

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, )  
)  
Plaintiff, ) CAUSE NO. IP 06-CR-1, 2, 3  
) Indianapolis, Indiana  
-v- ) November 13, 2006  
) Volume I  
MA-RI-AL CORPORATION, d/b/a )  
BEAVER MATERIALS, CORP.; et al.)  
)  
Defendants. )

Before the Honorable  
Larry J. McKinney, Chief Judge

OFFICIAL REPORTER'S TRANSCRIPT OF  
TRIAL

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PROCEEDINGS TAKEN BY MACHINE SHORTHAND  
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1 (FOLLOWING VOIR DIRE A JURY WAS SELECTED AND SWORN AND  
2 THE TRIAL PROCEEDINGS WERE HAD AS FOLLOWS:)

3 (Trial resumed 1:30 p.m.)

4 THE COURT: Are we ready to bring in the jury for  
5 opening statements, yes?

6 MR. VOYLES: We are, Your Honor.

7 THE COURT: I can't recall how long I gave for opening  
8 statements.

9 MR. VOYLES: Half hour, Your Honor.

10 THE COURT: Half hour. Okay. All right. When I read  
11 this indictment to them, I have taken out references to  
12 everybody with the exception of Nuckols and Irving. I  
13 mentioned co-conspirators Irwin Materials, Builder's Concrete  
14 and Supply. And then I think as we described in the indictment  
15 as the allegation is made regarding the meeting, I have left in  
16 where it takes place.

17 (In the presence of the jury.)

18 THE COURT: You may be seated. Good afternoon, Ladies  
19 and Gentlemen.

20 THE JURORS: Good afternoon.

21 THE COURT: We turned up the heat a little bit in  
22 here, thought it would be a little less chilly of course than  
23 it was this morning. I expect by 3:00 o'clock we'll probably  
24 have to turn the heat back down again. But, in any case, as I  
25 mentioned this morning, once you're sworn in, I will read to

1 you these preliminary instructions and then as a part of that  
2 reading I'll read the indictment to you and let you know what  
3 the law is.

4 (Preliminary Instructions read to the Jury.)

5 THE COURT: So, Ladies and Gentlemen, we're ready now  
6 to hear the opening statements of counsel.

7 MR. VOYLES: Judge, if it please the Court, may we  
8 come to the bench for a second?

9 THE COURT: Sure.

10 (Bench conference on the record.)

11 MR. VOYLES: Has the jury been sworn, Your Honor?

12 THE COURT: Sure. She swore in the jury before lunch.  
13 But you know what? I'm not above making that mistake. I  
14 appreciate your bringing it up.

15 MR. VOYLES: We're also going to ask the Court for  
16 separation of witnesses, and I just didn't want to do it --

17 THE COURT: Okay.

18 MR. VOYLES: -- before Mr. Nuckols.

19 THE COURT: Are there people in the courtroom that are  
20 going to be witnesses?

21 MR. VOYLES: No.

22 MR. VONDRAK: No, other than Special Agent Schlobohm,  
23 Your Honor.

24 THE COURT: All right. So since they're not all here,  
25 I'll have to rely on you not to bring them in here unless

1 they're getting ready to testify.

2 MR. LOCKWOOD: Will do.

3 THE COURT: Anything else?

4 MR. LOCKWOOD: No. Treat me gently when I make a  
5 mistake.

6 THE COURT: I don't know. I don't know, Mr. Lockwood,  
7 if I'll do that or not.

8 (In open court.)

9 THE COURT: All right. Let us proceed.

10 OPENING STATEMENTS

11

12 MR. VONDRAK: May it please the Court, Mr. Lockwood,  
13 Mr. Voyles. Good afternoon, Ladies and Gentlemen.

14 On October 22nd, 2003 a meeting took place in this horse  
15 barn. But it was not a meeting of horse lovers. The people at  
16 that meeting were people who are in the business of producing  
17 and selling ready-mix concrete in the Indianapolis metropolitan  
18 area. And the topic of discussion that day was not about live  
19 stock. The topic of discussion that day was an ongoing secret  
20 agreement to fix the price of ready-mix concrete in violation  
21 of the Sherman Antitrust Act.

22 The evidence you will see and hear during this trial will  
23 prove to you beyond a reasonable doubt that a conspiracy  
24 existed to fix the price of ready-mix concrete in the  
25 Indianapolis area.

1           The evidence in this case will also prove to you beyond a  
2 reasonable doubt that that conspiracy began in July of 2000 and  
3 continued all the way through May 25th, 2004. The evidence in  
4 this case will also prove to you beyond a reasonable doubt that  
5 each of the Defendants in this case joined that conspiracy, and  
6 it will also prove to you beyond a reasonable doubt that each  
7 of the Defendants in the case knew what they were doing when  
8 they did so.

9           During this trial you will hear that that October 22nd,  
10 2003 horse barn meeting was not the beginning of a conspiracy  
11 in this case. What you will hear shortly after this meeting  
12 the conspiracy became uncovered and was brought to the  
13 attention of the government and the Federal Bureau of  
14 Investigation.

15           Before I outline for you what you will see and hear during  
16 this trial, let me take a moment to introduce ourselves again.  
17 I am Frank Vondrak. Jonathan Epstein, Eric Schleeef and I are  
18 all attorneys with the United States Department of Justice.  
19 Our office is located in Chicago.

20           You also see seeing sitting at our table Special Agent  
21 Schlobohm of the FBI. His office is located here in  
22 Indianapolis.

23           Sitting behind us at counsel table is Carly Blakeman.  
24 Ms. Blakeman is a paralegal in our office, and she will be  
25 helping us present the evidence that you will see and hear

1 during the course of this trial.

2 The first defendant in this case is MA-RI-AL Corporation,  
3 which does business as Beaver Materials. Beaver Materials  
4 operates plants in Noblesville and Waverly.

5 Beaver Materials is charged in the first count of this  
6 indictment with price fixing in violation of the Sherman  
7 Antitrust Act. Two executives from Beaver Materials are also  
8 Defendants in the first count, Chris Beaver and Ricky Beaver.  
9 Chris Beaver is the operations manager for Beaver Materials and  
10 Ricky Beaver is responsible for commercial sales for that  
11 company.

12 In addition, the indictment in this case charges Chris  
13 Beaver and Ricky Beaver with making false statements to the FBI  
14 on May 25th, 2004. That was when the FBI questioned them about  
15 this price fixing conspiracy. I will talk more about those  
16 false statement charges a little bit later. And after this  
17 trial you will see and hear how those false statements fit in  
18 with the conspiracy that is charged in count one of this  
19 indictment.

20 As Judge McKinney pointed out earlier, ready-mix concrete  
21 is made up of sand and water and gravel and cement, as well as  
22 other ingredients. Once it's mixed together, it begins to set,  
23 so it has to be poured quickly before it hardens. It's  
24 delivered in trucks that are familiar to all of us, and is  
25 mixed up on demand.

1           The equipment and supplies used to produce and sell  
2 ready-mix concrete are shipped into Indiana from places outside  
3 of the State of Indiana. During this trial you will hear how  
4 five companies got together and agreed amongst themselves what  
5 price they would charge for ready-mixed concrete. Those  
6 companies were Builder's Concrete and Supply Company  
7 Incorporated, which you will hear referred to as Builder's;  
8           Hughey, Inc., which does business as Carmel Concrete. You  
9 will hear that referred to as Carmel;

10           Irving Materials, Incorporated, which you will hear  
11 referred to as IMI; and

12           Shelby Materials, Incorporated, which is frequently called  
13 Shelby.

14           Also included in this conspiracy, the evidence will prove  
15 to you, is MA-RI-AL Corporation, which does business as Beaver  
16 Materials or Beaver.

17           Now these were not the only companies that sold ready-mix  
18 concrete in the Indianapolis metropolitan area, but they sold a  
19 lot of it. Most of it in fact.

20           The evidence you will see and hear during this trial will  
21 tell you that these companies, these competitors, had gotten  
22 tired of competing with each other. They wanted a way to keep  
23 their prices up and not lose any business. What they came up  
24 with was a secret agreement that they would work together and  
25 decide amongst themselves what prices they would charge for the

1 products and services that they offer. In other words, each  
2 time a customer ordered concrete for foundation or a driveway  
3 or whatever, that customer would pay more for it.

4 Competition was hurting the bottom line. The companies and  
5 individuals had a choice to make. Continue to compete with  
6 each other or work together and agree to limit competition.  
7 They chose to agree to eliminate competition. The agreements  
8 to eliminate competition violate the Sherman Antitrust Act.

9 That law was passed in the United States over a hundred  
10 years ago. And its purpose is simple: A customer is entitled  
11 to the best possible product at the lowest possible price. And  
12 the purpose of the Sherman Act is to protect free and open  
13 competition. And this means it is a crime in the United States  
14 of America for competitors to get together and agree not to  
15 compete. American customers are entitled to that best possible  
16 product at the best possible price.

17 The rules in this country don't allow race car drivers to  
18 get together and decide who's going to be the winner of the  
19 Indy 500. And if the law of the United States does not allow  
20 competitors to get together and agree amongst themselves that  
21 they will cheat their customers, they can't agree to not play  
22 fair with their customers. It is that agreement that  
23 constitutes the crime that we are talking about in count one of  
24 this indictment.

25 Now I mentioned earlier the secret agreements didn't begin

1 on October 22nd, 2003. And it didn't. But it did begin in the  
2 horse barn you saw a couple minutes ago. That horse barn was  
3 owned by Butch Nuckols. Butch Nuckols is the President of  
4 Builder's Concrete.

5 You will hear from Mr. Nuckols and others that on  
6 July 12th, 2000 representatives of Builder's, IMI, Carmel,  
7 Shelby and Beaver Materials got together at that horse barn.  
8 You will hear that Butch also represented Builder's at that  
9 meeting. John Huggins of IMI was also there. And Scott Hughey  
10 of Carmel was there. Richard and Philip Haehl represented  
11 Shelby. And Ricky Beaver was at this meeting also representing  
12 Beaver Materials.

13 At that July 2000 meeting these individuals representing  
14 these companies reached an agreement that they would limit how  
15 much of a discount they would offer to their customers. You  
16 will hear that this agreement was not always successful. You  
17 will hear sometimes some of the companies didn't live up to the  
18 agreement because sometimes some of the companies cheated on  
19 those agreements. But that agreement worked well enough for  
20 these companies and these individuals to continue to call on  
21 each other and continue to work with each other. And they  
22 continued to call and meet with each other to keep their prices  
23 from eroding. And you will hear that these companies got  
24 together again. These very same companies, Builder's, IMI,  
25 Carmel, Shelby and Beaver got together for another meeting.

1 This time they met at Signature Inn Hotel conference room. A  
2 lot of familiar faces were at this meeting.

3 Butch Nuckols was there representing Builder's. John  
4 Huggins had retired from IMI, but he was replaced at that  
5 meeting by Dan Butler and Price Irving. Scott Hughey from  
6 Carmel Concrete was there as well. Richard Haehl of Shelby was  
7 at that meeting. Tim Kuebler, who was the executive  
8 vice-president of Builder's at the time, was also at the  
9 meeting. And Ricky Beaver of Beaver Materials was present at  
10 that meeting at the Signature Inn.

11 At that meeting these people representing these companies,  
12 these supposed competitors, again agreed that they would limit  
13 the discounts that they would offer to their customers and they  
14 agreed that they would call each other to confirm what prices  
15 others were charging. They didn't want to get themselves  
16 caught in a situation where they were bidding themselves down.  
17 The telephone calls and meetings continued.

18 On October 22nd, 2003 the ready-mix companies met again in  
19 the horse barn. Butch Nuckols of Builder's Concrete was there  
20 again. So were Dan Butler and Price Irving of IMI again. And  
21 Scott Hughey of Carmel Concrete was there. And Richard Haehl  
22 and Philip Haehl of Shelby Materials were there. Two new faces  
23 were there as well. John Blatzheim was there with Butch  
24 Nuckols of Builder's. John Blatzheim joined Builder's in April  
25 of 2003. And at this meeting the Defendant Chris Beaver

1 replaced Ricky Beaver for Beaver Materials.

2 And during this trial you will hear why Chris replaced  
3 Ricky at that meeting. At this meeting these supposed  
4 competitors recommitted to their agreement to limit discounts  
5 they would offer their customers. They agreed to limit those  
6 discounts to no more than \$5.50. And they agreed that after a  
7 while they would further cut back on the discounts they offered  
8 to their customers. In other words, they would cutback even  
9 further on the amounts of a break they would give their  
10 customers. And they also agreed to reach out to other  
11 ready-mix concrete companies in order to get those companies to  
12 go along with the illegal agreement.

13 Scott Hughey agreed to contact Jason Mann of American  
14 Concrete. And Chris Beaver volunteered to contact Jason Mann  
15 of American Concrete. Scott Hughey agreed to contact Gary  
16 Matney of Prairie Materials.

17 By this time you may be asking yourselves: How do we know  
18 about this secret agreement? How do we know about these secret  
19 meetings?

20 During this trial you will hear from Butch Nuckols,  
21 Builder's Concrete. You will hear from an executive of IMI.  
22 And you will hear from Scott Hughey of Carmel. And you will  
23 hear from Richard Haehl of Shelby. In other words, you will be  
24 hearing from the Defendants' partners in crime. Each of these  
25 men will tell you about the secret agreement and the role that

1 they played in it.

2 Butch Nuckols and Scott Hughey will each tell you that they  
3 have pled guilty for their roles in the secret price fixing  
4 agreement. And they will tell you their plea agreements  
5 require them to cooperate and testify truthfully about their  
6 roles and the roles of others in the crime. You will hear  
7 about the hard time in prison executives from IMI did.

8 Butch Nuckols, Scott Hughey will tell you they have not yet  
9 been sentenced but that they expect to be sentenced by Judge  
10 McKinney and that Judge McKinney has sole discretion in what  
11 their sentences will be.

12 Richard Haehl will tell you that shortly after he learned  
13 about the investigation that leads to this case he decided to  
14 cooperate. In return, he received amnesty for his role in the  
15 crime. And he will tell you that one of the conditions for  
16 obtaining amnesty was that he testify truthfully and completely  
17 about his role in the crime. He and his company agreed to  
18 cooperate and to pay restitution to their victims, otherwise  
19 they would not get amnesty.

20 In other words, the evidence you will see and hear during  
21 this trial will prove to you that there were five companies  
22 involved in this conspiracy. In the government's case you will  
23 hear from representatives of four of those companies. Unlike  
24 many crimes, for instance bank robberies, there are no innocent  
25 victims or innocent people that we can call for you as

1 witnesses. These conspiracies are by their very nature secret.  
2 That's why these people met in the horse barn and in a hotel  
3 conference room. There are no innocent witnesses who can tell  
4 you about these conversations and these meetings where these  
5 secret agreements were reached. In order for us to present our  
6 case to you so that you can determine each defendant's guilt or  
7 innocence, we have to bring in the people who were involved in  
8 the illegal activities.

9 In addition to the defendants' partners in crime you will  
10 see and hear other evidence. All of that evidence will fit  
11 together with the testimony of the executives from Builder's  
12 and Carmel and IMI and Shelby to give you one clear picture.  
13 And you will be able to determine what is credible and what is  
14 not credible because the whole story will fit together for you  
15 at the end of this case. For example, you will hear from Jason  
16 Mann, who was the owner of American Concrete. And he will tell  
17 you about conversations he had with Chris Beaver. And you will  
18 hear how during those conversations Chris Beaver tried to get  
19 Jason Mann to go along with the agreements that the others had  
20 made in secret at that horse barn.

21 Scott Hughey will tell you he tried to contact Gary Matney  
22 of Prairie Materials, and tried to get Gary Matney to join the  
23 conspiracy. You will recall that during the October 22nd, 2003  
24 horse barn meeting Scott Hughey agreed to contact Matney and  
25 you will hear that he ultimately did so. You will hear how

1 those attempts to get other companies involved in the illegal  
2 secret agreement was the beginning of the end of this  
3 conspiracy. Unbeknownst to any of the conspirators, Gary  
4 Matney decided not join the conspiracy and he decided to  
5 cooperate and report these contacts to the FBI. As a result of  
6 Gary Matney's decision not to go along, not to play ball, the  
7 government obtained a Court's approval to get search warrants.  
8 The FBI executed those search warrants on May 25th, 2004.

