

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 14, 2006
) Volume II
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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TRANSCRIPTION

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1 (Call to order of the court, 9:10 A.M.)

2 (Jury not present)

3 THE COURT: As I mentioned to you earlier, juror
4 number 9 will not be with us today. And so alternate juror
5 number 13 will be in juror number 9's spot.

6 And it is a little after -- five after 9:00 and the good
7 news we have been waiting on the jury; the jury has not been
8 waiting on us.

9 So let's bring in the jury, please.

10 (Jury present)

11 THE COURT: You may be seated.

12 Good morning, ladies and gentlemen.

13 Anybody see or hear or exposed to anything outside the
14 courtroom having to do with this case, either from the media or
15 anybody else?

16 A JUROR: No, sir.

17 THE COURT: No, sir is exactly what I wanted to hear.

18 All right, you may call your next witness.

19 MR. EPSTEIN: Call Richard Haehl.

20 THE COURT: There has been a motion made and sustained
21 by the Court to separate witnesses in this case, which means
22 you are not to share your testimony with anyone who has been or
23 will be a witness in this matter. Do you understand that?

24 THE WITNESS: Yes.

25 THE COURT: You may inquire.

1

RICHARD HAEHL

2

PLAINTIFF'S WITNESS, SWORN

3

DIRECT EXAMINATION

4

GOVERNMENT'S WITNESS, RICHARD HAEHL, SWORN

5

DIRECT EXAMINATION

6

QUESTIONS BY MR. EPSTEIN:

7

Q Good morning. Please state and spell your name for the

8

record.

9

A My name is Richard Haehl. Last name spelled H-a-e-h-l.

10

Q Who do you currently work for, Mr. Haehl?

11

A Shelby Materials.

12

Q When did you begin working at Shelby Materials?

13

A In November of 1977.

14

Q And what is your current position?

15

A I'm a vice-president and I kind of oversee operations in

16

the Indianapolis area.

17

Q How long have you been in that position with Shelby?

18

A Since 1981.

19

Q If you could, describe generally during your time period

20

more recently with Shelby what your responsibilities are?

21

A Well, currently I spend my time in the Indianapolis area

22

and oversee the operations there and take care of just, you

23

know, just general business of -- you know, in our company.

24

Q Is there anybody else involved in the general business

25

operations?

HAEHL-DIRECT

1 A Yes. My brother, Phil.

2 Q And what is his position with Shelby Materials?

3 A He is the president.

4 Q And what areas is Phil responsible for?

5 A He typically takes care of a lot of the financial stuff and
6 stays in the Shelbyville area and overseas operations in that
7 market.

8 Q But you are primarily responsible for the Indianapolis
9 area?

10 A Yes.

11 Q Could you describe generally Shelby's business, what it is
12 that Shelby does?

13 A We are in the ready-mix concrete business and sand and
14 gravel business in Indianapolis and seven counties that are
15 basically south and southeast around Marion County.

16 Q Just focusing on Shelby's ready-mix concrete operation,
17 where does Shelby have ready-mix concrete facilities?

18 A They are in Indianapolis, and a plant in just at the edge
19 of Hendricks County in Clermont, and a plant in Franklin,
20 Shelbyville, Rushville, Columbus, Seymour, Nashville. And we
21 have two sand and gravel plants, one in Shelby County and one
22 in Johnson County.

23 Q Which of those facility does Shelby use to supply ready-mix
24 concrete to the Indianapolis market?

25 A Basically, a plant that is in the Beech Grove area and

HAEHL-DIRECT

1 Clermont area. Very little -- occasionally help out at the
2 Franklin plant.

3 Q Just focusing on the two you said you primarily use, when
4 did Beech Grove start supplying ready-mix concrete to the
5 Indianapolis market?

6 A In June of 1999.

7 Q And what about the Clermont facility?

8 A Clermont was March, 2003.

9 Q When you built the Clermont facility where did you get the
10 machinery and the plant facilities for that?

11 A The plants came from a company in Blair, Nebraska, CONICO.

12 Q And the company name again was?

13 A CONICO. Concrete Equipment Company, I think is the full
14 name of it.

15 Q Do you recall approximately how much Shelby paid for those
16 plant facilities?

17 A It was in excess of a half million dollars for both of
18 them.

19 Q Now, when did Shelby enter the ready-mix concrete market in
20 Indianapolis?

21 A In July of 1999.

22 Q And at that time who were Shelby's primary competitors?

23 A Irving Materials, Builder's Concrete, Beaver Ready-Mix,
24 Carmel Concrete, and American Concrete.

25 Q Was Prairie concrete --

HAEHL-DIRECT

- 1 A Prairie concrete. Prairie Materials.
- 2 Q I would like to walk you through each of those companies.
- 3 If you could, tell me what executives you are familiar with
- 4 from each of those companies, starting with Beaver Materials?
- 5 A Chris and Rick Beaver.
- 6 Q Do you know what their positions are with Beaver Materials?
- 7 A I think they are in sales with Beaver.
- 8 Q Would you recognize Rick and Chris Beaver if you saw them?
- 9 A Yes, I would.
- 10 Q Could you identify Rick Beaver?
- 11 A Rick is in the middle here.
- 12 Q What is he wearing?
- 13 A Like a dark suit.
- 14 Q Anything else to --
- 15 A I don't know. Like a light colored shirt, pink.
- 16 Q What about Chris Beaver, do you see Chris Beaver?
- 17 A Chris is on the right with the blondish hair, gray suit.
- 18 Q Okay. What executives from Builder's are you familiar
- 19 with?
- 20 A I'm familiar with Butch Nuckols and Tim Kuebler and John
- 21 Blatzheim.
- 22 Q And do you know what their positions are with Builder's?
- 23 A Butch would be the owner and Tim was sales manager and was
- 24 later replaced with John Blatzheim as sales manager.
- 25 Q What about Carmel Concrete?

HAEHL-DIRECT

1 A Scott Hughey.

2 Q And what is his position?

3 A I think he is the owner.

4 Q What about Irving Materials?

5 A John Huggins, Price Irving, Pete Irving and Dan Butler.

6 Q And again. Do you know what their positions are with IMI?

7 A Pete would be, I think, CEO. And Price and Dan and John
8 were head of their Indianapolis sales, or sales for materials.

9 Q What about -- you mentioned American Concrete. What
10 executives from American Concrete?

11 A I knew Dennis Mann, who died. Had a couple of sons in the
12 business. I know Jason, who is currently running American
13 Concrete.

14 Q That is Jason Mann?

15 A Jason Mann.

16 Q What about Prairie Materials?

17 A Gary Matney.

18 Q Just briefly what products do you use to make ready-mix
19 concrete?

20 A Concrete is made with either sand or crushed lime -- I mean
21 gravel with crushed limestone. Sand and the major product is
22 cement and you have got some chemical admixtures also.

23 Q And what are admixtures used for?

24 A Admixtures kind of enhance the properties of the concrete
25 and can, you know, increase set times, or slow set times, as

HAEHL-DIRECT

1 well as -- we entrain microscopic air bubbles in to help in the
2 winter for exterior your concrete resisting de-icing salts.

3 Q What proportion of Shelby's ready-mix concrete would you
4 say has these admixtures in them?

5 A Virtually almost every load. I mean, maybe 98, 99 percent.

6 Q And how much does Shelby spend in just an average year on
7 admixtures?

8 A Probably a quarter of a million dollars.

9 Q And where does Shelby purchase these admixtures from?

10 A These admixtures come from Axim, A-x-i-m, Chemical Company,
11 and they are in Cleveland, Ohio.

12 Q What types of equipment does Shelby use in its ready-mix
13 concrete operations?

14 A We have clients that basically weigh up the material and
15 drop them on large tri-axel concrete trucks.

16 Q Where does Shelby purchase the concrete trucks from?

17 A We purchase some from Fort Wayne, Indiana from Advance
18 Mixer. A few from Phoenix Truck in Fort Wayne and some from
19 Oshkosh Truck in Oshkosh, Wisconsin.

20 Q Between, say, July of 2000 and May of 2004 how many trucks,
21 approximately, would you say Shelby purchased from the Osgosh
22 manufacturer?

23 A Approximately 20.

24 Q And approximately how much do those trucks cost?

25 A They are about 150,000 for each truck, in that range.

HAEHL-DIRECT

1 Q I would like to turn back to Shelby's business now. How
2 does Shelby notifies its customers of its prices?

3 A Well, typically the construction season starts in the
4 spring of the year, and we will send out a letter based on what
5 increases we have had, you know, from suppliers that concrete
6 prices will go up in the spring of the year.

7 Q You say increases you have had from suppliers. What sort
8 of suppliers?

9 A Oh, like mainly cement really is the driving factor. And,
10 you know, cement and aggregate and, you know, lately,
11 obviously, diesel fuel and wages.

12 Q And Shelby will send out a price list to notify its
13 customers?

14 A Yes.

15 MR. EPSTEIN: May I approach?

16 THE COURT: Yes.

17 Q Handing you what has been marked Government's Exhibit 7, if
18 you would look at that. Do you recognize that document?

19 A Yes. That is our -- this is our price list effective April
20 1st, 2004.

21 MR. EPSTEIN: I would like to offer Government's 7
22 into evidence.

23 THE COURT: Any objections to 7?

24 MR. VOYLES: No objection.

25 MR. LOCKWOOD: No objection.

HAEHL-DIRECT

1 THE COURT: The exhibit is admitted.

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

4 MR. EPSTEIN: I would like permission to publish it to
5 the jury.

6 THE COURT: Yes.

7 Q If you could turn to the second page of this document.

8 A Yes.

9 Q This price list prices for performance concrete and bag
10 mixes. Do you see that?

11 A Yes.

12 Q What is performance concrete?

13 A Performance concrete is concrete that is sold as
14 compressive strength at 28 days. PSI is pounds per square
15 inch, and it is sold by, basically, a guarantee the concrete
16 will reach a certain strength 28 days after you pour the
17 concrete.

18 Q How does that differ from the columns that rate the bag
19 mixes?

20 A Bag mixes -- when we say bag mixes, it will be -- we will
21 have like five or five and a half, six bags of cementitious
22 material per cubic yard of concrete.

23 Q Do other companies use these same two categories?

24 A Yes.

25 Q And how do you know that?

HAEHL-DIRECT

1 A I have seen their price lists.

2 MR. EPSTEIN: May have I approach again?

3 THE COURT: Yes.

4 Q Handing you what has been marked Government's Exhibit. Do
5 you recognize these documents?

6 A Yeah. These are basically our prices. Our price lists
7 from like '92 up to 2002.

8 Q When you say "our price list --"

9 A Shelby Material's price list.

10 MR. EPSTEIN: I would like to offer Government's
11 Exhibit 40E into evidence.

12 MR. LOCKWOOD: We have no objection, Your Honor.

13 MR. VOYLES: MA-RI-AL has no objection.

14 THE COURT: The exhibit is admitted.

15 (Government's Exhibit(s) 40E
16 received in evidence.)

17 Q Now, there is no price list for 2003, is there, in there?

18 A No, there is not.

19 Q And why is that?

20 A Because we didn't have a price increase that year.

21 Q So if there is no price increase, there is no price list?

22 A Well, there was no price list. I mean, it was basically
23 the price list for 2002 was effective until the next one here
24 that was 2004.

25 Q Okay. I would like to return your attention now back to

HAEHL-DIRECT

1 Exhibit 7 when you first -- the one you were first using. When
2 you say "list price," you talk about list price, can you show
3 us on here, or refer to what it is you are talking about when
4 you say "list price?"

5 A List price would be the -- what is listed here as the gross
6 price.

7 Q So for, say, 4,000 PSI what number would we be referring
8 to?

9 A \$78 per cubic yard.

10 Q What other terms do companies use for what Shelby calls
11 gross price?

12 A List price.

13 Q And you know that how?

14 A I have seen price lists where it says list.

15 Q Next to the column that says "gross price" there is a
16 discount. Do you see that?

17 A Yes.

18 Q What is that discount?

19 A Discount is what I would call a prompt payment discount
20 that we would use typically in our prompt payment terms, or if
21 you would pay the balance of the month previous by the 10th of
22 the following month following delivery.

23 Q And, to your knowledge, what ready-mix concrete companies
24 offer a prompt payment discount?

25 A I think about all of them.

HAEHL-DIRECT

1 Q And in your experience how do those prompt payment
2 discounts compare across the companies?

3 A They are fairly close. I mean, I think, you know, we are
4 at \$3. I have seen some at 5, some at \$2 for prompt payments.

5 Q When you factor in that discount you get to a net price, is
6 that correct?

7 A Yes.

8 Q How do different company net prices, in your experience,
9 compare?

10 A Most of our net prices are all either the same or fairly
11 close.

12 Q So this prompt payment discount, even though people may
13 offer differing amounts, they wind up with the same net price?

14 A Yes.

15 Q Now, if you can, starting with the gross price, if you were
16 bidding a job to a customer can you walk us through how that
17 pricing process would work, starting with the gross price?

18 A I mean, if you say 4,000 PSI, it would be \$78. And then
19 there would be a \$3 discount and then an additional --
20 typically an additional discount. I mean, if the job is fairly
21 large or had some volume on it there would be an additional
22 discount off of the \$75, off the net selling price.

23 Q So there is essentially two discounts that you are talking
24 about?

25 A Yes.

HAEHL-DIRECT

1 Q The prompt payment discount and this additional discount?

2 A Yes.

3 Q And the additional discount, again, is taken off which
4 price on this list?

5 A It is taken off the net selling price.

6 Q And how is that additional -- the prompt payment discount,
7 I believe you testified if people pay within a certain amount
8 of time they get that discount. The additional discount, how
9 is that arrived at?

10 A The additional discount is arrived at according to how
11 large the job is and how well the customer pays and, you know,
12 a lot of times just a matter of trying to meet a competitor's
13 price or find the price that is going to get the job.

14 Q So this additional discount isn't limited on your price
15 list, is it?

16 A No.

17 Q Is it shown -- show up on an invoice to a customer, or how
18 does the customer know what their additional discount is?

19 A Typically, these are on bid jobs, okay, and it would show
20 up on a quote and show up on the invoice.

21 Q I'll get these documents back from you.

22 What is Shelby's status with respect to this investigation?

23 A We are the conditional -- we have conditional amnesty.

24 Q And what does that mean generally to you?

25 A That means we have come forward and it is something we have

HAEHL-DIRECT

1 applied for, and we have to be truthful and honest. We came to
2 the Department of Justice and have been truthful and honest.
3 And we have to provide documentation that they request. We
4 have to cease and withdraw from any agreements we have had and
5 pay full restitution.

6 Q Take a step back. How was it that Shelby came to apply for
7 this conditional amnesty?

8 A Well, when the FBI came in with search warrants we
9 contacted legal counsel and we decided the best thing we can do
10 is tell the truth. And he contacted the Department of Justice
11 and asked if amnesty was available, and shortly thereafter we
12 met with the Department of Justice and basically told them what
13 happened.

14 Q And how quickly, from the time of the search warrants to
15 the time you came to the Department of Justice, what was the
16 time frame?

17 A Probably within -- I know we called them within a couple of
18 days and met with them in a couple of weeks.

19 Q Okay. I would like to have you take a look at what has
20 been marked as Government's Exhibit 8. Do you recognize that
21 document?

22 A Pardon?

23 Q Do you recognize that document?

24 A Yes. This is the amnesty agreement.

25 Q Have you seen this document before?

HAEHL-DIRECT

1 A Yes.

2 Q I would ask you to refer to the last -- or I think the
3 second to last page of that document, the signature page.

4 A Okay.

5 Q Do you recognize the signatures?

6 A Yes, I do.

7 Q Whose signatures are they?

8 A It is Philip E. Haehl, president of Shelby Materials and
9 David R. Hennessy, counsel for Shelby Materials.

10 Q What is the date this document was signed?

11 A June 22nd, 2004.

12 MR. EPSTEIN: I would like to offer Government's
13 Exhibit 8 into evidence.

14 MR. VOYLES: MA-RI-AL has no objection.

15 MR. LOCKWOOD: No objection.

16 THE COURT: The exhibit is admitted.

17 (Government's Exhibit(s) 8
18 received in evidence.)

19 MR. EPSTEIN: I would like permission to publish this
20 to the jury.

21 THE COURT: You may, sir.

22 Q Looking at the first page, if you can focus your attention
23 on the first paragraph. Could you please read the first three
24 sentences of that paragraph?

25 A "Shelby desires to report to the Antitrust Division

HAEHL-DIRECT

1 possible price fixing activity or other conduct --"

2 Q Hold on. Sorry, the very first paragraph.

3 A "This letter sets forth the terms and conditions of an
4 agreement between the Antitrust Division of the United States
5 Department of Justice and Shelby Gravel, Incorporated., d/b/a
6 Shelby Materials, in connection with possible price fixing or
7 other conduct violative of Section 1 of the Sherman Act and the
8 ready-mix concrete industry in the Indianapolis, Indiana
9 metropolitan area and the Seymour/Columbus, Indiana area."

10 Q If you could read the next two sentences?

11 A "This agreement is conditional and depends upon Shelby
12 satisfying the conditions set forth below. After all these
13 conditions are met the Division will notify Shelby in writing
14 that the application has been granted."

