattern shops would cost in China -- not in China, in India, and I believe domestically, I can't recall for sure, but I think we had gone out. **So we were to a point where we knew if somebody flicked a switch, where to send the drawings, where to send out the purchase orders, what the purchase orders would cost us and a time frame. So we had that part done...So in answer to your question, we were ready with what was needed once the switch was flipped.** And we were also, at the same point in time, trying to formulate our thinking on the lost foam by actually test manufacturing.

CX 2523 (Bhattacharji, Dep. at 54-55) (emphasis added).

Answer: For the most part, Yes. Within certain restrictions, Sigma has the ability to supply our domestic product to their customers. While we understand your concerns, the reality of situation is that in the absence of the MDA with TylerUnion, Sigma was going to develop their own domestic sourcing options to the extent they could. More than likely that distributor you're concerned about would have obtained some level of domestic product either from Star or from Sigma. We believe that ultimately the market will be more stable, and your business will be better off, if distributors like the one in question purchase their domestic requirements either through TylerUnion or through Sigma under our MDA.

CX 1179-002

**From:** Rick Tatman  
**Sent:** Tuesday, July 21, 2009 10:08 PM  
**To:** Charlie Nowlin <cnowlin@mcwane.com>  
**Subject:** Proforma Sigma Offer July 2009.xls  
**Attach:** Proforma Sigma Offer July 2009.xls

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Charlie,

I believe Thomas left your a v-mail.

We are having some discussions with Sigma as to providing them with Domestic fittings as an alternative to them securing their own source option such as Star has done.

~~This is certainly a choice of evils as having more Domestic suppliers doesn't really increase the size of the pie.~~  
Our ultimate decision will be based upon:

- If we say No, would Sigma really spend the \$ required to execute a domestic product option
- Would providing Sigma with access to Tyler/Union domestic protect help us either better protect our brand/share against Star or promote more stable market prices

CX 0729-001  
10/06/09

CX 0729-001



## What we "Assume" to be true at this point

- ☐ Star didn't initiate their program until after the 1<sup>st</sup> of the year
  - ☐ Star moved patterns from China rather than tool new patterns/core boxes
  - ☐ Star is working with multiple jobbing type foundries and has not taken the taken a strategic partner approach
  - ☐ The have not yet made the investment required for low cost Disa type production
  - ☐ Finishing will require physical movement of castings to another supplier
  - ☐ Finished product costs basis would be in the range of \$2,600 to \$3,000 per ton
  - ☐ Star's current actual product availability is fairly limited
  - ☐ Sigma would most likely pursue a more strategic partner approach using a limited number of foundries for supply
  - ☐ Ebba will most likely take a hard line approach on restraints
  - ☐ The appropriate response to any Sigma program should be relatively the same as the response to Star's program
  - ☐ Star would not be a responsible competitor as long as incremental sales
- ☐ Having multiple Domestic suppliers will not significantly increase the overall Domestic spec market size.....Net tonnage gain scenario for us is unlikely
  - ☐ Sigma has yet to fully commit financially to their Domestic strategy

CX 0111

CX 0111-002

**From:** Walton, Thomas (McWane Sr. Vice President)  
**Sent:** Friday, August 14, 2009 1:24 PM  
**To:** McCullough, Leon (McWane Executive Vice President)  
**Subject:**

2. Agreement with SIGMA to allow them to sell domestic fittings;

As I understand where we are at now we are going to give SIGMA a 20% discount off of our current published domestic multipliers. Since we would not pay them a 10% rebate on this sale, as we would our regular distribution customers, then we are only giving them 10% of our current gross margin for domestic fittings we sell that we will lose to them when they sell those domestic tons. So for every 1000 tons of domestic fitting that they sell, that WWF would have sold, WWF will lose approximately \$350,000 in gross margin, this was calculated from WWF sales and gross July 09. It is probably a fair assumption that we will lose some non-domestic tons as well as domestic when SIGMA tries to package deals, etc. So if we assume that for every 1000 domestic tons they sell they will sell an additional 500 tons of non-domestic that would have been WWF's that would translate into a loss of approximately \$210,000 in gross margin for a combined total of approximately \$560,000 lost in gross margin. If I remember from one of our conference calls it was estimated that Sigma might sell around 3000 domestic tons per year, if so this would produce a gross profit loss for WWF of approximately \$1,680,000 per year from the current numbers.

Volume will reduce inventories and generate cash in the short term, but at some point in the future as you know we will need to generate profits in order to generate cash.

Thomas

Confidential

TU-FTC-0250249  
CX 0111-001

Confidential

TU-FTC-0250249  
CX 0111-002

CX 0111-002

50

- Sigma - Latman informed me that Sigma was forbidden from selling to USF as per the Master Distributor Agreement signed between Union + Sigma

Sigma

\* <sup>LM</sup> WHAT TO SENSITIVE TO PUT PRESSURE ON  
 SPAR, LM. [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] WOULD RATHER HAVE CONFERENCE  
 OTHER THAN SPAR.

[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

LM STATES THAT HE IS CERTAIN THAT  
 HD & FERGUSON KNOWS THAT WE ARE  
 NEGOTIATING WITH SIGMA TO SEE THE  
 DOMESTIC FITTINGS.

LM APPROVED RICK'S RECOMMENDATION AND  
 PAGE OF HIS POWERPOINT PRESENTATION  
 ON SENSING SIGMA.

## What's in it for McWane

- ☐ Setting up Sigma as a Master Distributor (in the best case scenario)\*
  - Transfer \$473 of margin for every ton we would have sold
  - Retains \$910 of margin that would have been incrementally lost to Sigma or Star

- ☐ Although not accurately quantifiable, having Sigma sell McWane branded product

- Should reduce Star's ability to grow share
- Keeps additional overcapacity from being added to the industry
- Should strengthen our brand image as a Domestic manufacturer
- Should help drive some additional level of price stability

truly does have the resolve and financial backing to make a long term strategic commitment to being a supplier of Domestic products

If we can keep the discount rate to Sigma near 23% with a defined reduction schedule tied to falling published price levels then it's probably worth continuing to dialog with Sigma on a possible relationship... as long as they also accept the exclusive brand requirement for distribution

\* Pricing remains @ current published with Idle Plant and inventory reduction cost excluded from mfg costs

7/27/00 RGT