9 Some of the documents you will see during this trial come  
10 from the offices of the companies that were involved in the  
11 secret price fixing agreement. Those documents were not meant  
12 for public viewing. And we have them as a result of the hard  
13 work the FBI did in this case.

14 But that was not all that the FBI did on May 25th, 2004.  
15 While FBI teams were executing the search warrants, other FBI  
16 agents were conducting interviews of people in the ready-mix  
17 concrete industry. You will hear that the FBI wanted to  
18 interview as many people as possible so that they would find  
19 out firsthand from people in the ready-mix concrete industry  
20 exactly what had happened. Remember while Gary Matney was  
21 cooperating with the FBI he had never been at any of the  
22 secrets agreements at the barn and the Signature Inn hotel.

23 The FBI also wanted people to tell them what they knew  
24 before they had a chance to get together and concoct a story to  
25 tell law enforcement. They wanted to reach out to the people

1 before the people could come up with a cover story to tell a  
2 lie. And in the early morning of May 25th, 2004 Special Agent  
3 Neil Freeman of the FBI interviewed Chris Beaver at  
4 Mr. Beaver's home in Noblesville.

5 During that meeting Chris Beaver denied any knowledge of  
6 competitors in the ready-mix concrete industry discussing  
7 pricing. Despite the fact that he was at the October 22nd,  
8 2003 horse barn meeting just a few months earlier, he denied  
9 attending any meetings with others in the ready-mix concrete  
10 industry except for trade association meetings. Chris Beaver's  
11 denial of pricing discussions is the subject of count 3 of the  
12 indictment in this case.

13 At about the same time on May 25th, 2004 Special Agent  
14 Karen Medernach of the FBI interviewed Ricky Beaver at the  
15 offices of Beaver Materials. She will tell you that Ricky  
16 Beaver also denied any knowledge of pricing discussions between  
17 competitors in the ready-mix concrete industry. That denial is  
18 the subject of count 4 of the indictment in this case.

19 Ladies and Gentlemen, the evidence in this case will prove  
20 to you beyond a reasonable doubt that the scheme between the  
21 Defendants and their partners continued until the day FBI's  
22 investigation became known. It continued until May 25th, 2004.  
23 And the evidence will prove beyond a reasonable doubt that  
24 Chris Beaver and Ricky Beaver fought to conceal the existence  
25 of that conspiracy right up to the very end. Right through

1 their interviews with the FBI.

2 Judge McKinney told you earlier that the United States has  
3 the burden of proving each defendant guilty on each count of  
4 which they are charged. And we have a burden of making that  
5 proof beyond a reasonable doubt. Beyond a reasonable doubt is  
6 no greater or no lesser a burden than any other prosecutor in  
7 any other courtroom in this country has, and the United States  
8 gladly accepts that burden.

9 At the conclusion of the evidence in this case, I will  
10 stand before you one last time. When I do that, I will ask you  
11 to return a verdict of guilty. The evidence you will see and  
12 hear during the course of this trial will support those  
13 verdicts of guilty. And I will ask you to return the verdicts  
14 of guilty for the simplest possible reasons in the world, they  
15 did it.

16 Thank you, Ladies and Gentlemen.

17 Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Vondrak.

19 Mr. Lockwood, Mr. Voyles.

20 MR. VOYLES: Please the Court, Your Honor, Mr. Vondrak  
21 and other members of the government.

22 Ladies and Gentlemen, to refresh your recollection, my name  
23 is Jim Voyles. My client is the MA-RI-AL Corporation. And  
24 seated with me is Allyn Beaver, who is the president of that  
25 corporation. We have been using the term MA-RI-AL Corporation.

1 I want to tell you what it means. It is the first letters of  
2 the names of three individuals that were involved in the  
3 company. Marion, who was their father, Richard and Allyn.  
4 Kind of a simple way for a simple company to have its name.  
5 But when that name was called in by people to try to get  
6 information, if you were seeking to have concrete delivered by  
7 them, the operator really couldn't confine herself to what is  
8 it, MA-RI-AL? How do you spell it? So they started using  
9 Beaver Concrete, or Beaver Materials. So that's the way,  
10 that's how I'm going to discuss this case with you today.

11 Mr. Vondrak in his statement to this jury said to you that  
12 the government had and would be bringing to you a lot of  
13 evidence, and what he believed to be evidence in this case.  
14 It's kind of a preview for the government to tell you what this  
15 case is all about that they think. It will be up to you,  
16 Ladies and Gentlemen, in the end to determine whether the  
17 government was able in presenting its actual evidence in this  
18 courtroom to live up to their expectations.

19 Beaver Gravel was started in 1948 with three employees by  
20 Allyn and Gary Beaver's grandfather Forrest Beaver. In 1959  
21 the ready-mix company, the MA-RI-AL company, was operated by  
22 Allyn Beaver and his brother Gary, and their father Marion  
23 Beaver. With two employees, two dump trucks, concrete trucks.

24 In 1965, when Gary Beaver got out of the Navy, he and his  
25 brother Allyn became the sole owners of the company, and

1 Marion, their father, went into independent businesses.

2 In 1970 Allyn and Gary bought out the gravel business. And  
3 in 1974 they started the precast business and called it Beaver  
4 Products. Their main plant and corporate office is located in  
5 Noblesville, Indiana.

6 In the summer of the year 2000 they opened a second plant  
7 down in Waverly, Indiana off Route 144.

8 Now, as Mr. Vondrak indicated to you, the concrete business  
9 is a kind of business that requires, in particularly the  
10 ready-mix part of the business, that you have to have access to  
11 your customers in a relatively short period of time because the  
12 concrete that they are delivering to you sets up rather  
13 quickly. So most of the jobs that they engage in are  
14 approximately 40 to 45 minutes away from the main plant or the  
15 plant in Waverly.

16 Now you heard Mr. Vondrak indicate to you in his opening  
17 statement that Chris Beaver and Ricky Beaver are employees of  
18 the company. The president is Allyn Beaver. And you will hear  
19 and you will see during the course of the government's  
20 presentation at no time did you ever see Allyn Beaver's name  
21 mentioned as being at any meeting that the government was  
22 presenting to you on their slide show.

23 What they did tell you is Chris Beaver, who was an  
24 employee, was involved in operations. Ricky Beaver was  
25 involved in sales. Never were either one of those gentlemen

1 corporate officers nor members of the corporation other than in  
2 an employee capacity.

3       It was interesting to hear what the government said when  
4 they talked to you about the meetings. We believe the evidence  
5 will be that the conspirators who are being brought to you as  
6 witnesses in this case, who now are, at least some of them,  
7 convicted felons, others who are people awaiting sentencing in  
8 this courtroom, are people who have worked out agreements with  
9 the government in their particular case. And we think that you  
10 should and will pay close attention to what the nature of that  
11 agreement is. What did they get for their plea agreement? Why  
12 did they plead guilty and under what circumstances did the  
13 government agree in the plea agreement to give them leniency or  
14 to give them what other things that the government would  
15 require them to do for that plea agreement.

16       It will also be very important for you when the government  
17 begins calling witnesses in this case to pay attention to  
18 exactly what was said and when it was said. The government has  
19 made a series of slides to indicate to you there were certain  
20 meetings that were conducted. The government didn't tell you  
21 about the number of meetings that were not shown on the slide  
22 show by these competitors where the people from Beaver  
23 Materials did not attend. The government didn't tell you about  
24 the number of conversations that occurred among a number of  
25 these competitors that Beaver company was not involved in.

1           And I think you will see and the evidence will be that some  
2 of the witnesses can tell you about 18 to 20 separate meetings,  
3 conversations, things that they did with each other that Allyn  
4 Beaver was never involved in, that the Beaver Corporation was  
5 never involved in.

6           When people who have committed crimes are called as  
7 witnesses on behalf of the government, they are called in a  
8 particular way. They are called because the government has  
9 chosen to exercise its responsibility and its power to work out  
10 an agreement with them for their testimony. They have agreed  
11 to come to the courtroom to testify. They have agreed to  
12 explain what they believed were facts and circumstances  
13 involving their conduct. And the government will be asking you  
14 to utilize that in an attempt to find beyond a reasonable doubt  
15 for us that these people were involved in a conspiracy with  
16 Beaver Materials.

17           It was interesting to hear Mr. Vondrak say to you that  
18 certain people were interviewed by the FBI when they fanned out  
19 across the community on May 25th of the year 2004 to talk to  
20 them. One of the people that they talked to was Mr. Nuckols.  
21 And Mr. Nuckols told the agent who interviewed him that they  
22 didn't know anything about a conspiracy, didn't know anything  
23 about any price fixing meetings and never had been to any price  
24 fixing meetings, that they were only meetings he may have  
25 attended where they were talking about their corporations and

1 their agreements in the ready-mix industry.

2 The government has indicated to you that these witnesses  
3 who are going to be called on behalf of the government's case  
4 are people that you are going to be asked to rely on. That in  
5 order for the government to prove beyond a reasonable doubt  
6 that any conspiracy was engaged in, they're going to have to  
7 have you believe the people who are called as witnesses on  
8 behalf of the government.

9 We believe that at the conclusion of this case that when  
10 all the evidence is in and when all the people and the  
11 convicted felons have finished with their testimony and their  
12 cross-examination that the government will be failing to prove  
13 to you beyond a reasonable doubt that the MA-RI-AL Corporation,  
14 the company I represent, and the president who is here with me,  
15 Mr. Allyn Beaver, engaged in any conspiracy to effect or in any  
16 way fix prices in the concrete industry.

17 The evidence will be that Beaver Concrete was active in its  
18 community, was involved in community projects. Itself, had a  
19 relatively low profile in the concrete industry. Maintained  
20 because of this 40 to 45 minute period of time it takes for  
21 concrete to set up, a market that is generally close to their  
22 plants. And we believe, and we will ask, and I on behalf of  
23 the Beaver Material Corporation will ask you at the end of the  
24 case to return a verdict of not guilty as to any conspiracy on  
25 behalf of Beaver Concrete in this case.

1 Thank you.

2 THE COURT: Thank you, Mr. Voyles.

3 Mr. Lockwood.

4 MR. LOCKWOOD: May it please the Court, Ladies and  
5 Gentlemen of the government, Mr. Voyles.

6 Ladies and Gentlemen of the Jury, my name is Jeff Lockwood.  
7 I represent Rick Beaver and Chris Beaver.

8 I'm going to tell you what's wrong with the government's  
9 case. The pretty pictures they showed you were of rare cement  
10 or rare concrete discharge mixers, not a single competitor  
11 that's ever been charged in this case uses that equipment.

12 You must be thinking the man has lost his mind. It's such  
13 a trivial point. And it is trivial. But it's not trivial in  
14 the context of the fact that the government cannot prove its  
15 case because it doesn't know the operable facts of its case.  
16 For example, you heard Mr. Vondrak say that my client Rick  
17 Beaver attended a meeting in 2000 at a horse barn. That didn't  
18 happen. Nor will the government's witnesses say that it  
19 happened.

20 I'll tell you when my client attended the meeting he  
21 attended the meeting at the Signature Inn in the year 2002. He  
22 attended another meeting and this was in July of 2003  
23 approximately, and there will be government witnesses who will  
24 say that.

25 Chris Beaver attended a meeting also. He attended a

1 meeting in October of 2004. Are these facts significant?

2 They're significant because you must always test what the  
3 government's evidence is in this case.

4 For example, the government has said to you in its opening  
5 statement that my client Chris Beaver attempted to persuade  
6 Jason Mann to join a conspiracy. Ladies and Gentlemen, that  
7 will not be the evidence in this case. Jason Mann will tell  
8 you that Chris Beaver never said anything to him about keeping  
9 the price at a level or changing the price. It's important I  
10 think that you know that in the cement business it's not the  
11 list price that is significant.

12 In my own mind I sort of relate that to the car  
13 dealerships. It's not what they say on the sticker. It's what  
14 you can get them to sell you the product for.

15 And so in the cement industry discounts are used. There's  
16 a standard discount that everybody gets if they pay for their  
17 product within thirty days, I believe it is, and then there are  
18 other discounts that can be offered for various market,  
19 legitimate market and business type considerations.

20 For example, the trucks are not on the road as long in one  
21 job as they might have to be in another. And so they can  
22 charge less to deliver a product. If it's an excellent  
23 customer, they want to make sure they keep them. And so they  
24 may offer a discount.

25 The government charges as part of the case that these were

1 the agreements that were reached by these conspirators. And,  
2 Ladies and Gentlemen, I shouldn't have much to say, Mr. Vondrak  
3 and Mr. Voyles have already presented excellent opening  
4 statements. And we will not dispute some of the Government's  
5 evidence there was a conspiracy, Ladies and Gentlemen. There  
6 was a conspiracy at which some of the conspirators that you  
7 will hear under grants of immunity, under promises regarding  
8 their sentencing, there was a conspiracy. But it did not  
9 involve Rick Beaver. And it did not involve Chris Beaver.  
10 This conspiracy was among men whom you dared not disagree with  
11 publicly very often. There could be a price to pay if you  
12 jumped up in the middle of the meeting and said: Now,  
13 Mr. Nuckols, I'm not going to go along with this. In front of  
14 everybody else in the industry.

15 You heard the government refer to Gary Matney. Do you know  
16 what they did to Gary Matney? When Gary Matney wouldn't go  
17 along, they went to his boss in Chicago and tried to get him in  
18 trouble and tried to get him fired. There was a special trip  
19 to Chicago, Illinois for that purpose. There was also talk  
20 that you will hear from the witness stand in this case that in  
21 order to get Mr. Matney in line, there was some talk they would  
22 all gang up on him, they would all undercut his price on all of  
23 his jobs.

24 Rick Beaver never agreed to do that. Chris Beaver never  
25 agreed to do that. That didn't happen in this case, Ladies and

1 Gentlemen. It is not against the law to assemble. It is not  
2 against the law even to talk about the price. It is against  
3 the law to agree to artificially fix a price. That law is  
4 worthy of being upheld. I'm not trying to stand here and tell  
5 you you shouldn't uphold that law. I am saying to you that the  
6 men who did that crime have already pled guilty to it. And  
7 some of them haven't been sentenced yet because they need to be  
8 on a short leash when they come in this courtroom, I submit to  
9 you, so that they will do what they have promised the  
10 government they will do, and that is help get other  
11 convictions.

12 None of that justifies convicting men who are not guilty of  
13 this terrible thing.

14 Mr. Vondrak says there were meetings. Mr. Vondrak says  
15 there were follow-up phone calls. And there were. Mr. Nuckols  
16 I believe had some twenty-eight, minimal of twenty-eight  
17 contacts, either meetings or phone calls when they go to lunch,  
18 they would have supper and they would have drinks. Chris  
19 Beaver wasn't at any of those meetings. Ricky Beaver wasn't at  
20 any of those meetings.

21 Mr. Hughey, I believe, some thirty-two, conservatively  
22 thirty-two contacts and efforts in order to establish this  
23 artificial price floor. Rick Beaver wasn't at those meetings.  
24 Chris Beaver wasn't at any of those meetings, Ladies and  
25 Gentlemen. Everyone who committed this crime has pled guilty

1 to this crime. And who you have before you for trial this week  
2 is Rick Beaver and Chris Beaver. They were employees of a  
3 family-owned operation. Rick helped, though he was not the  
4 only salesperson, to sell concrete. He sold concrete the way  
5 everybody sells concrete. He sold it so that he could maximize  
6 the profit of his corporation. Without reference to any kind  
7 of an agreement he entered into for the simple reason that he  
8 didn't enter into any agreement.