15 "It is further agreed disclosures made by counsel for
16 Shelby in furtherance of the amnesty application will not
17 constitute a waiver of the attorney-client privilege for the
18 work product privilege."

19 Q It says in there, the section you just read, that Shelby's
20 amnesty is conditional. What does it mean to you? What is
21 your understanding of that, conditional?

22 A Conditional is that we are just not subject to prosecution,
23 but still produce all documents requested, we make ourselves
24 available for testimony when need be, we give full disclosure,
25 we are honest and truthful, and we pay restitution.

HAEHL-DIRECT

1 Q And it is only after those conditions are satisfied that
2 the amnesty will be finalized?

3 A Yes.

4 Q What if you or any of the Shelby employees were to not be
5 truthful or forthcoming?

6 A Then we would be prosecuted and anything we said can be
7 used against us in our prosecution.

8 Q And I would like to have you focus on this first page,
9 paragraph 1. What representations did Shelby make to the
10 Department of Justice?

11 A Well, we basically took -- you know, tell the truth, and
12 the first thing is to terminate and withdraw from all
13 agreements that were related to the anti-competitive activity,
14 and that we didn't -- but we were not a leader or originator of
15 this anti-competitive activity.

16 Q Are those two statements true and accurate with respect to
17 Shelby?

18 A Yes.

19 Q What action did Shelby take to terminate its involvement?

20 A Well, we withdrew from the anti-competitive activity that
21 we were involved in in the Indianapolis area, and then reported
22 anti-competitive activity that we were involved in in the
23 Columbus/Seymour area.

24 Q And at the time Shelby reported the Columbus/Seymour
25 activity was the Government aware of that?

HAEHL-DIRECT

1 A No.

2 Q I would like you to turn to -- looking at paragraph 2 of
3 this document, and in your own words, what is required of
4 Shelby Materials under this amnesty application?

5 A Well, first and foremost is to tell the truth and provide
6 all details, whether they came through a subpoena or any
7 details and documents that are relevant to the investigation
8 and to provide all documents that are relative to the antitrust
9 activity. It says to be truthful and honest, which we have
10 been. Make ourselves available for testimony and disclose all
11 facts, pay full restitution, and that is about it.

12 Q I would like you to focus on a couple of those paragraphs.
13 Paragraph 2(c.)?

14 A Okay.

15 Q Again, what does that paragraph require of Shelby?

16 A It basically requires full and truthful cooperation from
17 all the employees and the director of Shelby Materials. And
18 provide information to the Antitrust Department on all the
19 activities.

20 Q And has Shelby done that?

21 A Yes.

22 Q Paragraph 2(e)?

23 A Okay. Basically says make yourself -- basically, make
24 yourself available for testimony and again tell the truth to
25 all questions and interviews in front of the grand jury or any

HAEHL-DIRECT

1 appearances at trial.

2 Q And have you done that, and will you do that today?

3 A Yes.

4 Q And lastly, paragraph 2(e). I'm sorry, 2(f).

5 A Basically says don't falsely try to protect anybody else or
6 implicate any person.

7 Q And has Shelby complied with that?

8 A Yes.

9 Q Next I would like to turn to paragraph 4 of this document.

10 And again, in your own words, what requirements do these impose
11 on Shelby?

12 A Produce all documents and records, whether personal or
13 company, and make them available to the United States
14 Department of Justice. Make myself available for interviews at
15 the request of the United States, or attorneys for them.
16 Respond truthfully to all inquires about the anti-competitive
17 activity that has been reported. Provide the Department of
18 Justice with all materials, you know, whether they are
19 requested in a subpoena or voluntarily given. And testify
20 truthfully in front of the grand jury or in court hearings.

21 Q And again, has Shelby done that, and are you continuing to
22 do that?

23 A Yes.

24 Q I would like you to read actually paragraph 4(e) of this
25 document.

HAEHL-DIRECT

1 A 4(e)?

2 Q 4(e).

3 A 4(e) says: "When called upon to do so by the United
4 States, testifying in trial and grand jury or other proceedings
5 in the United States, fully, truthfully and under oath, subject
6 to penalties of perjury, making false statements or
7 declarations in grand jury or court proceedings contempt, and
8 obstruction of justice in connection with the anti-competitive
9 activity being reported."

10 Q In your own words, what does that mean?

11 A That means if I don't tell the truth, if I tried to impede
12 their investigation, that I will be prosecuted.

13 Q Again, generally taking this document as a whole, what has
14 Shelby done to satisfy its amnesty obligations?

15 A We have been truthful and honest. We have provided
16 documentation. We have reported another area where we had
17 anti-competitive activity in the Columbus and Seymour market.
18 We have made ourselves available for testimony when requested.
19 And we have tried to identify, and are currently trying to
20 identify people that we need to make restitution to.

21 Q In addition to restitution, does Shelby have any other
22 financial obligations as a result of the conduct?

23 A We are subject to the civil trial -- to the penalties of
24 the civil trial.

25 Q So a civil case has been filed against Shelby?

HAEHL-DIRECT

1 A Yes.

2 Q In return on this amnesty agreement what does Shelby
3 receive?

4 A We receive immunity from prosecution.

5 Q In the criminal case?

6 A In the criminal case.

7 Q Did you ever meet with a group of ready-mix concrete
8 competitors outside of the trade association meeting?

9 A Yes.

10 Q When was the first time?

11 A The first meeting would have been in July of 2000.

12 MR. EPSTEIN: May I approach, Your Honor?

13 THE COURT: Yes.

14 Q Handing you what has been marked as Government's Exhibit
15 13. If you would take a look at that document. Can you tell
16 me what that document is?

17 A This is my -- basically came out of my outlook off my
18 computer, my calendar.

19 Q Are there any entries in this calendar that relate to this
20 July, 2000 meeting you are discussing?

21 A Yes, on the July the 12th there is a note here says, "3:30,
22 Butch."

23 MR. EPSTEIN: Okay, I would like to publish this
24 exhibit to the jury, Your Honor.

25 THE COURT: Did you offer it?

HAEHL-DIRECT

1 MR. EPSTEIN: I'm sorry. I would like to offer it
2 into evidence. I apologize.

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

4 MR. LOCKWOOD: No objection.

5 THE COURT: The exhibit is admitted.

6 (Government's Exhibit(s) 13
7 received in evidence.)

8 MR. EPSTEIN: And I would like to publish this to the
9 jury.

10 THE COURT: That's fine.

11 Q You said July 12th of 2000, is that correct?

12 A Yes.

13 Q And what does the entry on July 12th, 2000 say?

14 A Just "3:30, Butch."

15 Q And what is that -- what does that tell you?

16 A That is in reference to a meeting that was in Butch
17 Nuckols' barn.

18 Q Where is Nuckols' barn located? Where is his --

19 A It is in the Noblesville area.

20 Q Why would you meet in a horse barn?

21 A Because it was private and, you know, what we were doing
22 there was not legal.

23 Q What ready-mix concrete companies were at this meeting?

24 A Beaver Ready-Mix, Irving Materials, Carmel Concrete,
25 Builder's Concrete, and Shelby Materials.

HAEHL-DIRECT

1 Q And I'm going to walk you through each company, but who was
2 there representing Beaver?

3 A Rick Beaver.

4 Q Who was there from Builder's?

5 A Butch Nuckols and Tim Kuebler.

6 Q How about Carmel?

7 A Carmel, Scott Hughey.

8 Q IMI?

9 A John Huggins.

10 Q And from Shelby?

11 A Richard Haehl, myself and, my brother, Phil.

12 Q How did you learn about this meeting?

13 A Butch called me and asked me to attend it.

14 Q What exactly did he tell you?

15 A Didn't get a lot of details, but just asked us to come out
16 and meet so we could hopefully get some price increases in the
17 market.

18 Q When you say, "We could meet," who do you mean, "we?"

19 A The other Indianapolis ready-mix producers.

20 Q How did the discussion of this meeting begin?

21 A The discussion generally started with just kind of
22 complaining about the overall industry and maybe complaining
23 about customers that didn't pay very well, and things like
24 that.

25 Q Were there any other issues other than those that were

HAEHL-DIRECT

1 discussed?

2 A There were -- the main issue was the fact that selling
3 prices were declining and we needed to do something to get the
4 price up.

5 Q When you say prices were declining, do you mean list prices
6 were declining?

7 A No, prices on bid work, for jobs of bid in the area.

8 Q And what would cause those prices to decline?

9 A Just a slowdown of the overall economy, the business, and,
10 you know, us entering the market and adding trucks into the
11 market.

12 Q In order for those prices to become lower, if the list
13 price stayed the same did the net price stay the same?

14 A No. The list price would stay the same, but there would be
15 an additional discount off the net selling price of concrete.

16 Q I would like to return your attention to what was
17 previously marked Government's Exhibit 7. Look at the second
18 page of that document. Again, this is the Shelby price list.
19 Again, using this, you talk about this additional discount and
20 the fact it was increasing. What would that mean with respect
21 to, let's say, 4,000 PSI? How would that work?

22 A That would mean jobs, you know, bid jobs, we would bid an
23 additional discount off the net selling price on 4,000. For
24 instance, off of the 4,000 PSI net selling price of 7,500, or
25 \$75, there would be an additional discount off of that price.

HAEHL-DIRECT

1 Q And so the discussion at the horse barn meeting was about
2 these additional discounts off of net?

3 A Yes.

4 Q What specifically was the discussion about?

5 A The discussion was we agreed to limit -- try to limit the
6 amount of discount off of that net selling price, the \$5.50 off
7 the net selling price per cubic yard.

8 Q You said there was an agreement on that point?

9 A Yes, there was.

10 Q Who was involved in the discussion about this agreement to
11 limit discounts?

12 A You know, I don't remember specifically. Everybody was
13 involved in the discussion that was there, and in the end there
14 was just a consensus that we limit the discounts to 5.50, \$5.50
15 off the net selling price.

16 Q You said everybody was involved in the discussion
17 generally?

18 A Yes.

19 Q Was Rick Beaver involved in that discussion?

20 A Yes.

21 Q Do you recall anything specifically that Rick Beaver said?

22 A No.

23 Q Do you recall anything specifically that Tim Kuebler said?

24 A No.

25 Q What about John Huggins?

HAEHL-DIRECT

1 A No.

2 Q But you do recall that all those gentlemen were involved in
3 this discussion about the discounts?

4 A Yes.

5 Q How did this discussion conclude?

6 A The discussion concluded with the fact that we were going
7 to limit discounts on bid work in the Indianapolis area to
8 \$5.50 per cubic yard off the net selling price of concrete.

9 Q Did anyone disagree?

10 A No.

11 Q Did anyone object?

12 A Nobody objected, nobody disagreed, nobody walked away.

13 Q So what leads you to believe there was an agreement?

14 A Well, there was no -- there were no dissenters, there was
15 nobody that said they weren't going to go along with it.

16 Q What companies and what people do you believe were parties
17 to this agreement to limit discounts to 5.50 off of net?

18 A Rick Beaver, Beaver Ready-Mix; John Huggins with IMI,
19 Irving Materials; Scott Hughey, Carmel Concrete; Butch Nuckols,
20 with Builder's Concrete; and me, Shelby Materials. And Scott
21 Hughey said he was -- he would contact Gary Matney at Prairie
22 by phone, as well as Jason Mann with American Concrete.

23 Q How did you feel about reaching agreement with your
24 competitors on prices?

25 A I knew it was wrong, I knew it was illegal. And when I

HAEHL-DIRECT

1 went there, the very first meeting, I knew it was wrong, and I
2 regret ever doing it. I'm sorry for it.

3 Q Following that meeting how did that agreement to limit
4 discounts affect Shelby?

5 A We priced jobs at that price as well as other prices. I
6 mean we still had jobs we priced, different prices off that,
7 but we didn't price jobs at that price.

8 Q Let me get that document back.

9 When did you next meet with the next group of ready-mix
10 concrete competitors?

11 A Our next meeting would have been in either the fall of '02
12 or spring of '03.

13 Q And where was that meeting?

14 A That was Signature Inn.

15 Q Why did you meet at a hotel?

16 A We met in a conference room there that was out of the way
17 where nobody would see us.

18 Q Again why was it important not to be seen?

19 A Because what we were doing was illegal.

20 Q What ready-mix concrete companies were at this meeting?

21 A Beaver, Beaver Materials, Irving Materials, Carmel
22 Concrete, Builder's Concrete and Shelby Materials.

23 Q Who was there on behalf of Beaver Materials?

24 A Rick Beaver.

25 Q And on behalf of Builder's?

HAEHL-DIRECT

1 A Butch Nuckols.

2 Q Who represented Camel Concrete.

3 A Scott's Hughey.

4 Q Who was there from IMI?

5 A Dan Butler and Price Irving.

6 Q And who was there from Shelby?

7 A I was.

8 Q What was the purpose of this meeting?

9 A The purpose of this meeting was to just reaffirm the
10 bidding \$5.50 off the net selling price of concretes on bid
11 work.

12 Q When you say reaffirm, what do you mean by reaffirm?

13 A Just, you know, there had been instances where people
14 strayed from the previous agreement and this was to reaffirm
15 that we would bid work at \$5.50 off the net selling price.

16 Q So it was an attempt to go back, strengthen what you
17 already agreed to?

18 A Yes.

19 Q What was discussed at this meeting?

20 A There was a general discussion, kind of like the first one,
21 where people complained about, you know, the overall industry.
22 And in the end, the whole crux of the meeting was to reaffirm
23 that we would bid jobs at \$5.50 off the net selling price.

24 Q If you could describe generally what this discussion about
25 the discount was at this meeting.

HAEHL-DIRECT

1 A Oh, I think that, you know, the discussion was just
2 basically, you know, people on bid jobs, they would stray from
3 the agreement and there was some general discussion about
4 trying to go to a number even less than \$5.50, but we
5 typically, everybody strayed from the original agreement. So
6 it was just really an effort to shore up the \$5.50 off the net
7 selling price.

8 Q So people might have strayed, but you felt like they still
9 had an agreement in place?

10 MR. LOCKWOOD: I'll object on the ground it calls for
11 a conclusion on the part of this witness.

12 THE COURT: At least rephrase that question.

13 BY MR. EPSTEIN:

14 Q There was straying but the agreement you had agreed to was
15 still there?

16 MR. LOCKWOOD: The same objection.

17 THE COURT: He can answer, go ahead.

18 MR. LOCKWOOD: I'm sorry?

19 THE COURT: I said he could answer. I'm sorry.

20 A I felt like there was an agreement that was still there,
21 but we strayed and everyone else strayed.

22 BY MR. EPSTEIN:

23 Q Who was involved in this discussion about limiting
24 discounts?

25 A Everybody that there was.

HAEHL-DIRECT

1 Q Did that include Rick Beaver?

2 A Yes.

3 Q And again, do you recall specifically anything he said?

4 A No.

5 Q What about Price Irving?

6 A I don't recall anything specific.

7 Q Butch Nuckols?

8 A With any of them really. I mean, there was a general

9 discussion it always came down in the end to limiting

10 discounts. That was the end of it.

11 Q And you felt like everyone was in on that discussion?

12 A Yes.

13 Q Now how did this discussion about limiting discounts

14 conclude?

15 A It concluded with the decision to limit the discounts on

16 bid work of \$5.50 off the net selling price for concrete.

17 Q Did anyone disagree with that conclusion?

18 A No. Nobody disagreed. Nobody dissented.

19 Q Anybody leave the meeting?

20 A No. Nobody objected, nobody left.

21 Q Again how did you know there was an agreement to the limit

22 of discounts?

23 A Just the fact that nobody stood up and disagreed, nobody

24 walked out of the meeting. Everybody there knew the reason

25 they were there, and that it was illegal and nobody dissented.

HAEHL-DIRECT

1 We didn't take a vote, but in the end it was the agreement that
2 we would limit discounts to \$5.50 off the net selling price of
3 concrete.

4 Q What companies and what people were parties to that
5 agreement to limit discounts to \$5.50 off net?

6 A Rick Beaver, Beaver Ready-Mix, Dan Butler and Price Irving,
7 Irving Materials, Scott Hughey, Carmel Concrete, Butch Nuckols
8 with Builder's Concrete and me.

9 Q And when you left, what did you understand was going to
10 happen with respect to discounting the market?

11 A That on bid jobs we would limit our discount to \$5.50 off
12 the net selling price of concrete.

13 Q And how did that agreement affect Shelby's prices?

14 A We bid some work at that price.

15 Q How did you feel about reaching this agreement with your
16 competitors?

17 A I knew it was not the right thing to do. I knew it was
18 illegal.

19 Q When was the next time you met with the group of ready-mix
20 concrete competitors?

21 A The next time was October of 2003.

22 MR. EPSTEIN: May I approach, Your Honor.

23 THE COURT: Yes.

24 BY MR. EPSTEIN:

25 Q Handing you what has been marked government's exhibit 12.

HAEHL-DIRECT

1 Do you recognize this document?

2 A Yes, this again is my outlook printout from my calendar.

3 Q Are there any entries in this document that relate to the
4 meeting you were referring to?

5 A This is actually Phil's record you handed me.

6 Q Okay. Are there any entries in this document that relate
7 to that meeting?

8 A Yeah, on the October 22nd there is an note says D. Butler
9 1:00 o'clock.

10 MR. EPSTEIN: I'd like to offer government 12 into
11 evidence.

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

13 MR. LOCKWOOD: No objection.

14 THE COURT: It's admitted.

15 (Government's Exhibit 12
16 entered into evidence)

17 MR. EPSTEIN: Permission to publish.

18 THE COURT: You may.

19 BY MR. EPSTEIN:

20 Q This exhibit on October 22nd, again what is the entry you
21 were referring to?

22 A There's an entry 1:00 o'clock, it says D. Butler on
23 October 22nd.

24 Q What is it about that entry that refreshes your memory
25 about that?

HAEHL-DIRECT

1 A That was a meeting that was in Butch's barn on
2 October 22nd.

3 Q And this is the same barn that you had mentioned meeting at
4 previously?

5 A Yes.

6 Q What ready-mix concrete companies were at this meeting?

7 A Beaver Ready-Mix, Irving Materials, Carmel Concrete,
8 Builder's Concrete and Shelby Materials.

9 Q Who was there on behalf of Beaver Materials?

10 A Chris Beaver.

11 Q What about Builder's?

12 A Builder's was Butch Nuckols and John Blatzheim.

13 Q Carmel?

14 A Scott Hughey.

15 Q IMI?

16 A Dan Butler and Price Irving.

17 Q And Shelby?

18 A Phil Haehl, Richard Haehl.

19 Q How did you learn about this horse barn meeting?

20 A I believe that Butch called me and would ask me to attend
21 this meeting.

22 Q Do you recall what he said the purpose of the meeting was?

23 A Was the same thing it was previously, to try to, really to
24 recommit to limiting discounts on bid work.

25 Q What issues were actually discussed at this meeting?

HAEHL-DIRECT

1 A Oh, there was a lot of issues discussed. You know, similar
2 to what we had talked about before. And, you know, the crux of
3 the meeting was try to limit the discounts and the \$5.50 off
4 the net selling price.

5 Q Were there any other pricing issues discussed at the
6 meeting.

7 A Yeah, there was, talked about implementing a winter
8 surcharge on concrete. And we also talked about raising the
9 selling price of concrete effective April first of 2004.

10 Q How did the winter surcharge issue come up?

11 A It was just in a general discussion in that with fuel
12 prices escalating and the cost of doing business in the winter
13 that we should have a surcharge or an additional, you know,
14 additional cost for winter concrete.

15 Q Was there a number discussed?

16 A Yeah, \$3 per cubic yard.

17 Q What about the issue of price increases, what was the
18 discussion about price increases?

19 A That was we decided we would raise the performance mix
20 concrete by \$2 for cubic yard April 1, 2004, bag mix prices by
21 \$2.50s per cubic yard.

22 Q Now when you say "we" agreed, who is we?

23 A All the people that were in that room. And then Scott
24 Hughey was the contact Gary Matney with Prairie.

25 It was Scott -- or Gary Matney with Prairie Concrete,

HAEHL-DIRECT

1 Prairie Material, and Jason Mann with American Concrete.

2 Q You mentioned earlier that limiting discounts was discussed
3 again at this meeting, is that right?

4 A Yes.

5 Q What specifically was discussed with respect to limiting
6 discounts?

7 A It was just really to recommit to limiting discounts to
8 5.50 off the net selling price of concrete.

9 Q Who was involved in this discussion?

10 A Everybody that was there.

11 Q Did that include Rick Beaver -- sorry, Chris Beaver?

12 A Yes.

13 Q Do you recall anything specifically that Chris Beaver said?

14 A No, I do not.

15 Q Do you recall anything specifically anybody said about the
16 limiting discounts?

17 A No.

18 Q But you do recall everybody in the meeting being involved
19 in that discussion?

20 A Yes.

21 Q What conclusion was reached regarding limiting discounts?

22 A In the end the conclusion by everybody was to limit
23 discounts on bid work to no more than 5.50 off the net selling
24 price of concrete.

25 Q Did anyone disagree?

HAEHL-DIRECT

1 A Nobody disagreed. Nobody dissented. Nobody stood up and
2 objected.

3 Q What companies again and what people were parties to this
4 agreement to limit discounts to 5.50 off net?

5 A Chris Beaver with Beaver Ready-Mix. Dan Butler and Price
6 Irving of Irving Materials. Scott Hughey, Carmel Concrete.
7 Butch Nuckols, John Blatzheim with Builder's Concrete. And
8 Phil Haehl and myself with Shelby Materials.

9 Q And again when you left this meeting what did you
10 understand was going to happen with respect to discounts?

11 A That we would limit the discounts on bid work to no more
12 than \$5.50 off the net selling price of concrete.

13 Q When you say "we", who do you mean by we?

14 A I meaning everybody that was there and Prairie Materials
15 involved in it, American Concrete.

16 Q How did this horse barn meeting end?

17 A This horse barn meeting concluded with Scott Hughey
18 summarizing and our agreement to limit discounts to \$5.50 off
19 the net selling price of concrete.

20 Q And was there any reaction, any disagreement when he stated
21 that?

22 A No.

23 Q I'll get that back from you. Thanks.

24 What were you supposed to do if someone was pricing out of
25 line with the agreement?

HAEHL-DIRECT

1 A Supposed to pick up the phone and, you know, call one of
2 the people, one of the competitors and try to verify the price.

3 Q How did that understanding come about?

4 A That was some stuff that I was just in a general discussion
5 in those meetings or in some of the meetings that, you know, if
6 you have a doubt -- many times contractors may tell you, may
7 tell you that they're buying concrete for a certain price in an
8 effort to get you to lower your price, maybe meeting a
9 competitor or getting, just enable themselves to get a lower
10 selling price. And many times it was not the truth. So the
11 whole idea behind it was if you have a doubt, call. Pick up
12 the phone and call the guy and ask him, whoever the other
13 company was that they wanted you to meet, call them and verify
14 the price.

15 Q So these contacts with your competitors were meant to help
16 enforce the agreement?

17 A Yes.

18 Q Did you ever participate in any phone calls like this?

19 A Yes.

20 Q What specific instances do you recall?

21 A You know there was an instance, I mean the one I recall
22 which was shortly before the FBI came in to do their search
23 warrant was when Rick Beaver called me about verifying the
24 price of a job up in the Noblesville area.

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

HAEHL-DIRECT

1 THE COURT: Yes.

2 BY MR. EPSTEIN:

3 Q Handing the witness what has been marked government exhibit
4 ten. Do you recognize that document?

5 A Yes.

6 Q And what is that?

7 A That is my brother's handwriting and notes says Rick
8 Beaver, Greystone, and then a cell phone number.

9 Q Are you familiar with your brother's handwriting?

10 A Yes.

11 Q And you recognize this to be his?

12 A Yes.

13 MR. EPSTEIN: I'd like to offer government ten into
14 evidence.

15 MR. LOCKWOOD: No objection.

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

17 THE COURT: Exhibit is admitted.

18 (Government's Exhibit 10
19 entered into evidence)

20 MR. EPSTEIN: And permission to publish to the jury.

21 THE COURT: Yes.

22 BY MR. EPSTEIN:

23 Q If you could read this note.

24 A It says, "Rick Beaver, Greystone, 440-6829."

25 Q Again who is Rick Beaver?

HAEHL-DIRECT

1 A Rick Beaver with Beaver Ready-Mix.

2 Q And who is Greystone?

3 A That's a customer that, the customer of ours that buys
4 concrete in the Indianapolis area.

5 Q And the number at the bottom, what do believe that number
6 to be?

7 A I think this was Rick's cell phone number.

8 Q When is this note from?

9 A This would have been sometime mid to late May of 2004.

10 Q And how do you recall that?

11 A I just remember as before, shortly before the FBI came in
12 with our search warrant.

13 Q What is this note in reference to?

14 A This is in reference to a job that bid in Noblesville where
15 he called me and asked me if Greystone, he had said IMI,
16 quoted -- or Greystone had told him that IMI quoted a job at a
17 price lower than what he had quoted it and he called to verify
18 what I thought the selling price should be.

19 Q Why would he want to know that from you?

20 A Well, I think, I think he felt like we had an agreement to
21 limit discounts, and IMI strayed from that number, and he had
22 bid according to how we should bid. IMI had a lower bid price.

23 Q Thank you.

24 Between July of 2000 and May of 2004 what did Shelby agree
25 to with its competitors?

HAEHL-DIRECT

1 A We agreed to limit discounts to \$5.50 off the net selling
2 price of concrete on bid jobs. We agreed to increase our board
3 price or list price of concrete April 1, 2004 by \$2 per cubic
4 yard on performance mix concrete and \$2.50 per cubic yard for
5 bag mix concrete, and to add a winter service charge of \$2 per
6 cubic yard effective December 1, 2003.

7 Q You did also agree to contact competitors to enforce the
8 discount limit?

9 A Yes.

10 Q What companies and what people were parties to those
11 agreement?

12 A Rick and Chris Beaver with Builder's or with Beaver
13 Ready-Mix.

14 Scott Hughey with Carmel Concrete.

15 John Huggins, Price Irving, Dan Butler with Irving
16 Materials.

17 Butch Nuckols, Tim Kuebler, John Blatzheim, Builder's
18 Concrete.

19 Gary Matney with Prairie Materials.

20 Jason Mann with American Concrete.

21 And my brother Phil and I with Shelby Materials.

22 Q How did you feel about reaching agreements on prices with
23 your competitors?

24 A I knew it was illegal and I knew it from the start and I
25 regret it.

HAEHL-DIRECT

1 MR. EPSTEIN: No further questions.

2 THE COURT: Cross-examine.

3 MR. LOCKWOOD: May I approach, Your Honor?

4 THE COURT: Certainly.

5 (Bench conference on the record.)

6 MR. LOCKWOOD: I am very sorry to interrupt. My
7 client tells me he has to go to the restroom very badly.

8 THE COURT: Why did I know that? I knew that as soon
9 as you said.

10 MR. LOCKWOOD: If we can take a break.

11 THE COURT: That's all right, not to worry.

12 MR. LOCKWOOD: I am sorry.

13 (In open court.)

14 THE COURT: We need to take a quick break at this
15 time, Ladies and Gentlemen.

16 COURTROOM DEPUTY: All rise.

17 (A recess was held from 1:10 a.m. to 10:25 a.m.)

18 THE COURT: All right. Bring in the jury if you
19 would, please.

20 We're still on cross-examination? We didn't think of any
21 omitted questions we wanted to ask, did we?

22 MR. EPSTEIN: No.

23 THE COURT: Okay.

24 (In the presence of the jury.)

25 THE COURT: You may be seated. Cross-examine,

HAEHL-DIRECT

1 Mr. Lockwood.

2 CROSS-EXAMINATION

3

4 BY MR. LOCKWOOD:

5 Q Mr. Haehl, my name is Jeff Lockwood. I represent Chris
6 Beaver and Rick Beaver.

7 Mr. Haehl, to start where you left off, which I will say
8 concerned the statement that you made that Rick Beaver
9 contacted you about the Greystone project.

10 A Okay.

11 Q What was the Greystone project?

12 A It was a, I believe a Kroger store in the Noblesville area.

13 Q I'm sorry, sir?

14 A I think it was a Kroger store in the Noblesville area.

15 Q You do not service the Noblesville area?

16 A No.

17 Q And your company did not service it at that time?

18 A No.

19 Q But you testified that this was the kind of statement that
20 you believed was contemplated when your co-conspirator said
21 they would check with one another?

22 A Yes.

23 Q Yet what Rick actually said to you was, "We have bid on the
24 Greystone project and so has IMI," is that right?

25 A Yes.

HAEL - CROSS / LOCKWOOD

- 1 Q "And IMI's price is a lot lower than ours"?
- 2 A Yes.
- 3 Q "Can you confirm that?"
- 4 A I couldn't confirm it.
- 5 Q No, did he say to you, "Can you confirm that?"
- 6 A Yes.
- 7 Q That's what he wanted to ask you?
- 8 A Okay.
- 9 Q Is that true?
- 10 A Well, yeah.
- 11 Q Okay. He didn't say, "IMI's below the agreed price," did
- 12 he?
- 13 A No.
- 14 Q He didn't say, "IMI has breached our agreement," did he say
- 15 that?
- 16 A No.
- 17 Q He didn't say, "We need to get together and talk to IMI
- 18 because they're underbidding our agreement," he didn't say that
- 19 either, did he?
- 20 A No.
- 21 Q And so it was your assumption that because he called you he
- 22 was somehow enforcing a price agreement?
- 23 A I guess that was my assumption.
- 24 Q Well, you and your brother were not strangers to agreements
- 25 to limit competition, were you?

HAEL - CROSS / LOCKWOOD

- 1 A Well, we were familiar with this one.
- 2 Q I'm sorry?
- 3 A We were familiar with this one.
- 4 Q Well, you were also familiar with one that had to do with
- 5 Southern Indiana Concrete Manufacturers, weren't you?
- 6 A With one.
- 7 Q So you kind of had been down this path before about how to
- 8 fix these prices?
- 9 A We were participants.
- 10 Q In a price fixing scheme in Southern Indiana?
- 11 A Yes.
- 12 Q And had your brother not been even a consultant at one
- 13 point in time concerning the Sherman Antitrust Act and the
- 14 illegality of price fixing?
- 15 A I have no knowledge of that.
- 16 Q Don't know that?
- 17 Well, another reason that you would have some information
- 18 about actually fixing and enforcing prices is because you had a
- 19 number of individual meetings with other coconspirators of
- 20 yours, didn't you?
- 21 A I'm not sure what you're referring to.
- 22 Q I'm referring to the September 1999 meeting that you had
- 23 with Butch Nuckols at the Oaken Barrel?
- 24 A I'm familiar with the meeting there.
- 25 Q And didn't you talk about prices at that time?

HAEL - CROSS / LOCKWOOD

1 A No, we did not.

2 Q What did you talk about?

3 A We talked about -- the only thing that was discussed at
4 that September meeting was the fact that we were entering the
5 market and there was a period of time when they wanted us, they
6 wanted to buy our business there.

7 Q Mr. Haehl, isn't it true that Mr. Nuckols was rather vocal
8 with you at one point not long after you entered this market
9 that your company was underbidding everybody?

10 A I don't recall that.

11 Q How did you get involved in this particular price fixing
12 conspiracy?

13 A Like everyone else, I got a call to attend the meeting.

14 Q I'm sorry?

15 A I got a call to attend the meeting.

16 Q Okay. Now let's talk about getting these calls for a
17 moment. You testified during direct examination that everybody
18 knew what the meeting was for.

19 A Yes.

20 Q But you didn't call Rick Beaver and tell him what the
21 meeting was for, did you?

22 A No.

23 Q You didn't talk to Chris Beaver, you didn't tell Chris
24 Beaver what the meeting was for?

25 A No.

HAEL - CROSS / LOCKWOOD

1 Q You don't know who did call Chris Beaver, do you?

2 A No.

3 Q You don't know who called Rick Beaver, do you?

4 A No, I do not.

5 Q So you don't know what was said to Rick Beaver or Chris

6 Beaver about the purpose of let's say the first horse barn

7 meeting you have testified to?

8 A I don't know that.

9 Q And you don't know what was in Rick Beaver's mind or Chris

10 Beaver's mind when one of them may have attended a meeting at

11 the Signature Inn?

12 A No.

13 Q On that same point, sir, you said that you met at the

14 Signature Inn because -- what was your words? I'm going to

15 miss -- I usually am better. "You didn't want to be seen."

16 Do you remember testifying to that on direct examination?

17 A I knew that what we were doing was illegal, so.

18 Q "We did not want to be seen", meeting together I assume,

19 correct?

20 A Yes.

21 Q Who is "we"?

22 A The people that came to the meeting.

23 Q What do you know about Rick Beaver's mind state before he

24 came to the meeting?

25 A I don't know.

HAEL - CROSS / LOCKWOOD

1 Q Okay. Then you would not necessarily include Rick in the
2 term "we," would you, sir?

3 A Well, I knew he was at the same meeting that I was at and
4 that what the results of that meeting were.

5 Q Let's talk about the results of that meeting if we could
6 for just a moment. Because, as I understand it, the pattern
7 was that there would be a general gripe session, if you will,
8 or a discussion about how people were losing money and how
9 prices were going down, just a general complaint session about
10 we're not making enough money. And then Butch, was it, would
11 summarize in the end what he thought the agreement ought to be,
12 is that who did it?

13 A No, Scott.

14 Q Scott Hughey, I'm sorry. And then there was no vote taken?

15 A No.

16 Q There was no show of hands, sir?

17 A No.

18 Q You didn't pass around a little piece of paper ballots to
19 say, "Yeah, I think that instead of limiting it to \$5.50 we
20 ought to make it \$4.50," none of that?

21 A Nobody got up and walked out. Nobody.

22 Q I understand nobody got up and walked out, sir. But Rick
23 Beaver didn't say we'll go along either, did he?

24 A No.

25 Q And so you are assuming from the silence of everyone that

HAEL - CROSS / LOCKWOOD

1 there was an agreement?

2 A I'm assuming since there were no dissenters that we had an
3 agreement.

4 Q And immediately after the first meeting the first thing you
5 found out was that it was necessary to call another meeting
6 because nobody was doing what you thought they had agreed to?