9 I too will stand here before you again in final argument  
10 and while Mr. Vondrak asked you for your verdict of guilty, I  
11 will ask you for your verdict of acquittal, not on some obscure  
12 point of law or some nebulous theory, but because neither of  
13 these men are guilty. I say it's up to you to decide whether  
14 or not the false statements that were made by Chris Beaver and  
15 Rick Beaver to the FBI were material to this investigation  
16 because they must be material. I think it's up to you to  
17 decide whether or not these gentlemen were engaged in a  
18 conspiracy. And I for one am happy to have that decision in  
19 your hands if you listen to the government's case. Please,  
20 please do that. Carefully. Listen for those things that you  
21 don't hear, to the meetings they didn't attend, to the  
22 indications that are all over this case that Rick Beaver is  
23 innocent in this case and Chris Beaver is innocent in this  
24 case.

25 I'll ask you for your verdict of not guilty. I'll ask you

1 to restore these men's reputations and I'll ask you to restore  
2 them to their families with their reputations in tact because  
3 they deserve that.

4 Thank you.

5 THE COURT: Thank you, Mr. Lockwood.

6 Mr. Vondrak, you may call your first witness.

7 MR. VONDRAK: Yes, Your Honor. The government will  
8 call Gus B. Nuckols III.

9 THE COURT: There is a witness stand up here, sir. If  
10 you come up here, I'll swear you in.

11 Would you raise your right hand, please.

12 THE WITNESS: I do.

13 GUS NUCKOLS

14 PLAINTIFF'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 THE COURT: You may be seated, sir.

17 There has been a motion made and sustained by the Court to  
18 separate witnesses in this case, which means you are not to  
19 share your testimony with anyone who has been or will be a  
20 witness in this matter.

21 Do you understand that?

22 THE WITNESS: Yes.

23 THE COURT: Microphone is right there. If you would  
24 attach the smaller end to the lapel, to your top someplace,  
25 please.

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1 THE WITNESS: Okay.

2 THE COURT: There's an antenna wire.

3 THE WITNESS: Okay.

4 THE COURT: Is the light on?

5 THE WITNESS: No. Okay.

6 THE COURT: It's on.

7 You may inquire.

8 MR. VONDRAK: Thank you, Your Honor.

9 BY MR. VONDRAK:

10 Q Sir, would you please tell us your name and spell your last  
11 name for the court reporter.

12 A Gus Nuckols, N-U-C-K-O-L-S.

13 Q And do you also go by the nickname Butch?

14 A Yes.

15 Q Where do you live?

16 A Fishers, Indiana.

17 Q How old are you?

18 A Forty-six.

19 Q Are you employed?

20 A Yes.

21 Q What kind of work do you do?

22 A I'm in the ready-mix concrete business.

23 Q Who do you work for?

24 A Builder's Concrete.

25 Q And what is your position at Builder's Concrete?

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- 1 A President and owner.
- 2 Q If I refer to your company as Builder's, will you know what  
3 I mean?
- 4 A Yes.
- 5 Q How long have you been president of Builder's?
- 6 A Since September of 2000.
- 7 Q What are your responsibilities as president of the company?
- 8 A I am in charge of all operations of the company.
- 9 Q Does that include pricing?
- 10 A Yes.
- 11 Q What did you do before you became president of Builder's?
- 12 A I was the operations manager.
- 13 Q How long were you the operations manager?
- 14 A Twelve -- fifteen years.
- 15 Q Did you have responsibility for pricing while you were the  
16 operations manager?
- 17 A Some. Not a lot.
- 18 Q What kind of business is Builder's in?
- 19 A We're manufacturer of ready-mix concrete.
- 20 Q Could you briefly describe for the jury what ready-mix  
21 concrete is?
- 22 A It's ingredients of aggregate, sand, cement and water.
- 23 Q Are these products mixed together at plants?
- 24 A They're either mixed in a central mixer plant or in  
25 transient mixer plant on the job.

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1 Q Where are Builder's plants located?

2 A We have five plants, four locations, scattered around  
3 Indianapolis.

4 Q Were Builder's plants located in the same places during the  
5 period of the year 2000 through the year 2004?

6 A Yes.

7 Q And what is ready-mix concrete used for?

8 A It is a building material product that is used from  
9 foundations to highway paving.

10 Q Could you describe who Builder's customers are?

11 A We have a variety of different customers. Residential,  
12 commercial, industrial.

13 Q When you talk about residential customers, what do you mean  
14 by that?

15 A Home builders who build homes for their customers.

16 Q And when you talk about commercial customers, what do you  
17 mean by that?

18 A Retail. Distribution centers, that sort of thing.

19 Q Do you have a specific area in which you sell ready-mix  
20 concrete?

21 A Yes.

22 Q And what area do you sell ready-mix concrete in?

23 A Marion County and the surrounding counties.

24 Q Is the area in which you sell ready-mix concrete limited in  
25 any way?

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- 1 A Yes.
- 2 Q How is it limited?
- 3 A By travel time on your delivery truck.
- 4 Q Why is it limited by the travel time?
- 5 A Most specifications call for 90 minutes after the water has  
6 hit the cement to be off the truck.
- 7 Q And why is it limited to 90 minutes time?
- 8 A After that you start losing strength in the quality of the  
9 product.
- 10 Q During the years 2000 through 2004 did Builder's have any  
11 competitors?
- 12 A Yes.
- 13 Q Who were Builder's competitors during the years 2000  
14 through 2004?
- 15 A American Concrete, Beaver Materials, Carmel Concrete, IMI,  
16 Shelby Materials, and Prairie Materials.
- 17 Q Have your competitors changed at all since 2004?
- 18 A Yes.
- 19 Q How have they changed?
- 20 A American Concrete has been bought by a company by the name  
21 of Spellino Materials.
- 22 Q Did there come a time -- by the way, do you know when that  
23 happened?
- 24 A I believe it was last year. I don't know the exact date.
- 25 Q Did there come a time when you were charged with a crime

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1 relating to Builder's?

2 A Yes.

3 Q When were you charged?

4 A In 3 of '06.

5 Q Is that March of '06?

6 A Yes, March of '06.

7 Q Where were you charged?

8 A In this court.

9 Q Was that before Chief Judge McKinney?

10 A Yes.

11 Q What were you charged with?

12 A Price fixing.

13 Q And did you plead guilty to that charge?

14 A Yes.

15 Q When did you plead guilty?

16 A In June of '06.

17 Q Was that when you pled guilty?

18 A No, I'm sorry, it was in March of '06, yes.

19 Q Was that also before Chief Judge McKinney?

20 A Yes.

21 Q Was your plea of guilty made under the terms of a plea  
22 agreement with the Government?

23 A Yes.

24 MR. VONDRAK: May I approach the witness, Your Honor?

25 THE COURT: You may.

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1 Q Mr. Nuckols, could you take a look at that document,  
2 please. I'm showing what has been marked as Government's  
3 Exhibit Number 1.  
4 A Which page?  
5 Q Just look at the document.  
6 A Okay.  
7 Q It is marked as Exhibit Number 1.  
8 A Yes.  
9 Q Do you recognize this document?  
10 A Yes.  
11 Q I'll give you a moment to put your glasses on.  
12 A Okay.  
13 Q Is this your plea agreement with the Government?  
14 A Yes.  
15 Q Let me direct your attention to page 12 of this exhibit.  
16 Is that your signature?  
17 A Yes.  
18 MR. VONDRAK: Your Honor, at this time we offer  
19 Exhibit Number 1 into evidence.  
20 MR. VOYLES: No objection on behalf of MA-RI-AL, Your  
21 Honor.  
22 MR. LOCKWOOD: No objection on behalf of Chris and  
23 Rick Beaver, Your Honor.  
24 THE COURT: The exhibit is admitted.  
25

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1 (Government's Exhibit(s) 1  
2 received in evidence.)

3 Q Are you testifying today because of this agreement with the  
4 Government?

5 A Yes.

6 Q Mr. Nuckols, please tell the ladies and gentlemen of the  
7 jury what this plea agreement requires you to do.

8 A To testify honestly and truthfully.

9 Q And directing your attention to page 8 of this plea  
10 agreement, and specifically to paragraph 12 of the plea  
11 agreement. Could you read paragraph 12 to the jury, please?

12 A Yes. "The defendant will cooperate fully and truthfully  
13 with the United States in the prosecution of this case, the  
14 conduct of the current federal investigation of violations of  
15 federal antitrust and related criminal laws involving the  
16 manufacture and selling of ready-mixed concrete, other federal  
17 investigations resulting therefrom, and any litigation or other  
18 proceedings arising or resulting from any such investigation to  
19 which the United States is a party. The ongoing, full, and  
20 truthful cooperation of the defendant shall include, but not  
21 limited to:"

22 Q Let me stop you at that point and ask you to go down  
23 further on the page to 12(c).

24 A Okay.

25 Q Do you see that?

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1 A Yes.

2 Q Could you slowly and loudly read that paragraph to the  
3 jury?

4 A "Responding fully and truthfully to all inquires of the  
5 United States in connection with any federal proceeding as  
6 defined above, without falsely implicating any person or  
7 intentionally withholding any information, subject to the  
8 penalty of making false statements and obstruction of justice."

9 Q And what is your understanding of what this subparagraph  
10 means?

11 A This means if I don't cooperate I could be charged with  
12 obstruction of justice or perjury.

13 Q And what does your cooperation include?

14 A What does my cooperation include? That I will testify and  
15 cooperate truthfully.

16 Q Directing your attention to paragraph 12(e) on page 9. Do  
17 you see that subparagraph?

18 A Yes.

19 Q What does paragraph 12(e) require you to do?

20 A "When called upon to do so by the United States in  
21 connection with any federal proceeding as defined above,  
22 testifying in a grand jury, trial, and other judicial  
23 proceedings, fully, truthfully, and under oath, subject to the  
24 penalties of perjury, making false statements, or declarations  
25 in any grand jury court proceedings, contempt and obstruction

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1 of justice."

2 Q What is your understanding of what would happen to you if  
3 you did not cooperate truthfully?

4 A That I could be charged with perjury.

5 Q Is there anything in this plea agreement that protects you  
6 in the event that you lie?

7 A No.

8 Q What does paragraph 13 on page 9 require the Government to  
9 do?

10 A To make a recommendation to the court.

11 Q Why don't you read for the jury paragraph 13?

12 A Okay.

13 Q Slowly and loudly.

14 A "Subject to full, truthful, and continued cooperation of  
15 the defendant, as described in paragraph 12 of this plea  
16 agreement and upon the Court's acceptance of his guilty plea  
17 called for by this plea agreement and the imposition of  
18 sentence, the United States will not bring further criminal  
19 charges against the defendant for any act or offense committed  
20 before the date of this plea agreement that was undertaken in  
21 furtherance of this antitrust conspiracy involving the  
22 manufacture and sale of ready mixed concrete in the  
23 Indianapolis area. The non-prosecution terms of this paragraph  
24 do not apply to civil matters of any kind, to any violations of  
25 federal tax or security laws, or any other crime of violence."

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1 Q What is your understanding of what that paragraph requires  
2 the Government to do, Mr. Nuckols?

3 A That they will not charge me with any other crimes in this  
4 case, but other issues they could.

5 Q Have you been sentenced yet, Mr. Nuckols?

6 A No.

7 Q When do you expect your sentencing to be?

8 A December of '06.

9 Q And in the plea agreement does the Government make a  
10 recommendation as to what your sentence should be?

11 A Yes.

12 Q What is your understanding of what the Government's  
13 recommendation is for your sentence under this plea agreement?

14 A Twenty-one months of incarceration and \$50,000 fine.

15 Q I'm sorry, how much of a fine?

16 A Fifty thousand.

17 Q Do you have an understanding as to who will ultimately  
18 decide what your punishment will be?

19 A Yes.

20 Q Who is that?

21 A Judge McKinney.

22 Q Was Builder's Concrete ever charged with a crime?

23 A Yes.

24 Q When was Builder's charged?

25 A In March of '06.

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1 Q Where was Builder's charged?

2 A In this court.

3 Q Was that also before Chief Judge McKinney?

4 A Yes.

5 Q And what was Builder's charged with?

6 A Price fixing.

7 Q Did Builder's plead guilty to that charge?

8 A Yes.

9 Q And when did Builder's plead guilty?

10 A In March of '06.

11 Q Was that also before Chief Judge McKinney?

12 A Yes.

13 Q Was Builder's plea of guilty made pursuant to a plea  
14 agreement with the Government?

15 A Yes.

16 MR. VONDRAK: May I approach, Your Honor?

17 THE COURT: You may.

18 Q I have just handed you what has been marked as Government's  
19 Exhibit Number 2. Do you recognize that document?

20 A Yes.

21 Q Is that Builder's plea agreement with the Government?

22 A Yes.

23 Q Directing your attention to page 12 of this exhibit, is  
24 that your signature?

25 A Yes.

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1 MR. VONDRAK: At this time, Your Honor, we offer  
2 Exhibit Number 2 into evidence.

3 MR. VOYLES: MA-RI-AL Corporation has no objection.

4 MR. LOCKWOOD: No objection by Rick or Chris Beaver.

5 THE COURT: The exhibit is admitted.

6 (Government's Exhibit(s) 2  
7 received in evidence.)

8 Q What does this agreement require Builder's to do?

9 A To testify and cooperate truthfully.

10 Q Directing your attention to page 6 of Exhibit 2, paragraph  
11 13. Could you tell us what paragraph 13 requires the company,  
12 Builder's, to do?

13 A "The defendant will cooperate fully and truthfully with the  
14 United States in the prosecution of this case, the conduct of  
15 the current federal investigation, and violations of federal  
16 antitrust and related criminal laws involving the manufacture  
17 and sale of ready mixed concrete, any other federal  
18 investigation resulting therefrom, and any litigation on other  
19 proceedings arising or resulting from any such investigation to  
20 which the United States is a party. The ongoing, full, and  
21 truthful cooperation of the defendant shall include, but not be  
22 limited to:"

23 Q And directing your attention to paragraph 13(a), what does  
24 that paragraph require your company to do?

25 A "Producing all non-privileged documents, including claimed

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1 personal documents and other materials, wherever located, in  
2 the possession, custody, or control of the defendant, requested  
3 by attorneys and agents of the United States."

4 Q Now, directing your attention to page 8 of Exhibit 2. What  
5 does this plea agreement require the Government to do as far as  
6 Builder's is concerned?

7 A Not to charge any other officers or employees with any  
8 crimes with the exception of two and to make a recommendation  
9 to the court.

10 Q And who are the two individuals that are not included in  
11 the paragraph 15?

12 A John Blatzheim and Timothy Kuebler.

13 Q Has Builder's Concrete been sentenced in this case yet?

14 A Yes.

15 Q Was that here before Chief Judge McKinney?

16 A Yes.

17 Q When did that take place?

18 A July of -- I'm sorry, June of '06.

19 Q Was there a hearing before that sentence was imposed?

20 A Yes.

21 Q What was the purpose of that hearing?

22 A To determine the amount of fine.

23 Q How long did that hearing last?

24 A About a day and a half.

25 Q What was the fine that was imposed by this Court?

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1 A Four million dollars.

2 Q Did the Government make a recommendation as to what the  
3 company's fine should be?

4 A Yes.

5 Q How did the fine imposed by the Government -- or, excuse  
6 me -- how did the fine imposed by the Court compare with the  
7 Government's recommendation?

8 A It was less.

9 Q Did your attorneys make a recommendation as to what the  
10 company's fine should be?

11 A Yes.

12 Q How did the fine imposed by the Court compare with your  
13 attorneys' recommendation?

14 A It was more.

15 Q The fine was more than the recommendation?

16 A Right.

17 Q You testified earlier that you and your company pled guilty  
18 to violating the law by price fixing. Can you describe for the  
19 jury what you did that made you guilty of that crime?

20 A We had an agreement with our competitors to limit  
21 discounts.

22 Q And what product was this agreement related to?

23 A For ready-mix concrete.

24 Q Before you pled guilty to that crime did you ever become  
25 aware of any rumors that the Federal Bureau of Investigation

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1 was investigating the ready-mix concrete industry?

2 MR. VOYLES: Object. Not relevant and calls for  
3 hearsay.

4 THE COURT: You have a foundation of some kind, I  
5 trust.

6 Q Before you first spoke with the FBI about the ready-mix  
7 concrete industry did you have any suspicion that the FBI might  
8 be looking at the ready-mix concrete industry?

9 A Yes.

10 Q Were those rumors -- were those rumors that you had heard?

11 A No, it turned out to be fact.

12 Q What confirmed that for you?

13 A The morning that the FBI and the Department of Justice  
14 visited my home.

15 Q And when was that visit?

16 A May of '04.

17 Q Who was present for that interview?

18 A Myself, an FBI agent, an attorney from the Department of  
19 Justice.

20 Q And during that interview in May of 2004 did you tell the  
21 FBI the truth?

22 A No, sir.

23 Q Why not?

24 A I was scared and nervous.

25 Q What were you scared and nervous about?

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1 A The penalty of the crime we are involved in.

2 Q How long did that meeting with the FBI last?

3 A Forty-five minutes.

4 Q What happened after your meeting with the FBI?

5 A I left my home and went to my office, and there were  
6 several agents conducting a search at my office.

7 Q And what did you do after that?

8 A We contacted our attorneys and they immediately contacted  
9 the Department of Justice and immediately starting trying to  
10 cooperate with the investigation.

11 Q When you say "we contacted our attorneys," who do you mean  
12 by "we?"

13 A Myself and my in-house staff that worked with our counsel.

14 Q Did you have meetings with your competitors for the purpose  
15 of fixing the price of ready-mix concrete?

16 A Yes.

17 Q Which competitors have you had such meetings with?

18 A Beavers, Carmel, Shelby, IMI, and Prairie.

19 Q You testified earlier that American Concrete was a  
20 competitor of yours. Did you ever have any meetings with  
21 anyone from American for the purpose of fixing the price of  
22 ready-mix concrete?

23 A No.

24 Q Who from IMI have you met with for the purpose of fixing  
25 the price of ready-mix concrete?

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1 A Peter Irving, Price Irving, John Huggins, and Dan Butler.

2 Q Who from Carmel Concrete have you met with for the purpose  
3 of fixing the price of ready-mix concrete?

4 A I'm sorry, what company again?

5 Q Let me repeat the question.

6 Who from Carmel Concrete have you met with for the purpose  
7 of fixing the price of ready-mix concrete?

8 A Scott Hughey.

9 Q Who from Shelby have you met with for the purpose of fixing  
10 the price of ready-mix concrete?

11 A Richard and Philip Haehl.

12 Q Are you familiar with a gentleman by the name of Jason  
13 Mann?

14 A Yes.

15 Q Did you ever have any conversations or meetings with Jason  
16 Mann for the purpose of fixing the price of ready-mix concrete?

17 A No.

18 Q Who from Beaver Materials have you met with for the purpose  
19 of fixing the price of ready-mix concrete?

20 A Chris Beaver and Rick Beaver.

21 Q Did you ever meet with Allyn Beaver for the purpose of  
22 fixing the price of ready-mix concrete?

23 A Allyn and I met one time. I was just asking him about a  
24 discussion we had with a customer. I wouldn't say we agreed to  
25 a price that day. We were just talking about a particular

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1 customer.

2 Q Were there ever times when you had meetings with more than  
3 one competitor at a time for the purpose of fixing the price of  
4 ready-mix concrete?

5 A Yes.

6 Q Did you ever have a meeting in your horse barn with your  
7 competitors?

8 A Yes.

9 Q How many times?

10 A Twice.

11 Q What was the purpose of those meetings?

12 A To discuss the price of ready-mix concrete.

13 Q Anything else?

14 A And to come up with an agreed limited discount.

15 Q Where is your horse barn located?

16 A Fishers.

17 Q Could you please describe your horse barn for the jury?

18 A Yes. It is an equestrian facility with stables, riding  
19 arena, and a party room, as such.

20 Q Why did you decide to meet with your competitors in a horse  
21 barn?

22 A Well, knowing it wasn't the right thing to do, we didn't  
23 want to be out in public doing this.

24 Q When was the last time that you met with your competitors  
25 in your horse barn?

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- 1 A In October of '03.
- 2 Q How long did that meeting last?
- 3 A Maybe an hour.
- 4 Q Was anyone else from Builder's present for that meeting?
- 5 A Yes.
- 6 Q Who was that?
- 7 A John Blatzheim.
- 8 Q Which of your competitors were represented at that October,
- 9 2003 meeting in your horse barn?
- 10 A Beavers, Carmel, Shelby, IMI.
- 11 Q Who at this meeting in October of 2003 in your horse barn
- 12 represented IMI?
- 13 A Dan Butler and Price Irving.
- 14 Q Who at this October, 2003 meeting in your horse barn
- 15 represented Carmel?
- 16 A Scott Hughey.
- 17 Q Who at this October, 2003 meeting in your horse barn
- 18 represented Shelby?
- 19 A I believe that was Philip Haehl.
- 20 Q Was there anybody else from Shelby Materials there?
- 21 A His brother may have been there. I'm just a little unclear
- 22 if they were both there, but I'm pretty sure it was just Phil
- 23 at that meeting.
- 24 Q Do you know Philip Haehl's brother's name?
- 25 A Richard.

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1 Q Who at this October, 2003 meeting in your horse barn  
2 represented Beaver Materials?

3 A Chris Beaver.

4 Q Who organized this meeting?

5 A That meeting, Scott Hughey and I had met at another time  
6 and decided to do this, and he and I together called the  
7 people.

8 Q Directing your attention to the meeting that you had with  
9 Scott Hughey.

10 A Yes.

11 Q When did that meeting take place?

12 A Maybe a week or ten days prior to the October meeting.

13 Q Where did that meeting take place?

14 A At a Hardee's restaurant in Fishers.

15 Q And besides yourself and Mr. Hughey, were there any other  
16 persons present?

17 A Not for the entire meeting. I think at the end of the  
18 meeting John Blatzheim stopped by.

19 Q And what did you discuss at this meeting at the Hardee's  
20 restaurant?

21 A That our prices just were not doing well and they were  
22 going in the gutter and that we should get together and talk  
23 with our competitors.

24 Q Who contacted the others for the horse barn meeting?

25 A I contacted Dan Butler and one of the Haehls and Scott

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- 1 Hughey contacted the rest.
- 2 Q When did you contact Mr. Butler?
- 3 A It would have been a few days prior to that meeting.
- 4 Q How did you contact Mr. Butler?
- 5 A I called him by phone.
- 6 Q Did you have his phone number prior to then?
- 7 A Yes.
- 8 Q Did you recognize his voice when he answered?
- 9 A I did.
- 10 Q How long did that conversation last?
- 11 A Just a couple of minutes.
- 12 Q Was there anyone else present for that telephone  
13 conversation with Mr. Butler?
- 14 A No.
- 15 Q Did you tell Mr. Butler what the purpose of the meeting at  
16 the horse born was going to be?
- 17 A I did.
- 18 Q What did you tell him?
- 19 A I told him that I have talked to Scott Hughey and that we  
20 thought we should get together as a group.
- 21 Q And did you tell him why you thought you should get  
22 together as a group?
- 23 A To discuss prices.
- 24 Q What was Mr. Butler's reaction to that?
- 25 A He said that he would let Price Irving know and that they

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1 would be there. And that he would also contact Chris Beaver,  
2 that he felt like he should be there also.

3 Q Did he say why he thought Chris Beaver should be there  
4 also?

5 A Yes, because we had had a prior meeting that Rick Beaver  
6 was at, and it was Dan's understanding that Rick had carried  
7 the wrong message back and he would rather Chris be there.

8 Q What time of day did the October, 2003 meeting at your  
9 horse barn take place?

10 A It was in the afternoon. I don't know the exact time.

11 Q How did it get started?

12 A Just a real informal meeting with some discussions on the  
13 Indiana Ready Mix Concrete Association reorganization. That is  
14 how we started it.

15 THE COURT: Let's stop right there and take our  
16 afternoon break at this point and come back in about 15  
17 minutes.

18 (The Court recessed from 3:10 P.M. to 3:30 P.M.)

19 (Jury not present)

20 THE COURT: So, we are ready?

21 MR. VONDRAK: Yes.

22 (Jury present)

23 THE COURT: You may be seated.

24 I remind you, sir, you are still under oath.

25 You may inquire.

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1 BY MR. VONDRAK:

2 Q Mr. Nuckols, before we took the break you mentioned at the  
3 October, 2003 horse barn meeting a discussion about the Indiana  
4 Ready Mix Concrete Association. Could you please tell us what  
5 that association is?

6 A Yes. It is a not-for-profit organization that represents  
7 ready-mix companies throughout the state.

8 Q And at your October, 2003 meeting in your horse barn who  
9 led the discussion about the IRMCA?

10 A John Blatzheim. He was the president.

11 Q I'm sorry, he was the president?

12 A Of the IRMAC.

13 Q What other position did Mr. Blatzheim have?

14 A He was executive vice-president of Builder's Concrete.

15 Q Other than the discussion about the IRMCA --

16 THE COURT: Excuse me a second. The mic doesn't seem  
17 to be working.

18 All right.

19 MR. VONDRAK: Thank you, Your Honor.

20 Q In your October, 2003 meeting in your horse barn what did  
21 you discuss other than the IRMCA?

22 A Discounts on ready-mix concrete.

23 Q What did you discuss about limiting discounts on ready-mix  
24 concrete?

25 A We discussed one thing. The discount of \$5.50. And if

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1 that worked we would consider going to 3.50. And we also --  
2 well, Price Irving from Irving Materials discussed a winter  
3 surcharge of \$3.

4 Q Were there other aspects of pricing that were discussed at  
5 this October, 2003 horse barn meeting?

6 A There were some general discussions on a general increase.  
7 I don't remember specific numbers. I was against that because  
8 I didn't feel like we were getting what we published, so why  
9 rate it.

10 Q Did you reach -- after these discussions did you reach any  
11 agreements with your competitors about pricing of ready-mix  
12 concrete?

13 A Well, I felt like that, you know, we were all there and we  
14 talked about this 5.50, and that is what everybody was in  
15 agreement to.

16 MR. VOYLES: Judge, I'm going to object on the basis  
17 that will be the ultimate decision for the jury to make. He  
18 can testify what he did or didn't do, but what anybody made in  
19 representations --

20 MR. VONDRAK: Your Honor, he can testify as to what he  
21 felt.

22 THE COURT: He can. I'll leave it in. Go ahead.

23 Q After the meeting was over did you feel that you had and  
24 agreement with IMI as to how much of a discount you would  
25 offer?

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1 A Yes.

2 Q What was your understanding of that agreement?

3 A That we would try to hold discounts to no more than 5.50.

4 Q And we talk about discounts of no more than 5.50. Is that  
5 off of a particular price?

6 A It is off of a published price list.

7 Q And would that be the net price?

8 A Yes.

9 Q After the meeting was over did you have an agreement with  
10 Carmel as to how much of a discount you would offer?

11 A Yes, I thought I did.

12 Q What was your understanding of that agreement?

13 A The same the, 5.50.

14 Q After the meeting was over did you believe that you had an  
15 agreement with Shelby as to how much of a discount you would  
16 offer?

17 A Yes.

18 Q What was your understanding of that agreement?

19 A 5.50 off the list.

20 Q When you say 5.50 off list, what do you mean by that?

21 A \$5.50 a yard off the net price.

22 Q And what about that \$5.50 off the net price?

23 A We agreed not to discount more than that.

24 Q After the meeting was over did you have an agreement with  
25 Beaver as to how much of a discount you would offer?

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- 1 A Yes.
- 2 Q What was your understanding of that agreement?
- 3 A Same thing, \$5.50.
- 4 Q What about that \$5.50?
- 5 A That would be the max off of the published list price.
- 6 Q You mentioned earlier that Chris Beaver was at that meeting
- 7 for Beaver Materials. Was he present for the entire meeting?
- 8 A Yes, I believe he was.
- 9 Q Did he say anything at that meeting?
- 10 A Not much, not that I can recall.
- 11 Q Did he object to anything that was discussed at the
- 12 meeting?
- 13 A Not that I can recall.
- 14 Q Well, then, what made you believe you had an agreement with
- 15 him at the end of the meeting?
- 16 A Well, we all knew what the purpose of the meeting was, why
- 17 we were there, so there was some -- I would assume that is what
- 18 everybody --
- 19 MR. VOYLES: Objection, Your Honor, to what he
- 20 assumed, and move to strike it. That is the problem --
- 21 THE COURT: There is no need for a speech. I'll just
- 22 sustain your objection.
- 23 MR. VOYLES: Thank you, Your Honor.
- 24 Q Did Mr. Beaver do anything that indicated to you that he
- 25 was not going along with the agreement?

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1 A No. As I say, he didn't really say anything.

2 Q During this meeting at your horse barn was there any  
3 discussion about communication?

4 A Yes. Basically, it was said, you know, if you see someone  
5 not going along with the program, give them a call.

6 Q And when you talk about someone not going along with the  
7 program, what do you mean about that?

8 A Someone being more than 5.50 off.

9 Q And those would have been your other competitors at the  
10 meeting?

11 A Yes.

12 Q Was there any discussion about competitors who were not at  
13 this October, 2003 horse barn meeting?

14 A I believe that there was about Scott Hughey was going to  
15 contact someone there.

16 Q Do you recall who Mr. Hughey said that he would contact?

17 A Gary Matney, I believe.

18 Q Was there discussion of communicating with anyone else?

19 A I believe there was some discussion that someone may  
20 contact American, but that is the best I can remember. I'm not  
21 sure who that was.

22 MR. VONDRAK: May I approach, Your Honor?

23 THE COURT: Yes.

24 Q I hand you what has been marked as Exhibit Number 4. Do  
25 you recognize this document?

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1 A Yes.

2 Q Could you tell us what this document is, please?

3 A It is a published price list from Builder's Concrete  
4 effective April the 1st of 2004.

5 MR. VONDRAK: And at this time, Your Honor, we would  
6 move to have Government's Exhibit Number 4 admitted into  
7 evidence.

8 MR. VOYLES: On behalf of MA-RI-AL, no objection.

9 MR. LOCKWOOD: No objection.

10 THE COURT: The exhibit is admitted.

11 (Government's Exhibit(s) 4  
12 received in evidence.)

13 Q Mr. Nuckols, does concrete come in different  
14 specifications?

15 A Yes.

16 Q Could you please explain to the jury what those  
17 specifications are, what those differences are?

18 A Well, there are many different mix designs and strengths.  
19 Our typical mixes run between the 2,500 PSI through 4,000 PSI,  
20 the standard mixes, and we have multiple mixes inside that.

21 Q Directing your attention to the column on the left-hand  
22 side of Exhibit 4 where it says "4,000 PSI concrete."

23 A Yes.

24 Q Could you please tell the jury what 4,000 PSI concrete is?

25 A The price?

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1 Q No, describe for the jury what it is.

2 A Okay. It would be a mixture at 28 days after it has cured  
3 that it would break, a minimum of 4,000 PSI.

4 Q Now, going to the right of 4,000 PSI concrete there are  
5 three columns with dollar amounts, is that correct?

6 A Yes.

7 Q Going to the first column, what is the title of that  
8 column?

9 A Gross price.

10 Q And what does the gross price mean?

11 A Well, that is the highest published price. It is similar  
12 to MSRP on an automobile.

13 Q And in this exhibit what is the gross price for 4,000 PSI  
14 concrete?

15 A \$78.50.

16 Q Now, moving over to the next column, what is the heading on  
17 that column?

18 A Discount.

19 Q And what is that discount?

20 A \$3.50.

21 Q And who is entitled to that discount of \$3.50?

22 A Anyone who pays their bills according to the terms.

23 Q Now, earlier you talked about agreements to limit discounts  
24 to \$5.50. Is that the discount that you were talking about  
25 here?

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1 A No.

2 Q Okay. Now, what I would like to do is move your attention  
3 over to the next column. Could you tell the jury what the  
4 third column after 4,000 PSI concrete is?