7 A Not all the time.

8 Q And so you didn't have any conversation was Chris Beaver or
9 Rick Beaver between the first meeting and the Signature Inn
10 meeting, did you?

11 A No.

12 Q You have only met Chris once.

13 A I have seen him at some of the industry functions, but that
14 may be true, one time or a couple of times.

15 Q You never met him at the Oaken Barrel, did you?

16 A No.

17 Q And you never had a meeting with him at Byrum Steakhouse
18 along with Butch Nuckols and Tim Kuebler and your brother Phil,
19 you never had a meeting like that with Chris, did you?

20 A Which was another meeting about buying or selling.

21 Q So wasn't anything wrong with that meeting?

22 A No.

23 Q Well, you never met with Chris or Rick, either one, at the
24 Olive Garden, did you?

25 A No.

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1 Q Like as you did in September of 2001 when you met with your
2 brother and Tim Kuebler and Butch Nuckols, was that inspired by
3 a common love of Italian food, sir?

4 A That was inspired because we entered the Indianapolis
5 market and they wanted to buy our business or put our two
6 businesses together.

7 Q So every meeting I talked to you so far they're wanting to
8 buy your business?

9 A You mean the meetings with Butch?

10 Q I mentioned to you so far.

11 A I think so. If that's what you're referring to.

12 Q How about the luncheon meeting where you and Scott Hughey
13 met at Chi-Chi's and Haehl was told -- you were told you needed
14 to --

15 MR. EPSTEIN: Object, Your Honor. Is this a question
16 or statement?

17 MR. LOCKWOOD: I'll rephrase it.

18 BY MR. LOCKWOOD:

19 Q You remember having a luncheon meeting, don't you, with
20 Scott Hughey at Chi-Chi's?

21 A No, I do not.

22 Q So if Mr. Hughey were to testify there was a meeting that
23 took place about a price agreement discussion, he would be
24 mistaken?

25 A No, I met with him about a price agreement. But I don't

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1 recall that meeting specifically.

2 Q Okay. But you have and you do remember meeting with Scott
3 Hughey at which the price agreements were discussed?

4 A Yes.

5 Q You never had that kind of a meeting with Rick Beaver, did
6 you?

7 A No.

8 Q And you never had that kind of meeting with Chris Beaver?

9 A No.

10 Q You never had that kind of meeting with Allyn Beaver?

11 A No.

12 Q Do you remember having a similar meeting, sir, in the same
13 year at Bob Evans with Mr. Hughey?

14 A I do not.

15 Q How many different luncheon type meetings did you have with
16 Mr. Hughey in order to discuss price fixing?

17 A I don't recall anything other than the one meeting and the
18 three meetings that were laid out here.

19 Q So again if Mr. Hughey recalls additional meetings where
20 you and he discussed prices and enforcement of this agreement
21 you assumed existed, he would be mistaken about that?

22 A Yes, he would.

23 Q Do you recall a meeting, sir, in January where Mr. Butler
24 was taking over for Mr. Huggins and you attended that meeting
25 along with Price Irving and Dan Butler and your brother Phil?

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1 A Yes.

2 Q I suppose you didn't talk about prices then either, did
3 you?

4 A No.

5 Q Well, you're just barely into this conspiracy then, aren't
6 you?

7 A I don't call that a conspiracy.

8 Q You don't call what you were doing a conspiracy, sir?

9 A Not in those meetings.

10 Q How about the meeting in March 12th or 13th of 2002 at the
11 Cracker Barrel where you met with Scott Hughey again and your
12 Brother Philip and you discussed price increases and discounts,
13 how is your memory about that meeting?

14 A That I have no recollection of that meeting.

15 Q Do you recall, sir, having a telephone conversation with a
16 man by the name of John Blatzheim in the fall of 2000 during
17 which you discussed the Brizendine bid?

18 A I don't recall.

19 Q Do you remember having a meeting in November of 2002 with
20 your Brother Philip and Dan Butler to agree on the same pricing
21 on a bid that all of you were getting ready to make?

22 A No.

23 Q Do you remember having any of these kinds of meetings,
24 Mr. Haehl?

25 A I remember the two meetings in the barn and I remember

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1 Signature Inn. And some of these, you're bringing them up, I
2 have no -- I have never heard of before.

3 Q Never heard of them. Didn't have any meetings with anybody
4 one on one to discuss price fixing?

5 A That's not what I said.

6 Q Did you?

7 A I met with Scott Hughey one time.

8 Q Okay. Have more than one meeting with people face-to-face,
9 one on one in order to discuss price fixing?

10 A No.

11 Q The only time you ever met with anybody one on one was with
12 Mr. Hughey one time?

13 A That's what I recall.

14 Q How about phone calls, you made phone calls, didn't you, to
15 enforce this agreement?

16 A Possibly.

17 Q Tell the jury about the phone calls you made in which you
18 wanted to get somebody in line.

19 A I don't know what you're referring to.

20 Q Because they were bidding lower than the agreement, who did
21 you call to say, "Hey, you're bidding lower than the agreement,
22 quit doing that."?

23 A I don't recall.

24 Q Do you recall a meeting with Butch Nuckols in May, May 19th
25 of 2003, in which you discussed raising prices and you

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1 discussed the August 1st cement increase?

2 A I don't recall.

3 Q Did you ever attend a meeting with your brother, Dan
4 Butler, Scott Hughey, Price Irving and Butch Nuckols and John
5 Blatzheim at the MicroBrewery on the south side of Indianapolis
6 after the 2003 horse barn meeting to discuss prices?

7 A No, I did not.

8 Q Mr. Haehl, you testified that you are testifying here today
9 under a grant of amnesty. That means that nothing very bad
10 happens to you; you're not going to be prosecuted for anything,
11 isn't that right?

12 A I wouldn't say nothing bad happens to me. But I will not
13 be prosecuted. I am still subject to civil penalties and
14 restitution.

15 Q I stand corrected.

16 MR. EPSTEIN: Let's finish his answer.

17 Q I apologize, please finish your answer.

18 A I am finished.

19 Q I'm sorry.

20 A I'm, you know, I'm not subject to prosecution, but I am
21 subject to everything else. The production, immense amount of
22 time producing documents, being available for testimony. I'm
23 subject to the civil penalties.

24 Q But you're not going to go to jail?

25 A No.

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- 1 Q You're guaranteed that?
- 2 A This is still conditional amnesty.
- 3 Q Conditional upon you telling the truth?
- 4 A Yes.
- 5 Q And you're not going to have to pay a fine?
- 6 A No.
- 7 Q Your company is not going to have to pay a fine?
- 8 A No.
- 9 Q You're still in business?
- 10 A Yes.
- 11 Q Still the vice-president?
- 12 A Yes.
- 13 Q Your brother is still the president, isn't he?
- 14 A Yes.
- 15 Q You're doing business pretty much as usual?
- 16 A We're still doing.
- 17 Q And looking to expand?
- 18 A If the opportunity arises.
- 19 Q Did you not authorize your accountant, sir, to make a pass
20 at Mark Flincham to make an inquiry about purchasing Beaver
21 Materials two weeks ago?
- 22 MR. EPSTEIN: Objection.
- 23 THE COURT: I'll let him answer, go ahead.
- 24 A We have been talking about to Mark Flincham and Katz Miller
25 about for a long time about estate planning. We had heard that

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1 Beaver may be, you know, they may sell their business. And all
2 we want to do was, you know, if the opportunity is there.

3 Q So your answer is yes?

4 A Yeah. But...

5 Q Okay, thank you.

6 Now under this grant of immunity, as you testified, you are
7 telling -- you're supposed to tell the truth. And, by the way,
8 could I ask you please to review how it was and when it was you
9 got this grant of immunity. Just if you would think about that
10 general subject matter, I'll ask you some specific questions if
11 I may.

12 The first time you heard about the FBI investigation was on
13 May 25th, 2004?

14 A I think that was the day.

15 Q And what was the event that happened that day that caused
16 you to find out there was an investigation?

17 A The FBI came in with search warrants into our business.

18 Q You hadn't talked to anybody prior to that time?

19 A No.

20 Q And when the FBI came in, did they ask you if you would
21 give them a statement?

22 A I was out of town.

23 Q When was the first time that you were approached by an
24 agent involving this investigation?

25 A I never was.

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1 Q So you have never been interviewed by an agent for the
2 Federal Bureau of Investigation?

3 A Well, I was interviewed by the Department of Justice.

4 Q Do you know when your lawyer made contact with the Justice
5 Department to get an amnesty agreement?

6 A He called -- we contacted our attorney and, you know, we
7 felt like we had to tell the truth, and he contacted the
8 Justice Department to ask about possible amnesty.

9 Q When, sir, did you --

10 A Probably within 48 hours.

11 Q You didn't contact him that day, as far as you know?

12 A We contacted our attorney that day.

13 Q And were you involved in that contact, even though you were
14 out of town?

15 A Well, I'm not sure. I didn't make the call. My brother
16 made the call, probably.

17 Q And do you know when your attorney then contacted the
18 Justice Department?

19 A It was either the next day or the day after.

20 Q Are you sure?

21 A The best of my knowledge, yes.

22 Q And then within a very short time you and your brother
23 traveled to Chicago, is that right?

24 A Yes.

25 Q And you went to the Justice Department offices there in the

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- 1 beautiful Rookery building on the loop and you had a
2 conversation with members of the prosecution team here?
3 A Yes.
4 Q And when you promised to tell the truth in order to
5 maintain your amnesty, in order to tell the truth there was
6 never a vote taken at the first barn meeting by anyone?
7 A No vote.
8 Q There was no show of hands?
9 A No.
10 Q Rick Beaver didn't stand up and say, "Yeah, let's go get
11 them?"
12 A He didn't say yes.
13 Q He didn't say yes, he didn't say no, he didn't say
14 anything?
15 A He participated in the discussion.
16 Q He didn't say yes to the agreement, sir?
17 A He didn't say yes, but nobody else --
18 Q Did he say no to the agreement?
19 A No.
20 Q He didn't say anything?
21 A He participated in the discussion.
22 Q He didn't say anything after Mr. -- was it Hughey's
23 summary?
24 A Yes.
25 Q He didn't say anything after that summary, did he?

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1 A Not that I remember.

2 Q That is the summary that laid out what you guys thought the
3 agreement ought to be?

4 A I think that is the summary that everybody thought that --

5 Q And Mr. Beaver sat there silently?

6 A I don't recall.

7 Q And the next time you remember seeing anybody from the
8 Beaver organization was at a meeting held at the Signature Inn,
9 which, based upon no contact you ever had with Rick Beaver, you
10 assumed he knew what it was about, is that right?

11 A I thought everybody knew what it was about.

12 Q You thought that. Again, there is no show of hands there?

13 A No.

14 Q No vote taken?

15 A No.

16 Q Everybody agreed because they were silent?

17 A There were no dissenters, there was nobody that got up and
18 walked out.

19 Q Everybody agreed, in your opinion, because they were
20 silent?

21 A Yes.

22 Q Same thing in the 2003 horse barn meeting that took place
23 at Butch Nuckols' horse barn in October of that year, is that
24 right?

25 A Yes.

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1 Q And the only time you ever heard from anybody associated
2 with the Beaver organization was when Mr. Rick Beaver called
3 you and asked you merely to verify a quote on a project that
4 you didn't even bid?

5 A That's correct.

6 MR. LOCKWOOD: Thank you.

7 THE COURT: Mr. Voyles.

8 CROSS-EXAMINATION

9

10 QUESTIONS BY MR. VOYLES:

11 Q Good morning, Mr. Haehl.

12 A Good morning.

13 Q My name is Jim Voyles and I represent MA-RI-AL Corporation,
14 Beaver materials, as you may know them.

15 Do you know Allyn Beaver?

16 A No.

17 Q You ever met Allyn Beaver?

18 A I'm not sure. Maybe.

19 Q Do you know what his role or responsibility is at Beaver
20 Material?

21 A No, I don't.

22 Q My understanding is, sir, that when you were first called
23 in the year 2000 to go to a meeting you were -- would it be
24 fair to say you were co-owner of your business?

25 A Yes.

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- 1 Q And you and your brother, Philip, shared the
2 responsibilities? You have different titles, but essentially
3 run the business as a team, is that correct?
- 4 A Yes.
- 5 Q Different functions?
- 6 A Some similar, some different, yes.
- 7 Q And the person that called you first was who?
- 8 A I think Butch Nuckols.
- 9 Q And did you know Mr. Nuckols?
- 10 A Yes.
- 11 Q Had you ever met him before?
- 12 A Yes.
- 13 Q Had you been associated with him at business meetings
14 before?
- 15 A Yes.
- 16 Q Did you discuss prices with him before that?
- 17 A No.
- 18 Q Never had?
- 19 A No.
- 20 Q Were you surprised that he called you?
- 21 A I don't know that I would say I was -- I mean, I guess I
22 was surprised about a call to meet.
- 23 Q Why would you be surprised about a call to you as a company
24 owner of a business?
- 25 A Well, I said I was surprised about a call to meet in his

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1 barn. You know, when I was driving in the driveway I knew it
2 was wrong.

3 Q Oh, so you knew in 2000 it was wrong? You knew before you
4 went it was wrong --

5 A Yes.

6 Q -- is that right?

7 A Uh-huh.

8 Q Why did you go?

9 A I don't know. I regret it deeply.

10 Q I bet you do. But you have no idea why you would go to a
11 meeting with somebody who is a competitor who, I guess, is not
12 a social friend, is he?

13 A No.

14 Q And was it because of greed?

15 A The reason we went was to try to get the -- to get the
16 prices up.

17 Q Well, if you can get prices up you make more money, right?

18 A If it happens.

19 Q Were you having business troubles in 2000? You could
20 barely make it?

21 A No.

22 Q Doing pretty well, weren't you?

23 A We were doing okay.

24 Q Well, how many markets did you have in the year 2000?

25 A We were in the same ones we are now.

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- 1 Q Tell me again where they were.
- 2 A We were in Columbus, Seymour, Nashville, Shelbyville,
3 Rushville, Franklin.
- 4 Q That is about seven counties you are in?
- 5 A Eight.
- 6 Q Eight counties. So you were doing pretty well, weren't
7 you?
- 8 A Doing okay.
- 9 Q Okay. And so you decided to go to this meeting. And did
10 Mr. Nuckols tell you on the telephone call that he had with you
11 what the meeting was about?
- 12 A I don't recall.
- 13 Q You just thought it was about prices?
- 14 A Yes.
- 15 Q Was there any reason for you to think it was about prices
16 if he never mentioned it?
- 17 A I don't recall if he mentioned it, or not.
- 18 Q Did he tell you who else was coming?
- 19 A I do not recall that either.
- 20 Q Did you tell your brother you were going?
- 21 A I went with him.
- 22 Q So both of you went?
- 23 A Yes.
- 24 Q So you immediately, or at some point you called your
25 brother and said, "We have got a meeting, let's go to it," is

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1 that right? Felt bad, but we are going to go anyway, is that
2 right?

3 A Yeah.

4 Q Told him how bad you felt about going?

5 A No.

6 Q Once you got there -- had you ever been to the horse barn
7 before?

8 A No.

9 Q And you say at that meeting there were other what you call
10 competitors, is that right?

11 A Yes.

12 Q How long did the meeting last?

13 A Probably, I don't know, an hour or a little longer, maybe.

14 Q And you said you had discussions about a number of items,
15 one of which were discounts, is that right?

16 A Yes.

17 Q And you didn't take a vote. Nobody had little scraps of
18 paper. Nobody raised their hand. But everybody walks out of
19 the meeting, right?

20 A Yes.

21 Q And everybody tells you, well, we are going to do this, or
22 at least you think everybody is doing the same thing, even
23 though some people don't speak a lot, is that correct?

24 A I knew that -- I felt like we had an agreement when we
25 walked out of that meeting.

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1 Q You knew the next day you didn't have an agreement, didn't
2 you, when you started seeing what other people were doing when
3 some of the contractors were calling you and telling you, "Hey,
4 IMI just gave me an offer of a \$3 discount. Can you do that?"
5 Or \$10, whatever they were.

6 A When I walked out of the meeting I knew that people would
7 stray from the agreement.

8 Q You knew it wasn't an agreement, didn't you?

9 A I knew that there was an attempt to have an agreement.

10 Q An attempt to have an agreement. But there never was an
11 agreement because, as you know, and everybody in the concrete
12 industry knows, when their lips are moving they are lying,
13 correct?

14 A I don't know about that.

15 Q Well, you knew when you walked out of that meeting it
16 wasn't an agreement?

17 A I felt like we had an agreement.

18 Q You said you felt like it was an attempt at an agreement.
19 You just told me that.

20 A Well, we agreed on limiting discounts at that meeting.
21 Nobody dissented, nobody got up and walked out, nobody stood up
22 and said, "I don't want to do this." Everybody had an
23 opportunity. They could have left at any point in time and
24 nobody did.

25 Q I see. So everybody who goes to a meeting, if they don't

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1 stand up and dissent, it is your assumption they agree, is that
2 right?