5 A That is the net price after discount.

6 Q And what is the net price after discount?

7 A \$75.

8 Q Now, when you talked about the discount limit at the  
9 October, 2003 horse barn meeting, which of these numbers would  
10 you take that discount off of?

11 A The net number.

12 Q So, for instance, for 4,000 PSI concrete, which number  
13 would you deduct the \$5.50 from?

14 A Seventy-five.

15 Q Just so we are clear, nobody would offer -- your  
16 understanding of the agreement was that nobody would offer more  
17 than a \$5.50 discount, is that correct?

18 A Well, that was the agreement.

19 Q Next, Mr. Nuckols, I would like to show you what has been  
20 marked as Government's Exhibit Number 18. Could you please  
21 tell the jury what Government's Exhibit Number 18 is, please?

22 A It is Irving Material's published price list dated  
23 October -- I'm sorry, dated April of 2004.

24 MR. VONDRAK: Your Honor, at this time we would move  
25 to have Government's Exhibit Number 18 admitted into evidence.

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1 MR. VOYLES: No objection by MA-RI-AL, Your Honor.

2 MR. LOCKWOOD: No objection, Your Honor.

3 THE COURT: The exhibit is admitted.

4

5 (Government's Exhibit(s) 18

6 received in evidence.)

7 Q Mr. Nuckols, directing your attention to the left-hand  
8 column for the Irving Materials price list dated April of 2004.

9 On the left-hand side do you see a number -- do you see a  
10 column for 4,000 PSI?

11 A Yes.

12 Q Is it your understanding that would be 4,000 PSI concrete?

13 A That's right.

14 Q And going across the price list, what is the gross price of  
15 4,000 PSI concrete?

16 A \$78.

17 Q And going further to the right, what is the prompt payment  
18 discount that IMI is offering for 4,000 PSI concrete?

19 A \$3.

20 Q And what is the net price that IMI is offering for 4,000  
21 PSI concrete?

22 A Seventy-five.

23 Q And what was your understanding of which of those numbers  
24 the limited \$5.50 discount would come off of?

25 A The net number, 75.

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1 MR. VONDRAK: May I approach, Your Honor?

2 THE COURT: Yes.

3 Q I will now show you what has been marked as Government's  
4 Exhibit Number 43. Could you please tell the jury what this  
5 exhibit is?

6 A It is Carmel Concrete's published price list, April 1st,  
7 2004.

8 MR. VONDRAK: Your Honor, at this time we move to have  
9 Government's Exhibit Number 43 admitted into evidence.

10 MR. VOYLES: No objection by MA-RI-AL, Your Honor.

11 MR. LOCKWOOD: What was the number, sir?

12 MR. VONDRAK: Forty-three.

13 MR. LOCKWOOD: No objection to 43.

14 THE COURT: The exhibit is admitted.

15 (Government's Exhibit(s) 43  
16 received in evidence.)

17 Q Mr. Nuckols, directing your attention to the left-hand  
18 column of this price list. Do you see a space for 4,000 PSI  
19 concrete?

20 A Yes.

21 Q And going to the right of that column, do you see a list  
22 price for ready-mix concrete, 4.000 PSI concrete?

23 A Yes.

24 Q And how much is their list price listed on this price list?

25 A \$78.

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1 Q And what is the discount offered by Carmel Concrete on this  
2 price list?

3 A \$3.

4 Q And directing your attention to the net price per cubic  
5 yard, could you tell us what that amount is?

6 A Seventy-five.

7 Q Now, what was your understanding of the agreement with  
8 Carmel Concrete, as far as which of these numbers you would  
9 offer the \$5 -- no more than the \$5.50 discount off of?

10 A The \$75.

11 MR. VONDRAK: May I approach, Your Honor?

12 THE COURT: You may.

13 Q I'll show you what has been marked as Government's Exhibit  
14 number 38. Could you please tell us what this document is?

15 A It is Beaver Material's published price list of April 1,  
16 2004.

17 MR. VONDRAK: Your Honor, at this time we move to have  
18 Government's Exhibit Number 38 admitted into evidence.

19 MR. VOYLES: No objection by MA-RI-AL, Your Honor.

20 MR. LOCKWOOD: No objection.

21 THE COURT: The exhibit is admitted.

22 (Government's Exhibit(s) 38  
23 received in evidence.)

24 Q Mr. Nuckols, do you see a column entitled "Performance  
25 Concrete?"

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1 A Yes.

2 Q And do you see -- going down that column do you see a space  
3 for 4,000 with the hash marks?

4 A Yes.

5 Q Do you know what that number and symbol mean?

6 A PSI.

7 Q What does that mean?

8 A The strength of the concrete.

9 Q And so what, in your mind, does this 4,000 mean? What  
10 product are we talking about here?

11 A 4,000 PSI concrete.

12 Q And directing your attention to the right of that listing,  
13 what is the price, the first price that is listed?

14 A \$77.

15 Q And going further to the right, what is the discount that  
16 is offered for 4,000 PSI concrete?

17 A \$2.

18 Q And what is the net price that is offered for 4,000 PSI  
19 concrete?

20 A Seventy-five.

21 Q Now, what was your understanding of your agreement with  
22 Beaver Materials as far as which of these numbers the limit of  
23 \$5.50 discount would be applied to?

24 A The third number, 75.

25 MR. VONDRAK: May I approach, Your Honor?

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1 THE COURT: Yes.

2 BY MR. VONDRAK:

3 Q Let me show you what's been marked as government exhibit  
4 number 44. Could you please tell us what that document is?

5 A It's Shelby Materials' published price list of April one of  
6 2004.

7 Q And going to the left hand side, do you see a listing for  
8 4000 PSI?

9 A Yes.

10 Q And what is the gross price for 4000 PSI?

11 THE COURT: Excuse me, do you want to offer that  
12 before you go through it?

13 MR. VONDRAK: Pardon me?

14 THE COURT: Did you want to offer that?

15 MR. VONDRAK: I apologize, Your Honor.

16 At this time we move to have government exhibit number 44  
17 admitted.

18 MR. VOYLES: No objection by MA-RI-AL.

19 MR. LOCKWOOD: No objection.

20 THE COURT: It's admitted.

21 (Plaintiff's Exhibit 44  
22 entered into evidence)

23 MR. VONDRAK: I apologize, Your Honor.

24 BY MR. VONDRAK:

25 Q Do you see the listing for 4000 PSI?

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- 1 A Yes.
- 2 Q What is the gross price listed for 4000 PSI?
- 3 A Seventy-eight dollars.
- 4 Q And what is the discount that Shelby is offering for 4000  
5 PSI ready-mix concrete?
- 6 A Three dollars.
- 7 Q And what is the net price that is offered for 4000 PSI  
8 ready-mix concrete?
- 9 A Seventy-five dollars.
- 10 Q Which of these numbers was the number that you believed  
11 that Shelby would limit their discount to \$5.50 off?
- 12 A The seventy-five.
- 13 Q I believe you -- was the October 2003 meeting in your horse  
14 barn the first time that you met with your competitors for the  
15 purpose of fixing the price of ready-mix concrete?
- 16 A No.
- 17 Q When was the first time that you met with your competitors  
18 in your horse barn for the purpose of fixing the price of  
19 ready-mix concrete?
- 20 A In July of 2000.
- 21 Q And how did that meeting come to be?
- 22 A I received a call from John Huggins, the executive  
23 vice-president Irving Materials. And he asked me to meet him  
24 for a beer. And we met and he was very upset with me on some  
25 pricing that we put in the market. And I said to John that he

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1 and I could talk about it all day but nothing we could do about  
2 it, you know, unless everybody wanted to get on board. We were  
3 wasting each other's time. So we decided to get together as a  
4 group.

5 Q How long before the meeting at the horse barn was this  
6 conversation with Mr. Huggins?

7 A I'm sure a few days.

8 Q Where did that meeting take place?

9 A The meeting with Mr. Huggins?

10 Q With Mr. Huggins, yes.

11 A Sahm's Restaurant at Fisher.

12 Q S-A-H-M?

13 A Yes.

14 Q How long did that meeting last?

15 A Oh, maybe an hour.

16 Q Was there anybody else present for that meeting?

17 A No.

18 Q As a result of the meeting with Mr. Butler, what did you  
19 do?

20 A Do you mean Mr. Huggins?

21 Q I'm sorry, Mr. Huggins.

22 A We decided to meet in my horse barn and he called some  
23 people and I called some people.

24 Q Do you recall specifically who you called?

25 A I don't back then.

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1 Q Which of your competitors were present at the July 2000  
2 meeting in your horse barn?

3 A Carmel Concrete, Shelby Materials, IMI, and myself.

4 Q Was anyone from Beaver Materials there?

5 A No.

6 Q Are you sure?

7 A To the best of my knowledge, I don't remember anyone from  
8 there at the meeting.

9 Q If someone else said that somebody from Beaver Materials  
10 was there --

11 MR. VOYLES: Objection, Your Honor. He's already  
12 testified he has no recollection of it.

13 THE COURT: He has. What's the question? Let me have  
14 the whole question.

15 BY MR. VONDRAK:

16 Q If somebody else said that somebody from Beaver Materials  
17 was at this meeting in July of 2000, would you not believe  
18 that?

19 MR. VOYLES: Objection.

20 THE COURT: He can answer that, go ahead.

21 A Would I not believe it, that was the question?

22 BY MR. VONDRAK:

23 Q Yes.

24 A There was two questions, right?

25 Q There was one question. If somebody else was present at

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1 that meeting said that somebody from Beaver Materials was  
2 there, would you believe them?

3 A Yes.

4 Q Who from Shelby was at this meeting?

5 A I believe both Richard and Philip Haehl were at this  
6 meeting.

7 Q Who from Carmel was at this meeting?

8 A Scott Hughey.

9 Q And who from IMI was at this meeting?

10 A John Huggins.

11 Q How did this meeting get started?

12 A That meeting is really vague to me. It's been a long time  
13 ago, but I'm sure just a typical small talk over discussion of  
14 pricing. But the dates of that meeting I can't recall.

15 Q What was the purpose of having your competitors meet at the  
16 horse barn?

17 A To discuss limiting discounts.

18 Q And did the conversation turn to the issue of discounts?

19 A Yes. Quite a bit.

20 Q What was said?

21 A I believe to the best of my recollection \$3.50 off the  
22 published prices.

23 Q You believe that you reached an agreement with your  
24 competitors as to discounts?

25 A Yes.

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1 Q Did everybody at the meeting agree on that discount?

2 A To the best of my knowledge.

3 Q Did anybody present at that meeting object to limiting the  
4 discount?

5 A No.

6 Q Did anybody say anything to the effect of we're not going  
7 to go along with this?

8 A No.

9 Q Did you have any discussion about communicating with each  
10 other at this meeting?

11 A I don't recall at that meeting.

12 Q After this meeting did you have one on one conversations  
13 with your competitors?

14 A Yes.

15 Q Were those conversations related to pricing?

16 A Yes.

17 Q Did you ever meet with your competitors for the purpose of  
18 fixing the price of ready-mix concrete anywhere other than at  
19 your horse barn?

20 A Yes.

21 Q Did you ever meet with your competitors for the purpose of  
22 fixing prices at a hotel?

23 A Yes.

24 Q Which hotel?

25 A The Signature Inn.

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1 Q And where is that hotel located?

2 A 465 and Allisonville.

3 Q How did that meeting come to be?

4 A I believe there was discussion with Scott Hughey I had, and  
5 again the prices were failing. And Scott said he would set it  
6 up and he reserved the room and we met there.

7 Q How long before the meeting at the Signature Inn was your  
8 conversation with Mr. Hughey?

9 A Again, I don't remember exactly, but it would have just  
10 been a few days.

11 Q Was anybody else present for that conversation?

12 A I don't believe so.

13 Q How long did that discussion last?

14 A Just a few minutes.

15 Q Why did you decide to meet at the hotel?

16 A Well, as I said earlier, not a meeting you want to have out  
17 in public. So it was kind of an off beat path place to meet.

18 Q Why did you not want to have the meeting in public?

19 A What we were discussing was illegal.

20 Q Was there an agenda written for this meeting?

21 A No, not that I'm aware of.

22 Q Did you know what the meeting was going to be about?

23 A Yes.

24 Q Was it going to be a trade association meeting?

25 A No.

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- 1 Q When you got to the meeting, did you believe that the  
2 others knew what the purpose of the meeting was?
- 3 A Yes.
- 4 Q Which of your competitors were at this meeting at the  
5 Signature Inn?
- 6 A There was someone from Beavers, Carmel, IMI, Shelby.
- 7 Q Who was there on behalf of IMI?
- 8 A Dan Butler and Price Irving.
- 9 Q Do you know why John Huggins was not at this meeting?
- 10 A I believe John had retired at that time.
- 11 Q Who was there on behalf of Carmel Concrete?
- 12 A John Hughey.
- 13 Q Who was there on behalf of Shelby?
- 14 A I believe Richard Haehl was.
- 15 Q Who was there on behalf of Beaver Materials?
- 16 A I believe Rick Beaver was.
- 17 Q You believe it was Rick Beaver?
- 18 A Rick Beaver was there.
- 19 Q How did the meeting get started?
- 20 A The same as I discussed in the last meeting, just nothing  
21 formal, just small talk, a lot of complaining and belly aching  
22 about where the prices were.
- 23 Q What specifically did you discuss about pricing?
- 24 A I believe at this meeting we discussed holding the price at  
25 a 3.50 maximum.

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1 Q Did you discuss other pricing terms?

2 A We did.

3 Q What other pricing terms did you discuss?

4 A Price Irving had a list of items that he had basically set  
5 the pricing market what they would be and they were DCI  
6 additives, steel fibers, a paving discount. Seemed like there  
7 was one more. DCI, steel fibers, paving. I can't recall the  
8 other we talked about.

9 Q Did you do any jobs that required quality assurance?

10 A Yes, I did.

11 Q Was quality assurance something that was discussed?

12 A It was. It was. Quality assurance, quality control  
13 program was discussed at that meeting.

14 Q Do you recall -- first of all, could you tell the jury what  
15 DCI is?

16 A It is a corrosion inhibitor that you -- it's an admixture  
17 put into concrete to prevent steel from corroding.

18 Q And what did you discuss about DCI at Signature Inn?

19 A Well, there wasn't a lot of discussion. It was basically  
20 Price Irving said this is what their company was charging for  
21 it, \$7.00 per gallon.

22 Q And what did you discuss about steel fiber?

23 A There again, it was what Irving Materials' price was going  
24 to be, it was \$.58 a pound.

25 Q What did you discuss about paving discount?

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1 A That it would be ten percent.

2 Q What did you discuss about quality assurance?

3 A Well, there wasn't a lot of discussion about that. I think  
4 at the time there had only been a couple of jobs done like that  
5 in the state. It was really of no interest to me. We had not  
6 done any of those jobs. And they discussed a \$2000 fee on  
7 that. And it was, it basically was just information what they  
8 were doing.

9 Q As a result of this meeting at the Signature Inn, did you  
10 believe that you had an agreement with IMI as far as limiting  
11 discounts off of net price?

12 A Yes.

13 Q As a result of your meeting at the Signature Inn, did you  
14 believe that you had an agreement with Carmel as far as  
15 limiting the discounts off of net price?

16 A Yes.

17 Q As a result of the meeting at the Signature Inn, did you  
18 believe that you had an agreement with Shelby as to limiting  
19 the discounts off of net price?

20 A Yes.

21 Q As a result of the meeting at the Signature Inn, did you  
22 believe that you had an agreement with Beaver Materials as far  
23 as limiting the discount off of net price?

24 A Yes.

25 Q At the Signature Inn meeting did you have any conversation

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1 about communications?

2 A Yes.

3 Q And what was that conversation about?

4 A If you saw another competitor not going along with the  
5 \$3.50 to call.

6 Q And did everyone agree to do that?

7 A I -- again there wasn't, you know, a vote, but I would  
8 assume yes, they did.

9 Q You testified earlier that Ricky Beaver was at the  
10 Signature Inn meeting and that Chris Beaver was at the last  
11 horse barn meeting in October of 2003. Do you know why Chris  
12 replaced Ricky?