3 A I didn't say that.

4 Q Okay. Is that what you belief?

5 A At this meeting I felt like we had an agreement.

6 Q But you just indicated when you walked out of the meeting
7 that the next day you knew you never had an agreement because
8 people were undercutting --

9 MR. EPSTEIN: Objection. Mischaracterizes the
10 testimony.

11 THE COURT: You can rephrase that question.

12 Q Didn't you know after you left that very meeting you have
13 just discussed that people began undercutting each other when
14 they walked out of the meeting?

15 A I felt like that people would stray from that agreement.

16 Q What does "stray from" mean? Does it mean they are going
17 to not do what you thought you agreed to?

18 A Yes.

19 Q Okay. So if I tell you I'm going to do something and I
20 don't do it, do we have an agreement?

21 A I guess not.

22 Q You guess not. Isn't that what that was, a guess not
23 agreement?

24 A When we went to that meeting -- walked out of that meeting
25 I felt like there was an agreement.

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1 Q Well, the next day, or maybe weeks later, you began cutting
2 your prices, didn't you?

3 A We didn't always live by that agreement.

4 Q What does "we didn't live by that" mean?

5 A We would bid jobs, some jobs, at that price, and some at a
6 different price.

7 Q So you didn't have an agreement?

8 A If that's what you want to --

9 Q No, I'm just asking you. If you tell me you are going to
10 do something and you don't do it, does that mean we have an
11 agreement, or not?

12 A I guess not.

13 Q Okay. And that is exactly what you did? You left that
14 attempt at an agreement and walked out and began doing things
15 exactly opposite? You, personally, your brother, Phil, your
16 company, didn't they?

17 A Yes.

18 Q And you found out everybody else; IMI, Carmel, Builder's,
19 doing the same thing, correct?

20 A Yes.

21 Q And that continued for a period of three years, or at least
22 two years to 2002, didn't it?

23 A There was, you know, attempts to shore it up.

24 Q Shore it up? Shore up something that was broken?

25 A I don't understand. I mean --

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1 Q Well, what do you shore up? In other words, if something
2 needs to be shored up, what does that mean?

3 A We went to a meeting -- a second meeting where we once
4 again tried to salvage limiting discounts on --

5 Q When was that?

6 A In the fall of '02 or spring of '03.

7 Q My question to you, Mr. Haehl, was that from 2000, when you
8 had this first meeting, until 2002, nobody lived by an
9 agreement. You are trying to shore it up two years later,
10 correct?

11 A Yes.

12 Q Weeks after you leave this meeting nobody is following it,
13 including you and your company and your brother, correct?

14 A That's correct.

15 Q Okay. So it is not an agreement, is it?

16 A I guess not.

17 Q Okay. And then in 2002 who calls you?

18 A When during 2002?

19 Q I don't know. You had a meeting in 2002, the second
20 meeting. Who called you?

21 A The Signature Inn meeting? Is that what you are referring
22 to?

23 Q You are the one that went to the meetings, I didn't. What
24 is your recollection?

25 A I don't remember who called.

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1 Q Do you remember why you went?

2 A Went to re-establish or reconfirm --

3 Q Re-establish or reconfirm on something you don't have,
4 correct?

5 A When we went to those meetings everybody that went there
6 knew what they were doing.

7 Q That is not my question, Mr. Haehl. My have question is,
8 you told us already repeatedly that nobody lived by this
9 agreement from 2000 to 2002. You just told me that.

10 A I told you nobody bid every job according to that
11 agreement.

12 Q Okay. How many jobs did you bid that didn't follow the
13 agreement between 2000 and 2002?

14 A I don't remember.

15 Q Hundreds, didn't you?

16 A I don't know.

17 Q Maybe even thousands?

18 A I doubt it.

19 Q Mr. Haehl, you have got seven plants you are running
20 full-time. That is two years, hundreds of agreements that you
21 say you had you never had. You are bidding just to get the
22 work, right?

23 A (No response)

24 Q We can go through them if you want to.

25 A We bid sometimes according to the agreement and sometimes

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1 not.

2 Q Yeah, if you find IMI was underbidding a job you had and
3 you wanted it, you underbid them, didn't you?

4 A I didn't always have to underbid them. And there are
5 relationships in this industry and there were times when it
6 probably made no difference what I bid. If IMI had a
7 relationship with this person, whatever price I put out there
8 they could match, beat, maybe not even do that.

9 Q So there wasn't an agreement. Because IMI has got a
10 special customer, they will do whatever to keep the customer
11 like you would correct?

12 A Yeah.

13 Q Okay. And that had been happening from 2000 to 2002?

14 A Yes.

15 Q So somebody calls you, you don't remember who, and you go
16 to another meeting?

17 A Yes.

18 Q In an attempt to what you call shore up something that is
19 broken that has been broken for two years, correct?

20 A Yes.

21 Q All right. So in this second meeting, just like the first,
22 nobody votes, nobody writes down on a piece of paper, nobody
23 raises their hand, everybody kind of talks about things,
24 including pricing?

25 A Yes.

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1 Q Correct?

2 A Yes.

3 Q How long was that meeting?

4 A Not long. Maybe an hour.

5 Q Okay. And it was taken up by other things other than
6 conversations about pricing, wasn't it?

7 A There were other things discussed, yes.

8 Q So out of the whole meeting that lasted an hour about what
9 percentage of the time dealt with this pricing issue, if you
10 recall?

11 A I don't recall.

12 Q It was a limited amount, was it not?

13 A It was not -- you know, I mean --

14 Q It wasn't even the focus of the meeting, was it?

15 A No, that was the focus of the meeting.

16 Q But it didn't turn out to be when the meeting happened.

17 Everything else happened. You talked about everything else but
18 pricing, except a small portion of it, didn't you?

19 A But the reason we went to that meeting was to shore up that
20 limiting discount.

21 Q I understand what you thought the reason was, but the
22 actual fact of the meeting was that a percentage of that was
23 only devoted --

24 MR. EPSTEIN: Objection. Asked and answered several
25 times.

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1 MR. VOYLES: I don't believe he answered the question,
2 Your Honor.

3 THE COURT: Let's give him one question to answer.

4 Q When you went to the meeting what percentage of the time of
5 an hour was spent talking about pricing?

6 A I don't know what percentage.

7 Q Tell us what else you talked about.

8 A I don't recall, but we talked about just in general
9 business and --

10 Q Was Mr. Allyn Beaver, who is the president of Beaver
11 Materials, there?

12 A I do not recall him being there.

13 Q Was he at the first meeting in 2000?

14 A No.

15 Q Now, when you left the second meeting the same thing
16 happened as the first meeting, didn't it? Everybody tells you
17 no problem, and you walk out and the next day you are doing the
18 same thing you did in 2000. You are cutting everybody's legs
19 out from each other and nobody is agreeing to anything,
20 correct?

21 A I don't know if I would put it that way.

22 Q Well, how would you put it?

23 A We bid some jobs according to the agreement and sometimes
24 we didn't.

25 Q Again, until you had your next meeting you bid hundreds of

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- 1 jobs not living up to any agreement, correct?
- 2 A We bid jobs that did not live up to the agreement.
- 3 Q Is the answer to my question yes?
- 4 A Yeah.
- 5 Q How many hundreds of jobs did you bid that had nothing to
- 6 do with the agreement?
- 7 A I don't know.
- 8 Q It was hundreds, wasn't it? Seven plants running full-time
- 9 the whole year.
- 10 A Possibly. I really don't know how many jobs.
- 11 Q Isn't that your job, to keep track of that kind of stuff in
- 12 your company?
- 13 A It is not my sole job.
- 14 Q It is part of your job, isn't it?
- 15 A Yeah.
- 16 Q Well, tell me.
- 17 A I don't know how many.
- 18 Q You can tell me it was hundreds of jobs that had nothing to
- 19 do with any agreement?
- 20 A I don't know.
- 21 Q Still have seven plants running full-time for a year,
- 22 correct?
- 23 A Seven plants, yeah.
- 24 Q Okay. And you are doing just what you did in 2000.
- 25 Everybody walks out, everybody is lying to each other, we never

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- 1 keep it up, we go out, we bid them for four, we bid them for
2 six, bid them for ten, what difference does it make, correct?
3 That is what was happening. That is why you had all these
4 phone calls. What is happening, what are you bidding, correct?
5 A When we met --
6 Q Which time?
7 A We made an attempt to have an agreement.
8 Q That is my understanding; it is an attempt. You never had
9 an agreement, Mr. Haehl. In 2000, 2002, 2003, you never had an
10 agreement, did you?
11 A I guess not.
12 Q Okay.
13 A If you say so.
14 Q And, as a matter of fact, when you testified earlier for
15 Mr. Lockwood about this Greystone. It wasn't even a Kroger you
16 were talking about, it was a movie theater. Do you remember
17 that? With Mr. Rick Beaver.
18 A I remember the conversation.
19 Q You don't even remember the project, do you?
20 A I thought it was a Kroger. I'm sorry.
21 Q It is an area you don't even bid outside your area,
22 correct?
23 A Yes.
24 Q Was Allyn Beaver, the gentleman I'm sitting next to, at any
25 of these meetings?

HAEHL - CROSS / VOYLES

1 A Not that I recall.

2 MR. VOYLES: Thank you. I have no further questions.

3 THE COURT: Cross-examine.

4 I'm sorry, redirect.

5 REDIRECT EXAMINATION

6 QUESTIONS BY MR. EPSTEIN:

7 Q Mr. Haehl, you mentioned earlier that Shelby has seven
8 plants, is that correct?

9 A Yes.

10 Q How many of those actually service the Indianapolis
11 ready-mix concrete market?

12 A Just two.

13 Q So when Mr. Voyles talks about hundreds of bids and seven
14 plants, which of those plants would have been subject to the
15 agreement you were testifying to?

16 A Just the two in Indianapolis.

17 Q So the other five, and any bids out of there, wouldn't have
18 been subject to this agreement?

19 A No.

20 Q You also talked about this Greystone project. What do you
21 recall that Greystone project being about?

22 A I thought it was a Kroger job in the Noblesville area that
23 we did not bid.

24 Q Why did you understand that Rick Beaver was calling you
25 about that project?

HAEHL - REDIRECT / EPSTEIN

1 A Rick evidently had a price from IMI that was lower than --
2 basically, he just said he had bid at \$67 and wanted to know if
3 IMI was at \$64 and wanted to know if I thought that Greystone
4 was telling the truth. And my response was that they would
5 probably bid it from IMI anyway.

6 Q Why do you believe he was calling you about that project?

7 A Just to reaffirm, or just -- I mean, because in our
8 meetings we had talked about calling each other if we have a
9 question about bidding.

10 Q And that is what this call was in reference to?

11 A Yes.

12 Q Now, Mr. Lockwood referenced a bunch of meeting you might
13 not have remembered he threw out there for you. Just to be
14 clear, what meetings do you remember where there was an
15 agreement reached with competitors to limit discounts to 5.50
16 off net?

17 A The July, 2000 meeting in Butch's barn, the fall '02 or
18 spring, '03 meeting at the Signature Inn, and the October, 2003
19 meeting in Butch's barn.

20 Q You aren't denying there might have been additional
21 meetings, or conversations, or telephone calls related to
22 conspiracy, are you?

23 A No.

24 Q But the ones where agreements were reached, you are clear
25 on?

HAEHL - REDIRECT / EPSTEIN

1 A Yes.

2 Q And again, Mr. Voyles made a big show about people cheating
3 on the agreement, is that correct?

4 A Yes.

5 Q But they were cheating on an agreement, right?

6 A What I perceived as an agreement.

7 Q Your understanding is that there were agreements reached to
8 limit discounts to 5.50 off net, is that right?

9 A Yes.

10 Q Did Shelby adhere to that agreement every single time?

11 A No.

12 Q Did IMI adhere to that agreement every single time?

13 A No.

14 Q Did Beaver every single time?

15 A No.

16 Q Do you feel like those companies, and the others that were
17 in the conspiracy, adhered to the agreement sometimes?

18 MR. VOYLES: Objection, Your Honor. That calls for
19 determination of law.

20 THE COURT: The question is do you feel that, so I'll
21 sustain the objection.

22 THE WITNESS: Could you repeat the question?

23 Q Did you feel like the companies that were parties to the
24 agreement I described adhered to the agreement sometimes?

25 A Yes.

HAEHL - REDIRECT / EPSTEIN

1 Q So it didn't work perfectly?

2 A No.

3 Q But you felt like it did work sometimes?

4 A We bid sometimes according to that agreement.

5 MR. EPSTEIN: One second.

6 THE COURT: Yes.

7 MR. EPSTEIN: No further questions, Your Honor.

8 THE COURT: Mr. Lockwood.

9 MR. LOCKWOOD: Thank you, Your Honor.

10 RECROSS-EXAMINATION

11 QUESTIONS BY MR. LOCKWOOD:

12 Q Let me make sure I understood your testimony on redirect.

13 You said that you received a call from Rick Beaver, which you
14 believed was to enforce this agreement you had, or this
15 non-agreement that you had?

16 A It was just -- it was a verification.

17 Q Of what, sir?

18 A It was a verification of conversation that we had had that
19 if you have a question about bidding call your -- call your
20 competitor and talk to them.

21 Q And that call occurred in February of 2004?

22 A No.

23 Q When was it?

24 A May, 2004.

25 Q In May of 2004?

R. HAEHL-RECROSS

1 A Yes.

2 Q Four years after the first meeting?

3 A Yes.

4 Q Was that the only time you ever heard from Rick Beaver,
5 sir?

6 A Was that the only time? Yes.

7 Q And you never mentioned the agreement during the
8 conversation?

9 A No.

10 Q Didn't call IMI, as far as you know?

11 A I don't know.

12 Q The fact is you don't know a thing about what price Beaver
13 Materials bid on any job between the years 200 and 2004, do
14 you, as you sit here today?

15 A I don't know any specific prices.

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

17 THE COURT: Mr. Voyles.

18 MR. VOYLES: No questions, Your Honor.

19 THE COURT: Anything else of this witness?

20 MR. EPSTEIN: Nothing else.

21 THE COURT: You may step down, sir.

22 (Witness excused)

23 THE COURT: You may call your next witness.

24 MR. SCHLEEF: The Government calls Price Irving.

25 THE COURT: This is the witness stand up here. If you

R. HAEHL-RE CROSS

1 will come up here I'll swear you in.

2 There has been a motion made and sustained by the Court to
3 separate witnesses in this case, which means you are not to
4 share your testimony with anyone who has been or will be a
5 witness in this matter. Do you understand that?

6 THE WITNESS: Yes.

7 THE COURT: You may inquire, sir.

8 GOVERNMENT'S WITNESS, RICHARD HAEHL, SWORN

9 DIRECT EXAMINATION

10 PLAINTIFF'S WITNESS, SWORN

11 GOVERNMENT'S WITNESS, PRICE C. IRVING, SWORN

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. SCHLEEF:

14 Q Please state and spell your name for the record.

15 A Price C. Irving. P-r-i-c-e C. I-r-v-i-n-g.

16 Q Are you currently employed, Mr. Irving?

17 A Yes.

18 Q Who is your current employer?

19 A Irving Materials, Incorporated.

20 Q Is that also known as IMI?

21 A Yes.

22 Q Did IMI enter a plea in this case?

23 A Yes.

24 Q What did IMI plead?

25 A Guilty.

IRVING-DIRECT

1 Q Are you familiar with the terms and conditions of the
2 company's plea agreement?

3 A Yes.

4 MR. SCHLEEF: Permission to approach the witness.

5 THE COURT: Yes.

6 Q I will hand you what has already been marked Government's
7 Exhibit 14. Do you recognize this document?

8 A Yes.

9 Q What is this document?

10 A This is the plea agreement for Irving Materials and myself.

11 Q Do you recognize the signatures on the third to the last
12 page?

13 A Yes.

14 Q Are you familiar with those signatures?

15 A Yes.

16 Q Whose signatures are they?

17 A Earl Brinker and Susan Rivas.

18 Q And who are these individuals?

19 A Earl Brinker is our chief financial officer and Susan Rivas
20 is counsel for the company.

21 Q What is the date this document was signed?

22 A June 22nd, 2005.

23 MR. SCHLEEF: I would like to offer Government's
24 Exhibit 14 into evidence.

25 MR. VOYLES: MA-RI-AL has no objection, Your Honor.

IRVING-DIRECT

1 MR. LOCKWOOD: No objection.

2 THE COURT: The exhibit is admitted.

3 (Government's Exhibit(s) 14
4 received in evidence.)

5 MR. SCHLEEF: Like to ask permission to publish
6 Exhibit 14.

7 THE COURT: Permission is granted.

8 Q Paragraph 4 of this document contains the description of
9 the evidence against IMI. Would you please read paragraph 4 B
10 for the Court?

11 A "During the relevant period the defendant, by and through
12 certain of its officers and certain employees, including
13 certain high- level personnel of the defendant, participated in
14 a conspiracy with other persons and entities engaged in the
15 manufacture and sale of ready mixed concrete, the primary
16 purpose of which was to fix the price at which ready mixed
17 concrete was sold in the Indianapolis, Indiana metropolitan
18 area. In furtherance of the conspiracy the defendant, by and
19 through certain of its officers and certain employees, engaged
20 in conversations and attended meetings with representatives of
21 other ready mixed concrete producers in the Indianapolis,
22 Indiana metropolitan area. During such meetings and
23 conversations agreements were reached to fix the price at which
24 ready mixed concrete was to be sold in the Indianapolis,
25 Indiana metropolitan area."