13 A Well, as I said earlier, that was Dan Butler's suggestion  
14 that Dan felt like that Chris should be there rather than Rick.  
15 He thought Rick had carried the wrong message back.

16 MR. VONDRAK: I have no further questions, Your Honor.

17 THE COURT: Cross-examine, Mr. Voyles.

18 MR. VOYLES: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. VOYLES:

21 Q Good afternoon, Mr. Nuckols.

22 A Hi, Mr. Voyles.

23 Q Mr. Nuckols, let's start with a date that I think you  
24 recall. May 25th, 2004.

25 A Yes, sir.

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1 Q I think that's the date you testified, did you not, sir,  
2 that the FBI came to your home?

3 A They did.

4 Q And at that time you sat down with Agent Bruce Greider, did  
5 you not, one of the FBI agents that was there?

6 A I don't recall his name. But...

7 Q But you remember there was an FBI agent there?

8 A Yes.

9 Q And you remember sitting down with him?

10 A Yes.

11 Q And you remember him asking you a series of questions  
12 concerning the ready-mix concrete business, correct?

13 A Yes.

14 Q And he asked you, did he not, a number of questions about  
15 your company?

16 A Yes.

17 Q Did you talk to him about discounts within the ready-mix  
18 industry?

19 A Boy, I don't remember a whole lot about that discussion,  
20 but I don't believe we talked specific discounts that day.

21 Q Did he have conversation with you, sir, about meetings that  
22 may have been held between you and other competitors?

23 A He did. He asked me about that.

24 Q And did you tell him then that none of those events  
25 happened?

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1 A I did.

2 Q And did he specifically describe a meeting at a horse barn  
3 or a building you owned?

4 A Yes, he did.

5 Q And you denied that that ever took place, correct?

6 A I did.

7 Q Were you advised at the time when you were talking to Agent  
8 Guider that if you were telling the agent things that were not  
9 true, that that is a separate, distinct crime that can be  
10 charged against you for lying to an FBI agent or government  
11 agent?

12 A You're asking me did they tell me that?

13 Q Yeah. Do you recall at the time that Mr. Kreider was  
14 talking to you that he asked you whether or not or indicated to  
15 you that if you told an FBI agent something that was not true  
16 that that could in fact be a separate, distinct crime?

17 A I do not remember that.

18 Q Would it refresh your recollection to look at a document  
19 that was prepared during the course of that interrogation with  
20 the agent, would that help you to refresh your recollection  
21 what he may or may not have told you, sir?

22 A It's possible.

23 MR. VOYLES: Judge, may I approach the witness box?

24 THE COURT: You may.

25 MR. VOYLES: Thank you.

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1 BY MR. VOYLES:

2 Q Could you look at this document and read the first  
3 underlined portions to yourself, please.

4 A You said read it out loud?

5 Q No, to yourself. Without reading it out loud, sir.

6 A (Witness complied.)

7 Okay, according --

8 Q Let me approach and retrieve the document. Thank you, sir.

9 A Okay.

10 Q Does that document which I handed to you refresh your  
11 recollection, sir, of what the Agent may have told you about  
12 conversation you had with an agent?

13 A Well, according to his notes there he says he did. But, as  
14 I said, that meeting was really vague.

15 Q All right. Were you ever charged with that offense, sir?

16 A Yes.

17 Q And the charge was lying to an FBI agent based upon the  
18 meeting?

19 A No.

20 Q You were never charged with that, were you?

21 A No, sir.

22 Q You told him, did you not, during that meeting that your  
23 company bids about 25 to 30 jobs a month and you learn about  
24 customer quotes or customers will call each other and say to  
25 you: You know, I just had a bid from IMI and they're \$3 lower

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1 than you, how about giving me their price. Is this correct?

2 A That's correct.

3 Q How often does that happen?

4 A Every day.

5 Q Okay. So every day you get customers of yourself, maybe  
6 even long time customers, that say that they know what another  
7 competitor is selling concrete for and they want you to give  
8 them a break on the price that they say IMI or Prairie or  
9 Beaver or anybody has, is that right?

10 A Yes, sir.

11 Q How do you respond to that, sir?

12 A Well, if it's a job you want, you do it. If it's a long  
13 time customer and you trust him, you do it. If it is a  
14 ridiculous number, you pass on it.

15 Q So if a customer calls you that's a long time customer and  
16 says I just got a bid from a competitor and you have given me  
17 this price, will you match their price, you do it because you  
18 want the job, is that right?

19 A That's right.

20 Q And you have been doing that since you have been in  
21 business, haven't you?

22 A Yes, sir.

23 Q It's a standard within the industry, is it not, and you  
24 have learned that customers, as we call them, will call each  
25 other and call different competitors with different, whether it

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1 was true or not, correct?

2 A Unfortunately, that's correct.

3 Q You also indicated in that statement to Agent Guider on May  
4 25th, 2004 you had not heard any competitors had agreed on  
5 prices?

6 A I did say that.

7 Q Now, Mr. Nuckols, you have indicated, sir, that you have  
8 had some conversations with competitors, is that correct?

9 A Yes.

10 Q And in going through the various documents that the  
11 government has provided me which would include your grand jury  
12 testimony, the statement to Agent Guider, we're trying to put  
13 together kind of a timeline about what you were doing, who  
14 you're doing it with and kind of essentially what the  
15 conversation would be about. So I would like to get kind of  
16 started talking to you a little bit in that area, okay?

17 A Okay.

18 Q All right. Is it your testimony that the first kind of  
19 conversation that you recall getting together with people was  
20 in the year 2000? I think you mentioned it was a meeting you  
21 were not very familiar with. You couldn't recall the details,  
22 things were vague?

23 A Yes. The meeting I had with Mr. Huggins.

24 Q Who was Mr. Huggins?

25 A He at the time was the executive vice-president of IMI.

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1 Q Where did you hold that meeting?

2 A At Sahm's Restaurant.

3 Q Sahm's Restaurant, is that a public place?

4 A Yes.

5 Q What did you talk about?

6 A Well, I wasn't doing a lot of talking. I was doing a lot  
7 of listening. Mr. Huggins is a pretty vocal man. He was very  
8 upset with me --

9 Q Okay.

10 A -- at some of the prices that we had out there.

11 Q And for the record, what company is he speaking for?

12 A Irving Materials.

13 Q We're referring to that as IMI, correct?

14 A Yes.

15 Q So he calls you, asks for a public meeting with you at the  
16 restaurant where you discuss pricing, is that correct?

17 A That's correct.

18 Q And he's mad at you because what, your prices are lower  
19 than his?

20 A Yes.

21 Q How much?

22 A Well, I believe the job in particular he called me on was a  
23 large paving job on I-69 and 96th Street. And I think he was  
24 upset because I was the difference between the performance and  
25 bag, which is about 2.20 a yard.

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1 Q When you left that meeting, did you agree to change your  
2 prices?

3 A No.

4 Q Did you then have a subsequent meeting with any other of  
5 your competitors other than Mr. Huggins?

6 A Well, we decided to have that meeting in my barn.

7 Q Now that's between you and Mr. Huggins, you and Huggins  
8 decide you're going to have a meeting in your barn, is that  
9 correct?

10 A Yes.

11 Q And you're going to call some people?

12 A Yes.

13 Q And your recollection is, and you have named these people  
14 during the course of your direct examination, Carmel Concrete,  
15 Builder's is you, IMI, Shelby, and you recall that you thought  
16 but you're not sure that Beaver was even there, is that  
17 correct?

18 A I don't believe they were there. But if somebody else in  
19 the meeting said they were there, I couldn't argue.

20 Q But you have no independent recollection that Mr. Chris  
21 Beaver, Mr. Rick Beaver were at that meeting?

22 A I agree to my best recollection they were not there.

23 Q And Mr. Allyn Beaver was not there?

24 A No.

25 Q Mr. Allyn Beaver was not at any meeting?

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- 1 A No.
- 2 Q Is that correct?
- 3 A That's correct.
- 4 Q What is his title if you know?
- 5 A Mr. Allyn Beaver?
- 6 Q Allyn Beaver.
- 7 A I believe he's the president.
- 8 Q Of what company?
- 9 A Beaver Material.
- 10 Q Now, when you had that meeting in your horse barn in the  
11 year 2000, was it a meeting -- and I think you said you  
12 particularly have a vague recollection of what was discussed at  
13 all of that meeting, is that right?
- 14 A That's right.
- 15 Q How long was the meeting?
- 16 A Maybe an hour.
- 17 Q And I think you said you recall you had some general  
18 conversations about other things. This ready-mix concrete  
19 agreement or group that you belonged to, was that talked about?
- 20 A I don't recall that in that meeting.
- 21 Q But you recall having general conversation?
- 22 A Oh, yes.
- 23 Q How much of the meeting was taken up with that, if you  
24 know?
- 25 A I don't know.

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1 Q You were not the one that contacted the individuals, you  
2 all kind of had different responsibilities about who was going  
3 to be called and who was going to be there?

4 A Yes.

5 Q Do you have any idea who would have gotten hold of anybody  
6 from Beaver?

7 A I do not.

8 Q And is it a fair statement that you indicated on direct  
9 examination that you have kind of a vague memory of what  
10 occurred at that meeting?

11 A Yes.

12 Q Do you have any specifics of anything that occurred at that  
13 meeting?

14 A The only thing I really recall was that 350 number.

15 Q 350?

16 A Yes.

17 Q Now the 350 number, was that in 2000?

18 A Yes.

19 Q That's the same 350 that's used four years later in 2004?

20 A Yes.

21 Q As a matter of fact when Mr. Vondrak was putting up his  
22 charts in front you and the jury it would indicate Beaver in  
23 2004 didn't even have a \$3 or \$3.50 discount, did it?

24 MR. VONDRAK: Objection, Your Honor, that's not the  
25 evidence in this case.

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1 MR. VOYLES: Well, the evidence clearly was Your Honor  
2 the chart showed that Beaver was at \$2.

3 THE COURT: The chart that we saw as we went across  
4 the list did say that. Go ahead.

5 MR. VOYLES: Thank you.

6 BY MR. VOYLES:

7 Q Do you remember, sir, that in 2004 the chart the government  
8 showed you government exhibit 38 had Beaver at \$2?

9 A Yes, I do.

10 MR. VONDRAK: Objection, Your Honor. The witness  
11 testified that was not the discount that was discussed and  
12 agreed upon.

13 MR. VOYLES: Judge, that's not my question to the  
14 witness.

15 THE COURT: That wasn't his question. His question  
16 was answered.

17 Go ahead.

18 MR. VOYLES: Thank you, Your Honor.

19 BY MR. VOYLES:

20 Q Now you indicated that in your meeting of 2000 that you had  
21 this kind of general conversation and you have no specific  
22 recollection of Chris or Rick Beaver being there?

23 A No.

24 Q After that meeting in July of 2000 did you have any  
25 additional meeting with people that you would call your

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1 competitors?

2 A Yes.

3 Q Do you remember in December of the year 2000 you met at

4 Bynum Steakhouse with yourself, Timothy Kuebler and Richard

5 Haehl and Philip Haehl?

6 A I do.

7 Q Is that a public place?

8 A Yes.

9 Q Did you discuss pricing there?

10 A Yes.

11 Q Was Chris Beaver there?

12 A No.

13 Q Was Rick Beaver there?

14 A No.

15 Q Was Allyn Beaver there?

16 A No.

17 Q Do you recall, sir, in September of the year 2001 meeting

18 at a place called the Olive Garden?

19 A Yes, I believe so.

20 Q And do you remember that at that meeting was Philip Haehl,

21 Timothy Kuebler, yourself, and Richard Haehl?

22 A Yes.

23 Q Was Chris Beaver there?

24 A No.

25 Q Was Rick Beaver there?

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- 1 A No.
- 2 Q Did you talk about pricing?
- 3 A No.
- 4 Q Was that a public place?
- 5 A Yes.
- 6 Q What were you talking about?
- 7 A We asked them if they were interested in selling their  
8 company.
- 9 Q All of those different people?
- 10 A Yes.
- 11 Q And you're talking about buying or selling a company at  
12 that meeting?
- 13 A Yes.
- 14 Q Allyn Beaver wasn't invited to this meeting, was he?
- 15 A Nope.
- 16 Q Did you have a meeting later on in the fall of 2001 where  
17 Dan Butler was present, John Huggins was present, yourself, Tim  
18 Kuebler, discussed pricing?
- 19 A Say again the people.
- 20 Q Would be the fall of 2001.
- 21 A And who were the people again? I'm sorry.
- 22 Q Dan Butler, John Huggins, yourself and Tim Kuebler?
- 23 A It doesn't come to mind right now.
- 24 Q Well, you know you don't remember the meeting at all?
- 25 A I do remember the meeting, but I can't put a place with it

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1 or what.

2 Q Do you remember whether Mr. Chris Beaver or Mr. Rick Beaver  
3 were there?

4 A They were not there.

5 Q Mr. Allyn Beaver?

6 A No, he was not.

7 Q Do you remember meeting in the Adams Mark Hotel during the  
8 years between 2001 and 2002?

9 A Yes.

10 Q Present at that meeting was Pete Irving, yourself and Allan  
11 Oremus, do you remember that?

12 A I do.

13 Q Do you remember discussing pricing at that meeting?

14 A There was prices discussed. There was no agreement.

15 Q Was that a public place?

16 A It was.

17 Q Let's talk a little bit about in May of 2002 you had a  
18 Signature Inn meeting. Do you recall that? I think you  
19 discussed that kind of at the end of your direct examination  
20 with Mr. Vondrak.

21 A Yes.

22 Q And do you recall who you contacted for this meeting?

23 A I do not.

24 Q Do you recall who was present at the meeting?

25 A Pardon? Do I recall who was present?

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- 1 Q Yes, sir.
- 2 A At the May of '02 meeting in my barn, right?
- 3 Q Yes, sir.
- 4 A May of '02. We have all of these meetings going on here.
- 5 May of '02, that was the meeting at the Signature Inn, right?
- 6 Q It was, sir.
- 7 A Okay. Yes, I do recall who as there.
- 8 Q Do you remember was there anyone from Beaver there?
- 9 A Yes.
- 10 Q Who do you believe was there?
- 11 A Rick Beaver.
- 12 Q And was the meeting to discuss pricing?
- 13 A Yes.
- 14 Q And how long was that meeting, if you recall?
- 15 A No more than an hour at the most.
- 16 Q And do you recall, was the meeting called for the purpose
- 17 of a different agenda; in other words, was the meeting called
- 18 for the purpose of having a conversation about this association
- 19 you belonged to?
- 20 A Not that I recall at that point.
- 21 Q Do you remember what the reason the meeting was called?
- 22 A Well, I -- yeah, to talk about pricing.
- 23 Q You have no recollection of who may have contacted
- 24 Mr. Beaver, what they may have told him, Mr. Rick Beaver?
- 25 A I don't.

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1 Q And at that meeting did Rick Beaver participate? Do you  
2 have any recollection of him participating at all?

3 A I don't think he had much to say.

4 Q Now when you walk out of these meetings, Mr. Vondrak asked  
5 did you have an agreement. Was there a vote taken?

6 A No.

7 Q I mean people on little pieces of paper write yes, we  
8 agree; no, we don't agree?

9 A No.

10 Q Was there a showing of hands where people raised their  
11 hands and say: Yeah, we're in?

12 A No.

13 Q So if you walk out, if you come to a meeting and you walk  
14 out, you just assume they're part of the agreement if they say  
15 nothing, is that correct?