IRVING-DIRECT

1 Q Thank you. What is the relevant period for this conduct?

2 A From 2000 to 2004.

3 Q Would you please read paragraph 4(c), as well? You can
4 look on the document, as well. It might be hard to see on the
5 screen.

6 A "During the relevant period the corporate conspirators
7 purchased substantial quantities of equipment and supplies
8 necessary to the manufacture and sale of ready mixed concrete,
9 which equipment and supplies were shipped into Indiana from
10 ports of origin outside Indiana. During the relevant period,
11 the business activities of the corporate conspirators in
12 connection with the manufacture and sale of ready mixed
13 concrete affected by the conspiracy were within the flow of,
14 and substantially affected, interstate trade and commerce."

15 Q Please turn to paragraph 2, Mr. Irving.

16 A Paragraph 2?

17 Q Paragraph 2. As part of this plea agreement did IM agree
18 to waive indictment and plead guilty to a one count information
19 charging IMI with participation in a price fixing agreement?

20 A Yes.

21 Q What else did IMI agree to pursuant to this plea agreement?

22 A To pay a 29.2 million dollars fine and cooperate with the
23 Government.

24 Q In turn, did the United States agree to advise the Court of
25 IMI's full and truthful cooperation?

IRVING-DIRECT

1 A Yes.

2 Q Did the United States agree not to bring further criminal
3 charges against IMI?

4 A Yes.

5 Q Did IMI also apply for conditional amnesty?

6 A Yes.

7 Q What conduct did IMI report in its conditional amnesty
8 application?

9 A What conduct?

10 Q Yeah. Did IMI report conduct in any other markets?

11 A Yes.

12 Q What kind of conduct did it report?

13 A Talking to other producers.

14 Q Was that conspiratorial conduct?

15 A Yes.

16 Q Were these markets Bloomington, Marion, and Muncie?

17 A Yes.

18 Q Why did IMI report this conduct?

19 A We were being truthful with the Government.

20 Q Is IMI still subject to criminal prosecution with respect
21 to these markets?

22 A No.

23 Q Is IMI still subject to civil lawsuits with respect to its
24 conduct in Bloomington, Marion, and Muncie?

25 A I don't know.

IRVING-DIRECT

1 Q As part of the plea agreement it states you are still
2 liable for civil --

3 A Yes, we are.

4 Q What is your understanding of the status of the
5 investigations in those markets?

6 A I'm not sure. I think they have concluded them. I don't
7 know.

8 Q Is it possible the investigations are still ongoing?

9 A Yes.

10 Q I would like to now talk about what is required under the
11 amnesty program.

12 A Okay.

13 MR. SCHLEEF: Permission to approach the witness.

14 THE COURT: Yes.

15 Q I am now handing you what has been marked as Government's
16 Exhibit 15. Do you recognize that document?

17 A Yes.

18 Q What is this document?

19 A This is a an agreement with IMI that we would cooperate
20 with the Government.

21 Q Is that also known as your conditional amnesty letter?

22 A Yes.

23 Q Do you recognize the signatures on the last page?

24 A Yes.

25 Q Whose signatures are they?

IRVING-DIRECT

1 A Earl Brinker and Susan Rivas.

2 Q What is the date this document was signed?

3 A 5/26/05.

4 MR. SCHLEEF: I would like to offer Government's
5 Exhibit 15 into evidence.

6 MR. LOCKWOOD: No objection to 16.

7 MR. VOYLES: No objection, Your Honor.

8 THE COURT: The exhibit is admitted.

9 (Government's Exhibit(s) 16
10 received in evidence.)

11 MR. SCHLEEF: I ask permission to publish Exhibit 15
12 to the jury.

13 THE COURT: You may.

14 BY MR. SCHLEEF:

15 Q Would you please read the first 3 sentences of the first
16 page?

17 A "Dear Mr. Rivas"?

18 Q "This letter sets forth the first paragraph."

19 A "This letter sets forth the terms and conditions of an
20 agreement between the Antitrust Division of the United States
21 Department of Justice and Irving Materials, Inc. (IMI) in
22 connection with possible price fixing or other conduct
23 violative of Section 1 of the Sherman Act, 15 USC 1, in the
24 ready-mixed concrete industry in the metropolitan areas of
25 Bloomington, Indiana; Marion, Indiana; and Muncie, Indiana.

IRVING-DIRECT

1 This agreement is conditional and depends upon IMI satisfying
2 the conditions set forth below. After all of these conditions
3 are met, the division will notify IMI in writing that the
4 application has been granted.

5 It is further agreed that disclosures made by counsel for
6 IMI in the furtherance of the amnesty application will not
7 constitute a waiver of the attorney-client privilege or the
8 work-product privilege."

9 Q Did IMI take prompt and effective action to terminate its
10 involvement in these conspiracies?

11 A Yes.

12 Q Did IMI agree not to coerce others and agree that it was
13 not a leader or originator of this conduct?

14 A Yes.

15 Q Did IMI terminate its involvement in this conduct by
16 reporting the conduct to the United States Antitrust Division?

17 A Yes.

18 Q Does this letter also explain what is required of IMI in
19 exchange?

20 A Yes.

21 Q Did IMI have to fully explain the underlying facts of its
22 conduct?

23 A Yes.

24 Q Did IMI have to promptly provide related documents?

25 A Yes.

IRVING-DIRECT

1 Q Did IMI have to secure the full cooperation of current and
2 former employees?

3 A Yes.

4 Q Did IMI have to pay full restitution to victims for any
5 harm caused?

6 A I don't know.

7 Q Did IMI have to pay restitution to any victims that are
8 identified?

9 A Yes.

10 Q As an IMI employee, did you also have to fully cooperate
11 with the government's inquiries into this activity?

12 A Yes.

13 Q Has IMI done these things to the best of its ability?

14 A Yes.

15 Q In return does IMI receive the government's promise not to
16 prosecute them for any conspirational conduct they may have
17 been involved in in the markets of Bloomington, Marion and
18 Muncie?

19 A Yes.

20 Q Is IMI still liable for civil damages in these markets?

21 A Yes.

22 Q Was IMI's amnesty grants conditional pending the company's
23 full and complete cooperation?

24 A Yes.

25 Q Returning your attention to Indianapolis, has IMI already

IRVING-DIRECT

1 been sentenced for its role in the Indianapolis price fixing
2 conspiracy?

3 A Yes.

4 Q What penalties did the Court impose upon IMI?

5 A \$29.2 million fine and full cooperation with the
6 investigation.

7 Q Were four employees of IMI also sentenced to prison terms
8 and fines?

9 A Yes.

10 Q Mr. Irving, are you also testifying today pursuant to a
11 plea agreement you entered into with the United States?

12 A Yes.

13 MR. SCHLEEF: Permission to approach the witness.

14 THE COURT: Yes.

15 BY MR. SCHLEEF:

16 Q I'm handing you what has been previously marked
17 government's exhibit twenty-eight. Do you recognize this
18 document?

19 A Yes.

20 Q What is this document?

21 A This is my plea agreement with the government.

22 Q Do you see the stamp in the top right corner of the first
23 page?

24 A Yes.

25 Q What stamp is this?

IRVING-DIRECT

1 A It's a District Court stamp.

2 Q What is date of that stamp?

3 A June 29th of 2005.

4 Q Would you please turn to the last page, page 13.

5 A (Witness complied.)

6 Q Do you recognize your signature?

7 A Yes.

8 MR. SCHLEEF: Your Honor, we offer government exhibit
9 number twenty-eight.

10 MR. VOYLES: No objection, Your Honor.

11 MR. LOCKWOOD: No objection to twenty-eight.

12 THE COURT: Exhibit is admitted.

13 (Government's Exhibit 28
14 entered into evidence)

15 MR. SCHLEEF: May I publish government's exhibit 28?

16 THE COURT: Yes.

17 BY MR. SCHLEEF:

18 Q Did you have certain responsibilities pursuant to your plea
19 agreement?

20 A Yes.

21 Q Were you also required to waive indictment and plead guilty
22 to a one count information charging you with participation in a
23 price fixing conspiracy?

24 A Yes.

25 Q Were you required to cooperate fully and truthfully with

IRVING-DIRECT

1 the United States in the prosecution of the price fixing
2 conspiracy?

3 A Yes.

4 Q Were you required to pay a hundred thousand dollar fine,
5 serve a prison term of 5 months and a home confinement term of
6 5 months as recommended by the government?

7 A Yes.

8 Q Please turn to page 3, paragraph 4B. Is this the same
9 paragraph that you read aloud in IMI's plea agreement?

10 A Yes.

11 Q Is this correct?

12 A Yes.

13 Q Could you read it again for me?

14 A "During the relevant period, the defendant participated in
15 a conspiracy with other persons and entities engaged in the
16 manufacture and sale of ready-mixed concrete, the primary
17 purpose of which was to fix the price of ready-mixed concrete
18 sold in the Indianapolis, Indiana metropolitan area.

19 In furtherance of this conspiracy, the defendant engaged in
20 conversations and attended meetings with representatives of
21 other ready-mixed concrete producers in the Indianapolis,
22 Indiana metropolitan area. During those meetings and
23 conversations, agreements were reached to fix the price at
24 which ready-mixed concrete was to be sold in the Indianapolis,
25 Indiana, metropolitan area. "

IRVING-DIRECT

1 Q When did this conduct take place, Mr. Irving?

2 A From 2000 to 2004.

3 Q Did the United States also possess certain responsibilities
4 pursuant to this plea agreement?

5 A Yes.

6 Q Was the United States required to advise the Court of your
7 cooperation at your sentencing?

8 A Yes.

9 Q Did the Court nonetheless have sole discretion in what
10 sentence to impose?

11 A Yes.

12 Q Did the United States also agree not to bring further
13 charges against you for activities related to the price fixing
14 agreement?

15 A Yes.

16 MR. SCHLEEF: Permission to approach the witness.

17 THE COURT: Yes.

18 BY MR. SCHLEEF:

19 Q The document I'm handing you has previously been marked
20 government's exhibit number 29. Do you recognize this
21 document?

22 A Yes.

23 Q What is this document?

24 A It's a motion to depart from the guidelines.

25 Q Is this also part of your plea agreement?

IRVING-DIRECT

1 A Yes.

2 Q Was this recommendation to depart from the guidelines given
3 to you for your cooperation that you provided to the
4 government?

5 A Yes.

6 Q Was it the Court's decision whether or not to grant this
7 motion?

8 A Yes.

9 Q Did the Court grant this motion?

10 A Yes.

11 Q Why did the Court grant this motion?

12 A To get my cooperation.

13 Q Did the Court see value in your cooperation?

14 MR. VOYLES: Object.

15 MR. LOCKWOOD: Object.

16 THE COURT: I'll have to sustain that objection.

17 BY MR. SCHLEEF:

18 Q Do you see the stamp in the right top corner?

19 A Yes.

20 Q What stamp is this?

21 A It's Southern District Court stamp.

22 Q Does the date read October 4th, 2005?

23 A Yes.

24 MR. SCHLEEF: Your Honor, we offer government's
25 exhibit 29.

IRVING-DIRECT

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

2 MR. LOCKWOOD: No objection to 29.

3 THE COURT: Exhibit is admitted.

4 (Government's Exhibit 29
5 entered into evidence)

6 MR. SCHLEEF: May I publish this exhibit?

7 THE COURT: You may.

8 BY MR. SCHLEEF:

9 Q I'd like to turn your attention to page 2 of this document.

10 Would you please read the second paragraph on this page.

11 A "Shortly after learning about the United States'
12 investigation which resulted in the charges in this case, the
13 defendant accepted responsibility for his illegal conduct and
14 offered his cooperation knowing that his conduct was being
15 investigated with a view towards the recommendation of an
16 indictment. The defendant has provided, and promises to
17 continue providing cooperation and assistance with the United
18 States.

19 The timing of the Defendant's cooperation was beneficial to
20 the United States' ongoing investigation of others involved in
21 the conspiracy. The defendant has been forthcoming and
22 complete in our interviews with him and has offered evidence
23 and detail of the illegal conduct which the government did not
24 have prior to his cooperation.

25 The United States believes the defendant has been truthful

IRVING-DIRECT

1 and complete in interviews with the United States. The
2 defendant is committed to continue his cooperation by, among
3 other things, making himself available to be interviewed,
4 testify before the grand jury, or testify at any trial that may
5 result from this investigation. As a result of the defendant's
6 cooperation, the investigation has been significantly
7 advanced."

8 Q Mr. Irving, do you take responsibility for your illegal
9 conduct?

10 A Yes.

11 Q Have you already been sentenced pursuant to your plea
12 agreement?

13 A Yes.

14 Q What sentence did the Court impose?

15 A Five months of incarceration and five months of supervised
16 release.

17 Q Was a fine also imposed?

18 A Yes, a hundred thousand dollars.

19 Q Have you served your period of incarceration?

20 A Yes.

21 Q Where did you serve your period of incarceration?

22 A Where?

23 Q Where.

24 A Terre Haute at the prison camp.

25 Q Is your testimony here today also part of your obligations

IRVING-DIRECT

1 under your plea agreement?

2 A Yes, it is.

3 Q Are you subject to penalties for perjury if your testimony
4 is found to be untruthful?

5 A Yes, I am.

6 Q Are you subject to penalty for obstruction of justice?

7 A Yes, I am.

8 Q Are you also subject to penalties for contempt of court?

9 A Yes, I am.

10 Q Mr. Irving, I would like to discuss your background a bit.

11 When did you begin working for IMI?

12 A I started working for IMI in 1988.

13 Q What -- excuse me. What were your responsibilities when
14 you started working for IMI?

15 A I was a common laborer, worked in stone quarry.

16 Q Were you involved in pricing decisions when you began
17 working for IMI in 1988?

18 A No.

19 Q Would you please provide the Court with a brief history of
20 your responsibilities with IMI?

21 A Yes. I worked in the aggregate division of our company up
22 through probably 1995 or 6 in operations. Gradually climbed up
23 through management through the different foreman, manager,
24 assistant area manager, area manager, and then in 1995 or 6 my
25 father transferred me to the ready-mix division to work on

IRVING-DIRECT

1 operations and maintenance in that area.

2 Q Did you ever become involved in determining the price IMI
3 charges for ready-mixed concrete?

4 A Not before 2002.

5 Q So did you become involved with pricing in 2002?

6 A Yes.

7 Q Prior to 2002 when you did become involved with IMI's
8 pricing did you have any contact with competitors?

9 A Yes. On occasion at industry trade shows or association
10 events you would run into competitors.

11 Q Did competitors ever discuss pricing at these meetings?

12 A No.

13 Q Did competitors ever reach agreements regarding the sale of
14 ready-mix concrete at these meetings?

15 A Not to my knowledge.

16 Q Did competitors ever reach agreements on discounts at these
17 meetings?

18 A Not to my knowledge.

19 Q Did competitors ever encourage one another to contact each
20 other to discuss prices?

21 A Not to my knowledge.

22 Q Are you familiar with any of IMI's competitors from these
23 ready-mix association meetings?

24 A Yes.

25 Q Who are you familiar with?

IRVING-DIRECT

1 A From the Builder's company I was familiar with Butch
2 Nuckols, John Blatzheim, Tim Kuebler.

3 From the Carmel company I was familiar with Scott Hughey
4 and his brother Brad.

5 From the Shelby company I met Phil Haehl and Richard Haehl.

6 Q Was the illegality of antitrust violations ever discussed
7 at these meetings?

8 A Not to any detail.

9 Q Was it mentioned?

10 A It may have been mentioned, but it wasn't covered very
11 efficiently or effectively.

12 Q You previously indicated you became involved with IMI's
13 pricing decisions around 2002?

14 A Um-hm.

15 Q What was your position with IMI at this time?

16 A After John Huggins retirement from our company, Dan Butler
17 took his role as executive vice-president, and I was the area
18 manager for the Indianapolis area. At that time Dan Butler
19 asked me to look after our Indianapolis sales staff.

20 Q How long had you been the area manager for Indianapolis at
21 this time?

22 A Probably about two years.

23 Q And you hadn't had any experience with pricing up until
24 this point?

25 A No.

IRVING-DIRECT

1 Q Why did Dan Butler ask you to become involved at this
2 point?

3 A It was a new position for Dan. Previously before John
4 Huggins had done all the sales and Dan was not involved a lot
5 in the sale of ready-mix concrete. So he asked that I help him
6 with that.

7 Q At the time you first became involved with IMI's pricing,
8 did you understand how IMI priced concrete to customers?

9 A Not totally, no. But I tried to learn as I went along.

10 Q After becoming involved in IMI's pricing in 2002, did you
11 attend any other meetings where employees of other ready-mixed
12 concrete companies were also in attendance?

13 A Yes.

14 Q When was the first such meeting you recall?

15 A The first meeting I recall was either April or May or June,
16 I'm not sure of the exact date or month. But it was at the
17 Signature Inn at Allisonville and 69.