16 A Yes.

17 Q Just because they are there?

18 A Yeah, I assume everybody was on board.

19 Q You don't have any idea what Mr. Rick Beaver was told and  
20 why he was to come to the meeting, do you?

21 A No.

22 Q And your recollection is that Mr. Rick Beaver at that  
23 meeting said very little, if anything?

24 A Yes.

25 Q Correct?

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- 1 A Correct.
- 2 Q Was never a vote taken, there was never a show of hands.
- 3 You just made an assumption, is that correct?
- 4 A Yeah.
- 5 Q After that meeting did you have some telephone
- 6 conversations with people, particularly in 2003 did you talk to
- 7 Butler?
- 8 A I'm sure I did.
- 9 Q That would be Dan Butler and he's with IMI, is he not?
- 10 A Yes.
- 11 Q Did you ever have a telephone conversation with Chris a or
- 12 Rick Beaver?
- 13 A No.
- 14 Q Did you ever have a telephone conversation with Allyn
- 15 Beaver?
- 16 A No.
- 17 Q Did you have frequent conversations with the other
- 18 competitors during that period of time?
- 19 A Well, I don't know that I would say frequent, but there was
- 20 some calls.
- 21 Q Telephone calls?
- 22 A Yes.
- 23 Q Okay. But none of them went to Chris Beaver, none went to
- 24 Rick Beaver, none went to Allyn Beaver, correct?
- 25 A Correct.

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1 Q Do you remember a meeting that happened in approximately  
2 May 19th of this year 2003 where you met with Richard Haehl to  
3 discuss pricing?

4 A Do you have a location? That might...

5 Q I'm sorry, we don't have a location from all your  
6 statements, it was kind of unknown where you were. You  
7 recalled the meeting but you didn't recall where you were.

8 A It's possible. I don't recall it right now.

9 Q Was Mr. Rick Beaver involved in that meeting?

10 A No.

11 Q Mr. Chris Beaver?

12 A No.

13 Q Mr. Allyn Beaver?

14 A No.

15 Q And then in July did you have another meeting at your horse  
16 barn of 2003?

17 A July of 2003?

18 Q Do you remember that?

19 A No.

20 Q Do you remember being at any meeting in July of 2003 at  
21 your horse barn?

22 A No.

23 Q Do you remember after the second horse barn meeting, when  
24 you're not sure exactly when that was, that you had telephone  
25 conversation with Scott Hughey about what had gone on at the

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1 meeting, do you remember that? That would be --

2 A That would be the second horse barn meeting which was  
3 October of '03.

4 Q Sometime after that you had telephone conversation with  
5 Mr. Hughey, do you recall that?

6 A I'm sure I did.

7 Q Did you have any conversation with Mr. Chris Beaver?

8 A No.

9 Q Mr. Rick Beaver?

10 A No.

11 Q With Allyn Beaver?

12 A No.

13 Q Do you recall a meeting at the Micro Brewery on the south  
14 side of Indianapolis at I-465 and Southport Road?

15 A Yes.

16 Q And do you remember who was at that meeting?

17 A I believe one or both of the Haehls. I believe Scott  
18 Hughey. And I believe Price Irving and Dan Butler.

19 Q Was that conversation you were having about pricing?

20 A Yes.

21 Q Is that a public place?

22 A It is.

23 Q Was Mr. Chris Beaver there?

24 A No.

25 Q Mr. Rick Beaver?

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- 1 A No.
- 2 Q Mr. Allyn Beaver?
- 3 A No.
- 4 Q You remember having a meeting at the Loon Lake Lodge in  
5 2003 with yourself, Mr. Peter -- Price Irving, Dan Butler, Pete  
6 Irving, John Blatzheim?
- 7 A Pete Irving wasn't there.
- 8 Q Do you remember others that were there? Mr. Butler was  
9 there, wasn't he?
- 10 A Yes.
- 11 Q You were there?
- 12 A Yes.
- 13 Q Price was there?
- 14 A Yes.
- 15 Q Is that a public place?
- 16 A It is.
- 17 Q Did you have conversations about pricing?
- 18 A I don't recall pricing being discussed there. I thought we  
19 were discussing the new Indiana Ready Mix Concrete Association  
20 building.
- 21 Q Do you remember Gary Foust bringing up -- who is he a  
22 salesman for IMI -- bringing up about undercutting competitors'  
23 pricing at that meeting? Do you remember that?
- 24 A I don't.
- 25 Q Well, let me ask you this: Was Chris Beaver at the

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1 meeting?

2 A No.

3 Q Rick Beaver?

4 A No.

5 Q Allyn Beaver?

6 A No.

7 Q Do you remember having several telephone calls with Scott

8 Hughey, Dan Butler, and Price Irving after the second horse

9 barn meeting concerning the events that had been talked about

10 at the horse barn?

11 A I wouldn't say several, but there were some calls.

12 Q Was Mr. Chris Beaver or Mr. Rick Beaver on those

13 conversations?

14 A No, they were not.

15 Q Was Mr. Allyn Beaver?

16 A No, he wasn't.

17 Q Now, you talked, did you not, sir, with Mr. Vondrak about

18 this published price list of April of 2004, and I think he took

19 you through all the Government's exhibits; Government's Exhibit

20 4, Government's Exhibit 18, Government's Exhibit 38,

21 Government's Exhibit 44, and he had you, as you recall, talk

22 about what the list price was, what the discount was, and what

23 the net price was, correct?

24 A Yes, he did.

25 Q Okay. Well, you testified on direct examination that your

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- 1 Builder's Government's Exhibit 4 showed a gross price of  
2 \$78.50, correct?
- 3 A That's correct.
- 4 Q You had a discount of \$3.50?
- 5 A I did.
- 6 Q And you had a net price of \$75?
- 7 A Yes.
- 8 Q And all of those were agreed upon after leaving the second  
9 horse barn meeting that that is what you would show the  
10 following spring and April when you sent out your price list,  
11 correct?
- 12 A I don't remember discussing that at that meeting.
- 13 Q Well, is that the way you notify your competitors, or your  
14 customers, or anybody about what the price of concrete will be  
15 for the next year? In other words, you send it out in the  
16 spring, don't you, so that people know who are going to order  
17 concrete that year about what your prices are?
- 18 A That is typical when the price increase comes out, in the  
19 spring, yes.
- 20 Q Government's Exhibit Number 18 shows that IMI had a  
21 different discount in that price list. They only had \$3. Do  
22 you remember that?
- 23 A Yes.
- 24 Q And there really is no agreement, then, is there. They had  
25 of different discounts than you already. You had a meeting in

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1 October and in the spring of the next year you are already  
2 different?

3 MR. VONDRAK: Objection, Your Honor. This is not the  
4 discount the witness testified about. The fact is that was not  
5 the discount they were discussing or agreeing upon.

6 THE COURT: Well, that is true, but the that is not  
7 the question this witness was asked, was it?

8 MR. VOYLES: No. May I go on?

9 THE COURT: Yes.

10 Q Your price list that you sent out in April of 2004 shows  
11 there is no agreements. Everybody has got different discounts,  
12 correct?

13 A A different early pay discount.

14 Q Okay. For everybody? In other words, if I early paid to  
15 Beaver I'm going to get a \$2 discount?

16 A That's right.

17 Q If I early pay to you you are going to give me 3.50?

18 A That's right.

19 Q If I early pay to IMI they are only going to give me 3?

20 A That's right.

21 Q You talked about that in October, about having a discount,  
22 and you have some continuity between competitors about what the  
23 discount is?

24 A That is not the discount we were talking about.

25 Q You were talking -- of course, to Mr. Vondrak you were

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1 talking about a straight across the board 3.50 or up to 5.50,  
2 correct?

3 A Yes.

4 Q Okay. But the price list that you send out to competitors  
5 and also to customers doesn't show that, does it?

6 A No.

7 Q It shows Shelby's at \$3, which is Government's Exhibit 44.  
8 Beaver is at \$2, Government's Exhibit 38. Carmel is at \$3 on  
9 Government's Exhibit 43. IMI is at \$3 at -- and you are the  
10 highest. You are at 3.50.

11 A That's right.

12 Q Is that correct?

13 A That's correct.

14 Q So people are more likely to come to you because you give a  
15 bigger discount if I pay you earlier than I do Beaver, right?

16 A No.

17 Q That is not true?

18 A No.

19 Q Well, that is what that list says that you sent out,  
20 doesn't it?

21 A No.

22 Q It doesn't? It doesn't indicate to you if I pay earlier  
23 you are going to give me a 3.50 discount?

24 A It does.

25 Q And if I pay early to Beaver they are only going to give me

NUCKOLS - CROSS / VOYLES

1 two?

2 A That's right.

3 Q But you are talking about maybe there was some hidden  
4 agenda that you guys had been talking about by telephone and  
5 everything else after this meeting that Mr. Allyn Beaver,  
6 Mr. Chris Beaver, and Mr. Rick Beaver didn't participate in,  
7 correct?

8 A They were not in any of those phone calls. No, they were  
9 not.

10 Q Okay. Now, also it is kind of interesting. You talked  
11 about in the last horse barn meeting -- I think that is it, and  
12 you can correct me if I'm wrong -- you talked about other  
13 things other than concrete. You talked about steal rods?

14 A I believe that was in the Signature Inn.

15 Q You think it was in the Signature Inn meeting. Okay. You  
16 talked about steel rods?

17 A Steel fiber.

18 Q Did you talk about some kind of additive that you put in to  
19 keep steel from --

20 A Corroding.

21 Q -- disintegrating?

22 A We did.

23 Q And you talked about paving?

24 A We did.

25 Q Is Beaver Materials involved in the paving industry in any

NUCKOLS - CROSS / VOYLES

- 1 way?
- 2 A I don't believe they do.
- 3 Q Do they sell additives?
- 4 A I don't believe they typically do those type of jobs.
- 5 Q Do they typically do that quality assurance job you talked
- 6 about for \$2,000?
- 7 A No, they do not.
- 8 Q Do they typically sell those rods, fiber?
- 9 A I don't know.
- 10 Q What percentage of that meeting that you said lasted up to
- 11 an hour was taken up with those conversations about things that
- 12 Beaver has nothing to do with?
- 13 A A lot of it.
- 14 Q Half? Over half?
- 15 A Probably.
- 16 Q Okay. So half of the meeting is talking about things that
- 17 Beaver Materials has nothing to do about, correct?
- 18 A Yes.
- 19 Q You have no recollection of anybody from Beaver speaking up
- 20 or talking about anything in the meeting, correct?
- 21 A That's correct.
- 22 Q And again, it is a situation when you have the meeting
- 23 nobody votes, correct?
- 24 A Correct.
- 25 Q Nobody raises their hand?

NUCKOLS - CROSS / VOYLES

1 A That's correct.

2 Q You just make an assumption because you show up at the  
3 meeting you have to have some nefarious purpose for being  
4 there?

5 A That's correct.

6 Q Okay. Without ever uttering a word or saying a thing,  
7 correct?

8 A Yes.

9 Q Okay. The last meeting that I think Mr. Vondrak discussed  
10 with you was this meeting where you had the conversation and  
11 talked about the price listing, is that correct? This horse  
12 barn -- or the Signature meeting?

13 A No, the price list --

14 Q No, I'm saying the last meeting he talked to you. I  
15 apologize, maybe it is a bad question. I'll rephrase it.

16 The last conversation you had where you said people were  
17 involved in meetings was the Signature Inn meeting we just  
18 talked about?

19 A Yes.

20 Q And again, Allyn Beaver was never there, was he?

21 A No.

22 Q And, to your knowledge, is he the president of this  
23 company?

24 A I believe he is.

25 Q What are you to Builder's?

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1 A I'm the president.

2 Q What is Price Irving to IMI?

3 A I believe he is a vice-president.

4 Q And Richard and Phil Haehl, they own their company, don't  
5 they, together? They are co-owners, correct?

6 A That's correct.

7 Q What about Mr. Scott Hughey, he owns that company. Isn't  
8 that Carmel Concrete?

9 A That's right.

10 MR. VOYLES: I have no further questions. Thank you  
11 Your Honor.

12 THE COURT: Redirect.

13 MR. LOCKWOOD: May I cross?

14 THE COURT: I'm sorry. Yes, you may.

15 CROSS-EXAMINATION

16 BY MR. LOCKWOOD:

17 Q Mr. Nuckols, my name is Jeff Lockwood. I represent Rick  
18 Beaver and Chris Beaver. I'll try not to repeat or be

19 redundant on your cross-examination. I'll try to be brief.

20 But I want to start out with the meeting you were questioned  
21 about in July of 2003 that you said you didn't recollect.

22 A Yeah.

23 Q You remember one in 2000?

24 A Yes.

25 Q Do you remember one in October of 2003?

NUCKOLS - CROSS / LOCKWOOD

1 A Yes.

2 Q Sir, if John Huggins said you had a meeting at your horse  
3 barn in July of 2003, would that refresh your recollection?

4 A No.

5 Q If Scott Hughey said he attended a meeting at your horse  
6 barn in July of 2003, would that refresh your recollection,  
7 sir?

8 A In July of 2003?

9 Q Yes, sir.

10 A No, it wouldn't.

11 Q If Price Irving said they were at your horse barn for a  
12 July, 2003 meeting, would that refresh your recollection, sir?

13 A No, I cannot recall that.

14 Q Did you take notes of all these meetings, Mr. Nuckols?

15 A No.

16 Q Would it be fair to say your recollection is a little bit  
17 foggy about some of the details?

18 A Sure.

19 Q Including, apparently, forgetting a meeting that several of  
20 your co-conspirator say they attended. Is that possible, sir?

21 MR. VONDRAK: Objection, Your Honor.

22 THE COURT: Yes.

23 MR. VONDRAK: That is argument. That is not a  
24 question.

25 THE COURT: That's true. Sustain the objection.

NUCKOLS - CROSS / LOCKWOOD

1 MR. LOCKWOOD: Thank you.

2 Q If other persons have given statements at which they say  
3 they have attended a meeting at your horse barn in July of  
4 2003, would you be able to dispute that, sir?

5 A I don't recall a July, 2003 meeting. Didn't you say  
6 Mr. Huggins was there too?

7 Q He mentions it in his statement. So doe Scott Hughey.

8 A But I believe he was retired in 2003.

9 Q Okay. So, as far as you know, it didn't happen?

10 A I don't recall it.

11 Q You are not saying it didn't happen, you just don't know?

12 A That's right.

13 Q Were your meetings with these people so frequent and so  
14 casual that you could forget such a meeting, sir?

15 A No, I wouldn't say that, but, obviously, I can't recall  
16 what you are asking me about.

17 Q Well, you were pretty determined that you were going to get  
18 these price things under control, weren't you, Mr. Nuckols?

19 A No.

20 Q No?

21 A No. I have been accused of that, but, you know, when I  
22 have got 80 trucks and my competitors have got 1,200 trucks,  
23 they were driving the ship.

24 Q Well, let me ask you this: That was causing you a great  
25 deal of business difficulty, wasn't it, these competitors?

NUCKOLS - CROSS / LOCKWOOD

1 A Sure.

2 Q Okay. Don't you recall, sir, meeting with Pete Irving at  
3 the Adams Mark Motel in late 2001 or 2002 and urging Mr. Irving  
4 to talk to a man by the name of Allan Aremus?

5 A Allan Aremus?

6 Q Or Oremus. I'm sorry.

7 A Yes.

8 Q Who is Mr. Oremus?

9 A He is the owner Prairie Materials.

10 Q And who was the managing officer of Prairie Materials  
11 during the operative time here? I'm sorry, let me withdraw  
12 that.

13 Do you know who Gary Matney is?

14 A Yes.

15 Q Was he the man who was managing Prairie Materials for  
16 Mr. Oremus?

17 A He was.

18 Q Isn't it true that Mr. Matney was refusing to play ball?

19 A I never asked him to play ball. He called me one day and  
20 told me -- he said if seen one of my trucks on the airport job  
21 again that he burn 40 of my trucks.

22 Q Is that right? Pretty rough stuff.

23 A I told him this wasn't Chicago.

24 Q Well, you told Mr. Irving that you wanted him to have a  
25 meeting with Mr. Oremus to get Mr. Matney in line, did you not?

NUCKOLS - CROSS / LOCKWOOD

1 A I said I think we need to go talk to Mr. Oremus about the  
2 way his man runs the place. Number one, they wouldn't belong  
3 to the ready-mix association. I had never asked him to come to  
4 a meeting. And I thought Mr. Oremus ought to know how he was  
5 not being responsible, I thought, to the market.

6 Q By not following through with the prices that you wanted  
7 him to charge, sir?

8 A I never talked to him about pricing.

9 Q But my question is, that is how he was not being responsive  
10 to the market, he wasn't following the price you wanted set?

11 A No, that wasn't true.

12 Q Well, That trip to Mr. Oremus in Chicago took place, didn't  
13 it?

14 A Yes, it did.

15 Q And, as a result of that, Mr. Matney got so mad that he  
16 began to wear a wire for the FBI?

17 A I don't know that.

18 Q Do you remember talking to Scott Hughey on more than one  
19 occasion in which Mr. Hughey swore to you that Mr. Matney was  
20 quote "onboard" with your price fixing?

21 A Yes.

22 Q And if he was wearing a wire for the FBI he hardly was  
23 onboard with the price fixing, was he?

24 MR. VONDRAK: Objection, Your Honor. He is not going  
25 to have a basis for knowledge on that.

NUCKOLS - CROSS / LOCKWOOD

1 THE COURT: He can answer if he knows.

2 THE WITNESS: Could you ask that question again?

3 Q Well, what I meant to say was, it is somewhat unlikely in  
4 your life experience for a man to agree illegally to conspire  
5 to fix prices and at the same time he is wearing a wire for the  
6 Federal Bureau of Investigation?

7 A I still am not sure what you are asking.

8 Q I'm just asking a bad question, sir.

9 A man is wearing a wire for the FBI?

10 A Okay.

11 Q Do you think that man is engaging in illegal price fixing  
12 conspiracies at the same time?

13 A Well, you wouldn't think so.

14 Q No, I wouldn't?

15 A But he did call me one time. And I had raised the price to  
16 one of his -- I'm sorry, he had raised a price to one of his  
17 customers, and I had already given him a price, and Mr. Matney  
18 told me that if I wasn't at this determined pricing with me  
19 that he would take an additional 50,000 yards away from my  
20 company. So he was just as guilty as anybody whether he was  
21 wearing a wire, or not.

22 Q During the October, 2003 meeting do you remember Dan  
23 Butler, one of your co-conspirators, encouraging or mentioning  
24 that everyone ought to get together and cut Matney's price in a  
25 series so that you would teach him a lesson?

NUCKOLS - CROSS / LOCKWOOD

1 A I don't recall that.

2 Q Do you recall that ever being discussed?

3 A No.

4 Q You don't remember telling Rick Beaver that the Signature  
5 Inn meeting was for the purpose of discussing credit problems?

6 A I don't recall that.

7 Q You said earlier that you don't know who contacted Rick  
8 Beaver to advise him of that Signature Inn meeting, didn't you,  
9 sir?

10 A Yes.

11 Q Now, Mr. Nuckols, it wasn't unusual, was it, to receive a  
12 price list from one of your competitors?

13 A No.

14 Q And what was the source of that?

15 A They could have been mailed or FAXed. I think on occasions  
16 people will have a plant break down, and I think we are all  
17 pretty much on each other's customers list and we do that mass  
18 mailing and get them that way, or typically get them from  
19 another customer.

20 Q Many times customers will hand you the price list of other  
21 persons who have bid jobs, is that right?

22 A Yes.

23 Q Now, it is also not unusual, was it, to have discussions  
24 about pricing -- not fixing them, but just who is bidding what  
25 on what jobs, is that right?

NUCKOLS - CROSS / LOCKWOOD

1 A That's right.

2 Q There is a good deal of this kind of information that is  
3 innocuous an not illegal floating around within your industry,  
4 is that right, sir?

5 A All the time.

6 Q Now, you have a plea agreement -- Mr. Vondrak reminded you  
7 of that -- in which you said that you were going to be required  
8 to tell the truth?

9 A Yes.

10 Q Now, who decides whether or not to ask a grand jury to  
11 indict you for not telling the truth, sir?

12 A I'm sorry?

13 Q Who decides whether you are telling the truth or whether to  
14 ask a grand jury to indict you for perjury? Would that be the  
15 Government here?

16 A I assume. I'm not familiar with the law.

17 Q You know, don't you, sir?

18 A Pardon?

19 Q You know?

20 A Yes.

21 Q And so would your version of the truth, then, be, in order  
22 to asset your plea agreement, that you would believe it if  
23 somebody told you that Rick Beaver attended a meeting without  
24 knowing who that person was?

25 A Without knowing who that person was?

NUCKOLS - CROSS / LOCKWOOD

1 Q Mr. Vondrak didn't tell you who it was that supposedly said  
2 that Rick Beaver was at that 2000 meeting?

3 A No, he didn't say that.

4 Q Your own recollection is that Rick Beaver wasn't there?

5 A My recollection is that he was not there.

6 Q Your recollection is that Chris Beaver wasn't there?

7 A That's right.

8 Q And yet if the Government suggests to you that somebody  
9 might have said they were there, you are just -- yeah, they  
10 must have been there. Is that how far it goes?

11 MR. VONDRAK: Objection, Your Honor. That is not how  
12 the witness answered that question.

13 MR. LOCKWOOD: I'll withdraw the question.

14 Q You answered the question by saying that if somebody said  
15 that Rick Beaver was there, you would believe it.

16 A Well, if there were four other people there and they said  
17 yes, he was, it would be my word against theirs. I don't  
18 recall him being there.

19 Q But you didn't have any hesitancy saying if someone else  
20 said so, it was okay with you?

21 A If that's what I said. It would have been my word against  
22 theirs.

23 Q Sir, would your version of the truth, pursuant to your plea  
24 agreement, include testifying that Chris Beaver agreed to price  
25 fix when he made no comment to the affect that he would agree

NUCKOLS - CROSS / LOCKWOOD

1 to price fix, that there was no vote taken, no show of hands,  
2 and it is just your assumption what was going through his mind?

3 A Yes.

4 Q Is that your version of the truth under your plea  
5 agreement?

6 A Well, I guess I assume everyone came to that meeting, and  
7 that is what we are talking about, and we all left and that is  
8 probably what we are all going to do.

9 Q Well, if you heard that people were thinking about running  
10 you out of business, or causing you to lose your job, would you  
11 think maybe you might want to go one of they was meetings just  
12 to find out what is going on?

13 A Yeah.

14 Q And you said you didn't have a conversation with Jason Mann  
15 about prices, didn't you?

16 A I did.

17 Q In fact, you did have a conversation with Jason Mann in  
18 which you were arguing with him because he had undercut by a  
19 great deal one of your favorite customers?

20 A I don't recall that. I remember talking to Jason about  
21 purchasing one of his plants after his father died. And the  
22 only time I ever remember talking to Jason about a job was way  
23 after the job was done and over.

24 Q Mr. Nuckols --

25 A I thought we talked earlier that it is okay to talk about

NUCKOLS - CROSS / LOCKWOOD

1 prices after the fact, after the job.

2 Q Don't you recall telling Jason that if he undercut a  
3 favorite client of yours again that you would cut every bit he  
4 made until he wouldn't be able to stay in business?

5 A I never said that. That's not true.

6 Q Don't you recall him threatening to break your legs if you  
7 tried to do that, sir?

8 A Absolutely not.

9 Q Did he ever threaten you?

10 A Jason Mann.

11 Q Yes.

12 A Absolutely not.

13 Q So you had no reason to be afraid of him and put any  
14 devices in your office to make sure that nobody snuck up on  
15 you?

16 A Jason Mann is the nicest man I know, or one of.

17 MR. LOCKWOOD: Thank you. That's all.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20

21 REDIRECT EXAMINATION

22 QUESTIONS BY MR. VONDRAK:

23 Q Mr. Nuckols, I'm going to show you again what has been  
24 marked as Government's Exhibit Number 4. Could you tell the  
25 jury again what this exhibit is?

NUCKOLS - REDIRECT / VONDRAK

1 A It is Builder's Concrete published list price of April 1,  
2 2004.

3 Q Going again to the 4,000 PSI concrete. And the second  
4 dollar amount listed there is a discount, is that correct?

5 A That's right.

6 Q Now, when you testified earlier that you had reached  
7 agreements with your competitors to limit the amount of a  
8 discount to no more than \$5.50, was that the discount that you  
9 were talking about?

10 A No, it was not.

11 Q What discount were you talking about when you reached the  
12 agreement with your competitors to limit the discount to \$5.50?

13 A Off of that last column of \$75.

14 Q Does that discount appear anywhere on this price list?

15 A No, it does not.

16 Q What customers were entitled to that \$5.50 discount?

17 A Anyone it was bid to.

18 Q When you were discussing limiting discounts were you  
19 discussing the discount that appears on this price list?

20 A No.

21 Q In fact, if you look at the net price for 4,000 PSI for  
22 Builder's what amount is the net price on this price list?

23 A Of 4,000?

24 Q Yes.

25 A \$75.

NUCKOLS - REDIRECT / VONDRAK

1 MR. VONDRAK: And may I approach again, Your Honor?

2 THE COURT: Yes.

3 Q Looking at Government's Exhibit Number 18, could you tell  
4 the jury again what price list that is?

5 A IMI, 2004.

6 Q And what is the net price for 4,000 PSI concrete on that  
7 price list?

8 A \$75.

9 Q How does that compare with the price on the net price on  
10 the Builder's price list?

11 A It is the same.

12 Q And again, the discount that shows up on this price and the  
13 IMI price list, is that the discount you were talking about  
14 limiting to \$5.50?

15 A No.

16 Q Showing you Government's Exhibit number 38. Could you tell  
17 us again what that exhibit is?

18 A That is Beaver Material's published price list of April of  
19 2004.

20 Q And what is -- the discount that shows up on that price  
21 list, is that the discount that you were talking about at the  
22 horse barn meeting when you said you would limit the discount  
23 to \$5.50?

24 A No.

25 Q And the next question is, what is the net price that is

NUCKOLS - REDIRECT / VONDRAK

1 listed on that price list?

2 A \$75.

3 Q And how does that \$75 compare to the other net prices that  
4 we just talked about?

5 A All the net prices are the same.

6 Q Showing you what has been marked as Government's Exhibit  
7 Number 43, could you tell the jury again what this exhibit is?

8 A Yes. It is Carmel Concrete's published price list of  
9 April, 2004.

10 Q And what is the discount that shows on that price list for  
11 4,000 PSI concrete?

12 A \$3.

13 Q And what is the net price that shows on that price list?

14 A \$75.

15 Q And how does that price compare to the other price -- other  
16 NET prices for 4,000 PSI concrete that we have just discussed?

17 A They are the same.

18 Q And the discount that you were talking about would have  
19 been a discount off of which price?

20 A The net number, 75.

21 Q Mr. Nuckols, you testified earlier that you believed that  
22 you had an agreement at the end of the October, 2003 horse barn  
23 meeting with all of your competitors, is that correct?

24 A Yes.

25 Q Now, at that meeting how big was the room that you met in?

NUCKOLS - REDIRECT / VONDRAK

1 A It is approximately 36 by 48.

2 Q How far away were you from Chris Beaver at that meeting?

3 A From me to this gentleman here in front of me.

4 Q Did you have an opportunity to observe Mr. Beaver during  
5 the course of that meeting?

6 A Yeah, we were all sitting around a round table.

7 Q And during that meeting did Mr. Beaver say anything at all  
8 about not going along with an agreement?

9 A I don't recall him saying anything.

10 Q Was there anything in his physical demeanor that indicated  
11 to you that he wasn't going to go along with an agreement?

12 A No.

13 Q Did he throw a cup of water on the table and say, "I'm not  
14 going to do this?"

15 A No.

16 Q At the point that you talked about limiting discounts to no  
17 more than \$5.50, did you believe that everybody in the room  
18 knew what the discussion was at that time?

19 A Yes.

20 Q You testified earlier that Ricky Beaver was at the  
21 Signature Inn meeting in May of 2002, is that correct?

22 A Yes.

23 Q And how big was that room? It wasn't a sleeping room, was  
24 it?

25 A No. It was a small conference room.

NUCKOLS - REDIRECT / VONDRAK

1 Q How small a conference room?

2 A Oh, gosh, maybe 20 x 30.

3 Q How far away were you from Rick Beaver during the course of  
4 that meeting?

5 A Again probably from me to this gentleman here.

6 Q And during that meeting did Rick Beaver say I'm not going  
7 along with any agreed upon pricing?

8 A No.

9 Q Did he say -- did he say anything about not going along  
10 with it?

11 A I don't recall him saying anything.

12 Q Do you recall him doing anything that indicated to you that  
13 he wasn't going to go along with it?

14 A No, I don't.

15 Q Did you invite anybody to the October 2003 horse barn  
16 meeting who you didn't think was part of your agreement?

17 A No.

18 Q And why was that?

19 A Well, the people we invited had been at the last meeting.

20 Q Well, there was a difference in the people who were there,  
21 right?

22 A Yes. Yes.

23 Q For instance, Mr. Blatzheim was there, is that correct?

24 A Yes, he was there. He wasn't at the prior ones, yes.

25 Q But Mr. Chris Beaver was at the October 2003 horse barn

NUCKOLS - REDIRECT / VONDRAK

1 meeting you testified?

2 A Chris was, yes.

3 Q When you say that you assumed that people had an agreement  
4 with you, what did you base your assumption on?

5 A Well, I guess that nobody said no, they weren't going to go  
6 along with it.

7 Q Anything else?

8 A Because they attended the meeting I guess.

9 Q Anything else?

10 A That they didn't disagree.

11 Q During the period of July 2000 through May 25th, 2004, how  
12 many times would you say you met with your competitors for the  
13 purpose of discussing the pricing of ready-mix concrete?

14 A Maybe a dozen.

15 Q And of those times how many times did you feel you had  
16 reached agreements with your competitors on the pricing of  
17 ready-mix concrete?

18 A Probably just those three meetings that we discussed here  
19 today.

20 MR. VONDRAK: I have no further questions, Your Honor.

21 THE COURT: Mr. Voyles.

22 MR. VOYLES: Please the Court, Your Honor.

23 RE-CROSS-EXAMINATION

24 BY MR. VOYLES:

25 Q Mr. Nuckols, you learned right after the meetings that

NUCKOLS - RE CROSS / VOYLES

1 nobody had an agreement because you started having problems  
2 immediately, didn't you, that's what all those telephone calls  
3 were about?

4 A That's right.

5 Q Nobody had agreed to anything because you found out there  
6 wasn't anybody living up to any kind of agreement about \$5.50,  
7 didn't you?

8 A That's right.

9 Q None of those people?

10 A You're right.

11 Q Whatever they told you, if their lips are moving, they're  
12 lying?

13 A That's right.

14 Q Right?

15 A Yes.

16 Q Mr. Allyn Beaver was not at any of the meetings?

17 A None.

18 Q And your recollection is that either Chris or Rick when  
19 they were at any meetings never said anything, you don't recall  
20 them ever say anything?

21 A I don't.

22 Q Is that correct?

23 A That's correct.

24 MR. VOYLES: Thank you. No further questions.

25 THE COURT: Mr. Lockwood.

NUCKOLS - RECROSS / VOYLES

1 MR. LOCKWOOD: No questions, Your Honor. Thank you.

2 THE COURT: Anything else of the witness?

3 MR. VONDRAK: Nothing else, Your Honor.

4 THE COURT: You may step down, sir.

5 Ladies and Gentlemen, that will be all the evidence we hear  
6 today. We'll start again tomorrow morning at 9:00 o'clock.  
7 While out don't discuss the matter among yourselves or with  
8 anybody else. Don't form or express any opinion on it until I  
9 give it to you for deliberation. Do not read the newspaper,  
10 this evening or tomorrow morning, nor watch any of the evening  
11 news, or the morning news. We discussed that this morning all  
12 the reasons why.

13 So, I'll see you in the morning at 10:00 o'clock. Thank  
14 you.

15 (Court recessed 5:05 p.m.)

16 CERTIFICATE OF REPORTER

17 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
18 FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE  
MATTER.

19 \_\_\_\_\_  
20 GLEN C. CUNNINGHAM, CM  
OFFICIAL COURT REPORTER

DATE

November 13, 2006

21 \_\_\_\_\_  
22 Patricia A. Cline, CM  
OFFICIAL COURT REPORTER

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