18 Q What year was this?

19 A Would have been 2002.

20 Q How long had you been involved with pricing at the time of
21 the Signature Inn meeting?

22 A Probably three or four months.

23 Q How did you find out about this meeting?

24 A The night before the meeting Dan Butler asked me to attend
25 the meeting.

IRVING-DIRECT

1 Q Did Mr. Butler inform you what the meeting was going to
2 involve?

3 A He said it was to address Indianapolis market conditions.

4 Q What did he mean by that? What did you feel he meant by
5 that?

6 A The pricing of the Indianapolis market.

7 Q What was wrong with the pricing in the Indianapolis market?

8 A It was tending to go downward.

9 Q What companies attended this meeting?

10 A Carmel Concrete, Builder's Concrete, Shelby Concrete,
11 Beaver Materials, and IMI.

12 Q Who represented IMI?

13 A Dan Butler and myself.

14 Q Who represented Builder's?

15 A Butch Nuckols and Tim Kuebler.

16 Q Who represented Shelby?

17 A Richard and Phil Haehl.

18 Q Who represented Carmel Concrete?

19 A Scott Hughey.

20 Q Who represented Beaver at that meeting?

21 A Rick Beaver.

22 Q Did you know before attending this meeting that some of
23 IMI's competitors would also be in attendance?

24 A I was not sure but I assumed that they may be there.

25 Q Before attending this meeting did you know which companies

IRVING-DIRECT

1 would likely be in attendance?

2 A No.

3 Q Did you think this was a ready-mix association or a similar
4 industry meeting?

5 A No.

6 Q Why did you not believe it was?

7 A There was no one from the association there that worked for
8 the association.

9 Q Was there a regularly scheduled meeting?

10 A To my knowledge there wasn't.

11 Q What were your feelings about attending this meeting?

12 A I was concerned. I didn't know if I should go to this or
13 not. I didn't know if it was a thing I should be doing.

14 Q Why, what gave you cause for concern?

15 A It seemed like it could be thought of as illegal if our
16 customers would happen to see me there.

17 Q Did you seek any guidance about whether or not you should
18 attend this meeting?

19 A Yes. I asked my father if I should attend.

20 Q Who is your father?

21 A Fred Irving.

22 Q Does he also go by neither name of Pete?

23 A Yes.

24 Q Does your father have a position with IMI?

25 A Yes, Chairman of the Board and President.

IRVING-DIRECT

1 Q What advice did your father give you?

2 A He told me I should go ahead and go, that it wouldn't be a
3 very big deal to just hear people complaining about people
4 cutting prices.

5 Q Could you please describe the day of the meeting for me?

6 A It was a beautiful day. Again, I can't remember the exact
7 month or day.

8 Q How did you get there?

9 A I drove.

10 Q Did you drive by yourself?

11 A I think I did.

12 Q Did you know where to go once you arrived?

13 A I ran into Dan Butler in the lobby and looked around and I
14 can't remember who we saw that we knew, but they said the
15 meeting is upstairs. So we walked up the stairs to a small
16 conference room.

17 Q So had others already arrived by the time you got there?

18 A There were some people there, yes.

19 Q Would you describe the room where the meeting was held?

20 A It was small, probably 14 x 10 possibly, I'm not exactly
21 sure, with the table in the middle and chairs around it.

22 Q Approximately how long did the meeting last?

23 A I can't remember.

24 Q Did anyone at the meeting explain why the meeting had been
25 called?

IRVING-DIRECT

1 A Yes. Scott Hughey opened up with, "I guess I called this
2 meeting, want to talk about the downward spiral of the
3 Indianapolis prices."

4 Q What did Scott Hughey indicate was the problem with the
5 downward spiral. What was the reason for it?

6 A Just people cutting their prices too much.

7 Q When you referred to cutting prices, could that also, that
8 also known as discounting?

9 A Yes.

10 Q Were any suggestions made on how to fix this downward
11 spiral?

12 A Yes.

13 Q What suggestions were made?

14 A The suggestion of confirming prices by calling the
15 competitors to see if they actually quoted that price was
16 arrived at. So we were able to call our competitors to see
17 what price they had actually quoted a customer.

18 Q You indicated that too big of discounts were a problem with
19 the prices in Indianapolis. Was there some discussion about
20 limiting discounts?

21 A Yes.

22 Q How did you feel about having a discussion about the prices
23 IMI was charging its customers in a meeting with competitors?

24 MR. VOYLES: Objection, Your Honor, to how he feels.

25 He can testify to what he did or what he didn't do.

IRVING-DIRECT

1 THE COURT: He can answer the question.

2 Go ahead.

3 A I didn't like it. I thought it was probably sharing too
4 much information with our competitors. I thought it might hurt
5 us. But...

6 BY MR. SCHLEEF:

7 Q Did you know it was illegal?

8 A I wasn't sure if it was illegal. It didn't feel right.

9 Q Who was involved in these discussions at the Signature Inn
10 meeting?

11 A Mainly Scott and Butch. Scott Hughey and Butch Nuckols
12 that I can remember.

13 Q Did others participate?

14 A Yes.

15 Q Did everyone probably say something during the time that
16 they were there?

17 A It's possible.

18 Q Do you recall specifically what Richard Haehl said?

19 A No.

20 Q Do you recall specifically what Philip Haehl said?

21 A No.

22 Q Do you recall specifically what you said?

23 A No.

24 Q Do you recall specifically what Rick Beaver said?

25 A No.

IRVING-DIRECT

1 Q But based upon what you heard and observed were any
2 agreements reached at this meeting?

3 A When we left the meeting, we felt that everybody was in
4 agreement to call each other and confirm prices.

5 Q Did you feel an agreement had been reached on limiting
6 discounts?

7 A I don't think at the first meeting that we reached that
8 agreement.

9 Q Is it possible others walked away with that understanding?

10 MR. LOCKWOOD: I'm going to object to what possibly
11 were in the minds of others.

12 THE COURT: It's possible, I'll sustain that
13 objection.

14 BY MR. SCHLEEF:

15 Q Can you remember for sure whether or not limitation on
16 discounts was agreed upon?

17 A No, I can't.

18 Q Were you nervous about attending this meeting?

19 A Yes.

20 Q Do you think that would have affected your memory?

21 A Most likely, yes.

22 Q What companies agreed to contact each other regarding the
23 prices their companies were charging for concrete?

24 A I was under the assumption that Builder's, Beaver, Carmel,
25 Shelby and IMI were all, have all agreed to contact each other.

IRVING-DIRECT

1 Q Could you remind me again who represented Carmel at this
2 meeting?

3 A Scott Hughey.

4 Q Who represented Builder's?

5 A Butch Nuckols and Tim Kuebler.

6 Q Who represented Shelby?

7 A Richard and Philip Haehl.

8 Q Who represented Beaver?

9 A Rick Beaver.

10 Q How do you know these companies had agreed to contact one
11 another regarding the prices they were charging for ready-mixed
12 concrete?

13 A Say that again, please.

14 Q How did you know that these companies had agreed to contact
15 one another regarding the prices they were charging for
16 ready-mixed concrete?

17 A Basically it was by the way people handled themselves. No
18 one objected or made any comment that they wouldn't. I assumed
19 that everybody would.

20 Q Did you sign a piece of paper stating you agreed?

21 A No.

22 Q Did you raise your hand to let everybody know you agreed?

23 A No.

24 Q Did you do anything differently from anyone else at the
25 meeting to indicate you agreed?

IRVING-DIRECT

1 A No.

2 Q Nonetheless, are you testifying today under oath that you
3 still reached an agreement?

4 A Yes.

5 Q Do you remember anyone at this meeting appearing
6 intimidated?

7 A Other than myself, no.

8 Q Why were you intimidated?

9 A I was nervous. I didn't know a lot of the people there.

10 Very well, if at all.

11 Q Did Rick Beaver agree to contact other competitors
12 regarding the prices Beaver was charging for concrete?

13 A I was under the assumption he had.

14 Q Did you ever exchange business cards with Rick Beaver?

15 A Yes.

16 Q How long after the Signature Inn meeting did this exchange
17 occur?

18 A Probably four or five months.

19 Q Why did you exchange business cards with Rick Beaver?

20 A If I needed to contact him, I needed his phone number.

21 Q Did you have his number?

22 A I got it from him, yes.

23 Q Did you have any reason to contact Rick Beaver?

24 A Yes.

25 Q What would that reason be?

IRVING-DIRECT

1 A There was a job right across from one our McCordsville
2 facility that Custom Concrete was doing the concrete work on.
3 And our sales staff told me that Beaver had the low price. It
4 was Custom's yearly contract price to them. And heard it was
5 \$61. I heard that from one of the sales staff, I'm not sure
6 which one. And went to Dan Butler, asked him about it. He
7 said, "Go ahead, call Rick."

8 So I did and Rick confirmed that that was their contract
9 price to Custom.

10 Q Was this conversation consistent with the agreement reached
11 at the Signature Inn meeting to contact one another regarding
12 prices?

13 A Yes.

14 Q Did you have another meeting with multiple competitors
15 where you discussed pricing and discounts in the fall of 2003?

16 A Yes.

17 Q Where was this meeting held?

18 A At Butch Nuckols' horse barn.

19 Q How did you find out about this meeting?

20 A Dan Butler asked me to attend the day before.

21 Q Why had this meeting been called?

22 A To talk about the Indianapolis area and the prices.

23 Q Was there a specific reason the meeting was called?

24 A To my knowledge, no.

25 Q Did you know the meeting was going to involve prices?

IRVING-DIRECT

1 A I assumed that.

2 Q Did you know there was going to be any discussion about
3 pricing agreements?

4 A I assumed that.

5 Q What did you think the discussion would involve?

6 A I thought discussion would go as the other meeting went,
7 trying to limit discounts, try and call each other more to
8 confirm prices. Talk about the mixtures, price increase.

9 Q Had there been a previous agreement on the limiting of
10 discounts?

11 A Yes.

12 Q And what had previously been agreed upon as that limit?

13 A Five to 5 and a half dollar discount.

14 Q What companies had been part of this agreement?

15 A Builder's, Carmel, Beaver, Shelby, IMI.

16 Q Had that agreement been working?

17 A No.

18 Q But it was an agreement nonetheless?

19 A Yes.

20 Q Why hadn't this agreement been working?

21 A The basic problem with the agreement is that no one wanted
22 to give up their customers. So they were quoting them with the
23 lower price. You were not going to lose your customer. You
24 you're going to match or beat their price to keep your
25 customer.

IRVING-DIRECT

1 Q So is it fair to say people have been cheating on the
2 agreement?

3 A Yes.

4 Q So despite the fact people had been cheating, did you still
5 want the agreement to work?

6 A Yes.

7 Q Does it make sense to you that someone would attend this
8 meeting if they didn't want the discounting agreement to work?

9 MR. LOCKWOOD: I'm going to object to that, Your
10 Honor, it calls for speculation.

11 THE COURT: Sustained.

12 MR. LOCKWOOD: It's not relevant what makes sense to
13 him. I'm sorry.

14 THE COURT: I'm sorry, I sustained the objection.

15 MR. LOCKWOOD: I'm sorry.

16 THE COURT: That's all right.

17 MR. SCHLEEF: Permission to approach the witness.

18 THE COURT: Yes.

19 BY MR. SCHLEEF:

20 Q What I am giving you has previously been marked
21 government's exhibit 30.

22 Do you recognize this?

23 A Yes, I do.

24 Q What is that?

25 A It's my calendar, my daytimer.

IRVING-DIRECT

1 Q I'm handing you a photocopy of a page in that daytimer.

2 It's been marked government's exhibit 30A. You can also find
3 it in there.

4 Do you recognize that?

5 A Yes.

6 Q What is that?

7 A That is a page in October out of my daytimer.

8 MR. SCHLEEF: Your Honor, we offer exhibits 30 and 30A
9 into evidence.

10 MR. VOYLES: MA-RI-AL has no objection, Your Honor.

11 MR. LOCKWOOD: No objection.

12 THE COURT: Exhibits admitted.

13 (Government's Exhibits 30,
14 30A entered into evidence)

15 MR. SCHLEEF: May I publish government's exhibit 30A
16 to the jury?

17 THE COURT: Yes.

18 BY MR. SCHLEEF:

19 Q Mr. Irving, I would like to draw your attention to an entry
20 on October 22nd at 1:00 p.m.

21 A Yes.

22 Q What is written on that date?

23 A Fat Man and Little Boy.

24 Q What does this entry signify?

25 A That's what Dan Butler called Butch Nuckols and Scott

IRVING-DIRECT

1 Hughey.

2 Q Who in this instance is the Fat Man?

3 A Butch Nuckols.

4 Q And who is the Little Boy?

5 A Scott Hughey.

6 Q Did you believe that this meeting was going to be an IRMCA
7 meeting?

8 A No.

9 Q Why did you not think it was going to be a concrete
10 association meeting?

11 A At that time I was involved with the IRMCA and would know
12 if it was a regular scheduled IRMCA meeting.

13 Q And where was this meeting held?

14 A At Butch Nuckols' horse barn.

15 Q Could you describe Butch Nuckols' property?

16 A It's beautiful. It has two or three really nice houses,
17 ponds. Nice fence, beautiful hay field. Great big barn with a
18 training area for horses, an area up front for lounging and
19 eating and dining.

20 Q Could you describe how the horse barn was decorated?

21 A It was close to Halloween, so I think they were having a
22 kids Halloween party. There was a lot of Halloween decorations
23 up and being put up.

24 Q Had others already arrived by the time you showed up?

25 A Yes.

IRVING-DIRECT

1 Q Besides IMI, what companies were represented at this
2 meeting?

3 A Builder's, Carmel, Beaver, Shelby and IMI.

4 Q Were these the same companies as at the previous meeting?

5 A Yes.

6 Q Who represented Carmel at this meeting?

7 A Scott Hughey.

8 Q Who represented Builder's?

9 A Butch Nuckols and John Blatzheim.

10 Q Who represented Shelby Materials?

11 A Either Richard or Phil Haehl, I'm not sure, one of the two.

12 Q Who represented Beaver Materials?

13 A Chris Beaver.

14 Q Prior to this meeting who had represented Beaver Materials
15 at the meetings you had attended?

16 A Rick Beaver.

17 Q How do you differentiate between Chris Beaver and Rick
18 Beaver?

19 A Rick has dark hair and Chris has lighter hair.

20 Q Do you know why Chris Beaver represented Beaver Materials
21 at this meeting instead of Rick?

22 A Dan Butler told me that Rick had taken the prices or taken
23 the previous agreement and made a mistake with it and it had
24 let them quote jobs at too high a price. So they lost some
25 business. And he was replaced by Chris.

IRVING-DIRECT

1 Q So is it fair to say Rick wasn't following the previous
2 agreement correctly?

3 A Yes.

4 Q So why would Beaver Materials send Chris Beaver instead of
5 Rick?

6 MR. LOCKWOOD: I'll object to that, Your Honor, calls
7 for speculation.

8 THE COURT: I'll sustain it.

9 BY MR. SCHLEEF:

10 Q Based upon your experience in the concrete industry, what
11 do you believe would be accomplished by replacing Rick -- Chris
12 Beaver -- I mean by replacing Rick Beaver with Chris Beaver?

13 MR. LOCKWOOD: Objection.

14 MR. VOYLES: Objection, Your Honor.

15 THE COURT: He can answer that question.

16 Go ahead.

17 A If there was a mistake made, changing the personnel to
18 correct that mistake would be an appropriate action.

19 BY MR. SCHLEEF:

20 Q Based upon your experience in the concrete industry would
21 this indicate to you that the company wanted to adhere to an
22 agreement?

23 MR. LOCKWOOD: Objection.

24 MR. VOYLES: Objection.

25 THE COURT: I'll sustain that.

IRVING-DIRECT

1 BY MR. SCHLEEF:

2 Q Did anyone at this meeting explain why the meeting had been
3 called?

4 A Yes. Butch Nuckols said, "I called this meeting to again
5 try and straighten out the prices in Indianapolis."

6 Q Did you play any role in the discussions at this meeting?

7 A Yes.

8 Q What role did you play?

9 A Toward the end of the meeting I raised my opinion when
10 Scott Hughey was trying to make the group on go for a 3-dollar
11 discount level and I just, I didn't think that was appropriate.
12 I told him that, I said, "We can't get the \$5 and \$5.50 to
13 work. There's no use in trying for a 3-dollar one. If the
14 5-dollar discount would possibly work, then maybe later you
15 could try the 3-dollar one." But it made no sense to do a
16 3-dollar discount at that time when we couldn't get a \$5 or
17 \$5.50.

18 Q So you discussed the discounting agreement again?

19 A Yes.

20 Q Who was involved in these discussions?

21 A I can't remember exactly who. I know Scott was and I know
22 Butch was. But other than that I can't remember.

23 Q You were involved, weren't you?

24 A Yes.

25 Q Were others in attendance also involved?

IRVING-DIRECT

1 A Yes.

2 Q Would Chris Beaver include one of those who was in
3 attendance?

4 A Yes.

5 Q Do you recall specifically what Chris Beaver said?

6 A No.

7 Q Do you recall specifically what John Blatzheim said?

8 A No.

9 Q Do you recall specifically what one of the Haehls said?

10 A No.

11 Q Besides what you just related to me, do you recall
12 specifically what you said?

13 A No.

14 Q After all this discussion were any agreements reached at
15 this meeting?

16 A Yes.

17 Q What was the agreement reached?

18 A We agreed to keep calling each other, to confirm prices,
19 work on a \$5.50 discount. Dan and myself announced we were
20 going to have a 2-dollar price increase for the 2004 year.
21 That was discussed. I don't know if I said that or Dan said
22 that.

23 We did talk about IMI having a winter charge that was going
24 to be a 3-dollar charge from December first to March 31st on a
25 per yard concrete. That was discussed some. I don't think

IRVING-DIRECT

1 anybody came to an agreement on that. We told them we were
2 going to do it. I don't think that was agreed to by everybody
3 or liked by anybody.

4 Q How was the price increase and the winter surcharge
5 received by the group?

6 A Oh, everybody liked it. A lot of people or a couple
7 people, I think Butch and John might have thought it needed to
8 be more. But we said we were going up \$2 and we were going to
9 implement a winter conditions charge of \$3 a yard.

10 Q You said when you stated this there was some general
11 discussion. Was everyone involved to some degree in this
12 general discussion?

13 A To the best of my knowledge. I can't remember exactly.

14 Q Do you feel that Chris Beaver was involved in this
15 discussion even if you can't remember exactly what he said?

16 A Yes.

17 Q Who agreed to stick to the \$5.50 discount at this meeting?

18 A When I left the meeting, I assumed that everybody was in
19 agreement to stick to that.

20 Q Who would everybody be?

21 A Scott Hughey, Butch Nuckols, John Blatzheim, one of the
22 Haehls, and Chris Beaver.

23 Q And were these the same companies that were at the previous
24 meetings?

25 A Yes.

IRVING-DIRECT

- 1 Q How do you know they agreed?
- 2 A No one objected to that at the meeting.
- 3 Q Again, did you sign a piece of paper stating you agreed?
- 4 A No.
- 5 Q Did you raise your hand again just to make sure everybody
- 6 knew that you were in agreement?
- 7 A No.
- 8 Q Did you do anything differently from anyone else at that
- 9 meeting to indicate that you agreed?
- 10 A Not that I remember.
- 11 Q Nonetheless, are you testifying today under oath that you
- 12 still reached an agreement?
- 13 A Yes.
- 14 Q Based upon the agreements that you reached at the meeting
- 15 you have just testified to, did you plead guilty to price
- 16 fixing?
- 17 A Yes.
- 18 Q Did the FBI interview you on May 25th, 2004?
- 19 A Yes.
- 20 Q After you had reached these price fixing agreements?
- 21 A Yes.
- 22 Q Did the FBI agent interviewing you identify himself?
- 23 A Yes.
- 24 Q Were you told that the interview concerned an allegation of
- 25 price fixing?

IRVING-DIRECT

1 A Yes.

2 Q And even though you were guilty, did you ever at any time
3 lie to the FBI during your interview?

4 A Not to my knowledge. No.

5 Q How has your guilty plea affected your employment with IMI?

6 A IMI had to reach an agreement with the Federal Trade
7 Commission.

8 The four of us that were charged cannot hold an office for
9 two and a half years in IMI.

10 The two that are left working, myself and Dan Butler, can't
11 be an officer of the board. We can't work with pricing or
12 sales.

13 Q Has there been negative implications?

14 A Negative as how?

15 Q Has your employment been negatively fixed? Would you
16 consider this a negative consequence?

17 A It's hampered my ability to do my job.

18 Q Do you regret coming forward and telling the truth?

19 A No.

20 MR. SCHLEEF: I have nothing further for this witness.
21 Can I grab the document?

22 THE COURT: Cross-examine.

23 We'll go to about 20 after 12:00 before we break for lunch.

24

25

IRVING - CROSS / VOYLES

1 CROSS-EXAMINATION

2

3 BY MR. VOYLES:

4 Q Good morning, Mr. Irving.

5 A Good morning.

6 Q My name is Jim Voyles. I represent the MA-RI-AL
7 Corporation.

8 Do you know Allyn Beaver?

9 A No.

10 Q Have you ever met him?

11 A I don't think so.

12 Q As he sits here today you don't recognize him?

13 A Correct. Sorry.

14 Q Wasn't at any of the meetings?

15 A (Witness nodded negatively.)

16 Q You never talked to him?

17 A No.

18 Q On May 25th of 2004 when the FBI came, you didn't talk to
19 him at all, did you?

20 A Not very much, no.

21 Q No. All you did say is you want to go get your lawyer?

22 A Yes, sir.

23 Q Is that correct?

24 Did you have a conversation with him before you ever talked
25 to the Bureau?

IRVING - CROSS / VOYLES

1 A Yes.

2 Q So when the attorney for the government asked you whether
3 you lied to him, you never talked to him, correct?

4 A Correct.

5 Q Okay. Now my understanding, did you attend a meeting that
6 Mr. Nuckols and Mr. Haehl said took place that your company was
7 involved in in the year 2000?

8 A No.

9 Q Did you ever hear about a horse barn meeting in the year
10 2000?

11 A No.

12 Q Your recollection is the only meetings that you recall, you
13 had two horse barn meetings in the year 2002 and 2003 and you
14 also had a meeting at the Signature Inn, is that correct?

15 A Correct.

16 Q The Signature Inn meeting was in 2000 or 2002?

17 A 2002.

18 Q 2002. So you don't have any recollection or any indication
19 that any meeting ever took place in the year 2000?

20 A I had no knowledge of that.

21 Q Okay. Now you indicated, sir, that your responsibility in
22 the company in the year 2002 was what?

23 A I was area manager for Indianapolis area.

24 Q Did you have a role in terms of a corporate office at that
25 time?

IRVING - CROSS / VOYLES

- 1 A Yes.
- 2 Q What was it?
- 3 A I was a vice-president, operations.
- 4 Q How big was your company then? In other words, how many
- 5 plants did you have?
- 6 A Counting aggregate and asphalt and concrete, close to 180.
- 7 Q 180 plants?
- 8 A (Witness nodded affirmatively.)
- 9 Q Is that correct?
- 10 A (Witness nodded affirmatively.)
- 11 Q You have to answer because --
- 12 A Yes. I'm sorry.
- 13 Q She can't take down your head nods. Thank you.
- 14 How many counties did you cover?
- 15 A I don't know offhand.
- 16 Q Pretty much all of Indiana?
- 17 A A large percentage of Indiana.
- 18 Q Other states also?
- 19 A Yes.
- 20 Q Illinois?
- 21 A At that time, no.
- 22 Q Kentucky?
- 23 A Yes.
- 24 Q Ohio?
- 25 A Yes.

IRVING - CROSS / VOYLES

1 Q What else?

2 A Tennessee.

3 Q Tennessee. And what was Mr. Butler's responsibility for
4 the company at that time when you were in 2002?

5 A In 2002, Dan had taken John Huggins place as executive
6 vice-president and was in charge of basically Indiana.

7 Q Would it be fair to say that Mr. Huggins was retiring about
8 that time?

9 A He retired at the end of 2001.

10 Q And he had been in the position that Mr. Butler had been in
11 before Mr. Butler?

12 A Yes.

13 Q You had been in the company a long time because it's a
14 family owned company, you kind of work your way up, is that
15 correct?

16 A Correct.

17 Q Now, you indicated to the government counsel that when you
18 went to your first meeting in 2002, you were not sure why you
19 were going other than the fact Mr. Butler had suggested you go?

20 A Yes.

21 Q Had you been under the impression from Mr. Butler there had
22 been any kind of understanding or agreement in place since
23 2000?

24 A No.

25 Q So if other people have testified that IMI was involved in

IRVING - CROSS / VOYLES

1 some kind of agreement from 2000, you have no knowledge of
2 that?

3 A That's correct.

4 Q Nor did Mr. Butler indicate there had been any kind of
5 agreement from 2000 forward, correct, to you?

6 A To me, no.

7 Q All right. And you have never attended any kind of meeting
8 that witnesses may have said took place in 2000, is that
9 correct?

10 A That's correct.

11 Q When you show up at this meeting in 2002, the first meeting
12 you recall is that at the Signature Inn, is that correct?

13 A That's correct.

14 Q Prior to that had you had -- excuse me.

15 Do you remember exactly, I think you said it was a nice
16 day, you're not sure exactly what month, but it was summer,
17 spring?

18 A Probably summer. May, June.

19 Q Prior to this had you had meetings about prices before that
20 May or June meeting of 2002?

21 A With competitors?

22 Q Yes.

23 A No.

24 Q Do you remember having a meeting in January of 2002 with
25 anybody before this meeting?

IRVING - CROSS / VOYLES

1 A No.

2 Q Okay. Now, when you had the meeting in the Signature Inn
3 it was your testimony that you were nervous, is that correct,
4 because you were going to be with competitors?

5 A Yes.

6 Q And the normal time when you were always with competitors
7 was when you were at these builders meetings, is that right?

8 A Yes.

9 Q Like trade shows, trade associations?

10 A Yes.

11 Q And when you got to this meeting you said it was a room,
12 and you think that somebody had rented it, you don't know who,
13 maybe Mr. Hughey, maybe Mr. Nuckols?

14 A Possibly. I don't know.

15 Q And at the meeting you said you recall that Builder's,
16 Mr. Nuckols, was representing them, correct?

17 A Yes.

18 Q And was he the president or owner of that company?

19 A Yes.

20 Q And you have not only a family interest, but had an
21 executive role with your company, is that correct?

22 A Yes.

23 Q And was Mr. Butler at the same meeting?

24 A Yes.

25 Q He also had an executive role with your company, correct?

IRVING - CROSS / VOYLES

- 1 A Yes.
- 2 Q Mr. Hughey is the owner of Carmel Concrete, is he not?
- 3 A Yes.
- 4 Q And Mr. Haehl, Richard, owned Shelby, correct?
- 5 A Yes.
- 6 Q Does Mr. Rick Beaver own anything?
- 7 A I don't know.
- 8 Q You knew, did you not, he was just a salesman?
- 9 A No, I didn't.
- 10 Q Did you ask?
- 11 A No.
- 12 Q And at that time you didn't have any knowledge who
- 13 Mr. Allyn Beaver was, or his role or ownership interest in
- 14 Beaver Materials, did you?
- 15 A No.
- 16 Q Okay. And you indicated that at that meeting -- how long
- 17 did the meeting last, by your recollection?
- 18 A I can't remember honestly. I can't remember if it was an
- 19 hour or two hours.
- 20 Q And you had conversation, and I think your recollection was
- 21 when you left that meeting, at least you testified on
- 22 direct-examination, as far as you were concerned there wasn't
- 23 any agreement about discounts, correct?
- 24 A To my recollection, that's correct.
- 25 Q Nobody had reached any kind of an agreement, correct?

IRVING - CROSS / VOYLES

- 1 A No. We had reached an agreement that -- to call each other
2 and confirm prices.
- 3 Q All you had reached was to have a conversation that if I
4 had a situation I wanted to call you, I could call you?
- 5 A Correct.
- 6 Q And I could ask you what I was charging, period, correct?
- 7 A Correct.
- 8 Q You can do that to anybody, can't you? Can you call
9 Wal-Mart and ask them what they are charging if you are at
10 another Wal-Mart store?
- 11 A I don't know.
- 12 Q Can you call Target? Can you call across the street and
13 say, "What are you selling the --"
- 14 A Yes, you can call a store and ask them.
- 15 Q If you are a Wal-Mart you can call Target and say, "What
16 are your prices today?"
- 17 A I don't know that.
- 18 Q Let me ask you this: You didn't have an agreement about
19 discounting from 2002 and you only had an agreement to call
20 competitors if you wanted to, correct?
- 21 A That is what I remember.
- 22 Q Okay. And to have an agreement both sides have to agree,
23 don't they?
- 24 A Yes.
- 25 Q If I tell you I'm going to do something and I don't do it,

IRVING - CROSS / VOYLES

1 we don't have an agreement, do we?

2 A I guess we would not have an agreement.

3 Q If I say I'm going to walk out the door right now and not
4 ask you anymore questions, but I continue to ask you questions,
5 does that mean we have an agreement, or not?

6 A No.

7 Q It means we don't have an agreement, doesn't it?

8 A Yes.

9 Q Okay. When you left the meeting you didn't have an
10 agreement about discounting?

11 A That's correct.

12 Q The only agreement you had was to call each other -- I
13 agree to call you, you agree to call me, and we will talk,
14 correct?

15 A Correct.

16 Q Do you have any specific recollection -- I think maybe I
17 know the answer, but you don't have any specific recollection,
18 do you, about what anybody said at that meeting, other than
19 when you left you thought we would all call each other?

20 A Correct.

21 Q And did you call Mr. Rick Beaver when the meeting was over?

22 A Not that meeting.

23 Q So you had no telephone conversation with anybody; Rick,
24 Chris, Allyn, anybody after that meeting?

25 A Correct.

IRVING - CROSS / VOYLES

- 1 Q Correct?
- 2 A Correct.
- 3 Q Okay. Did you have another meeting after that -- well,
4 let's say May meeting in 2002?
- 5 A Yes.
- 6 Q Okay. And who requested you come to a meeting, and what
7 did they say to you in that request?
- 8 A Dan Butler asked me to go to a meeting at Butch Nuckols'
9 horse barn to talk about the Indianapolis market.
- 10 Q And when was this?
- 11 A When he asked me or when the meeting --
- 12 Q Yes, approximately when he asked you. You have been to a
13 Signature meeting and you don't have an agreement, other than
14 to call each other, and then at some point Mr. Butler says he
15 wants you to go to another meeting. When is that in
16 relationship to when you had the Signature Inn conversations?
- 17 A I would say it was a four to six month period.
- 18 Q And this time you have been told by Mr. Butler it was to go
19 to Mr. Nuckols' horse barn?
- 20 A Yes.
- 21 Q Is that right?
- 22 A Yes.
- 23 Q Had you ever been there before?
- 24 A No.
- 25 Q When you arrived at that location you -- was it a business

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- 1 day?
- 2 A Yes.
- 3 Q I think you mentioned you looked at your calendar and said
- 4 it was at 1:00 o'clock in the afternoon?
- 5 A That meeting was, yes.
- 6 Q And when you arrived who was there?
- 7 A I can't remember.
- 8 Q Do you remember who was at the meeting?
- 9 A Yes, but I can't remember who was there when I got there.
- 10 Q Okay, who do you remember being at the meeting after you
- 11 got there and everybody got there?
- 12 A Butch Nuckols -- this is in 2002, correct?
- 13 Q Yes, sir.
- 14 A Butch Nuckols, Tim Kuebler --
- 15 Q For the record, who is Mr. Kuebler?
- 16 A Tim Kuebler is a salesperson that worked for Builder's.
- 17 Q He is one of the employees of Mr. Nuckols' company,
- 18 Builder's?
- 19 A Uh-huh.
- 20 Q And who else?
- 21 A Did I say Scott Hughey?
- 22 Q No, you hadn't yet.
- 23 A Scott Hughey from Carmel. Richard and Philip Haehl from
- 24 Shelby. Myself and Dan Butler and Rick Beaver.
- 25 Q Again, the conversation was -- according to Mr. Butler, was

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1 there any kind of indication of the subject matter, other than
2 just the Indianapolis market?

3 A I assumed it would be the same format as the Signature Inn
4 meeting.

5 Q So you were going to talk about the telephone conversations
6 that you other competitors are talking to each other about,
7 none of which have taken place between you and Beaver?

8 A Correct.

9 Q And when you get -- at the meeting who kind of runs the
10 meeting?

11 A I felt that Butch ran the meeting. Butch Nuckols from
12 Builder's.

13 Q And you talked about other things, did you not, other than
14 these telephone conversations that were supposed to take place
15 between competitors?

16 A Yes.

17 Q Did you talk about the ready-mix business in general?

18 A Yes.

19 Q And how long do you think the meeting lasted?

20 A I can't remember.

21 Q Would it be about the same length of time you discussed
22 before, maybe an hour or two, two hours?

23 A Could have been. I cannot remember.

24 Q Did you talk about winter pricing?

25 A Not at that meeting, no.

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- 1 Q Did you talk about additives?
- 2 A Possibly.
- 3 Q Did you talk about paving?
- 4 A Yes.
- 5 Q Do you know whether or not Beaver Materials has any paving
6 business at all?
- 7 A I do not.
- 8 Q Do you recall or have any recollection at all what
9 conversation, or what part of the conversation that Rick Beaver
10 participated in?
- 11 A No, I do not.
- 12 Q Do you ever remember him talking?
- 13 A No.
- 14 Q The answer is no?
- 15 A No.
- 16 Q Okay. Now, when you left the meeting was it your
17 understanding that you were going to do exactly what had
18 happened five or six months before, we are just going to call
19 each other and check with each other about prices?
- 20 A No. After the second meeting that I attended there was an
21 attempt to try and limit the discount to five to five and a
22 half dollars.
- 23 Q It was an attempt to have an agreement, correct?
- 24 A Everybody said they would try, yes.
- 25 Q Did anybody verbally say that? Did Mr. Rick Beaver ever

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1 say that?

2 A I don't know.

3 Q And, as we said, nobody takes a vote, nobody puts in a
4 little piece of paper, nobody raises their hand, correct?

5 A Correct.

6 Q You have got somebody running a meeting, but nobody
7 determining whether or not anybody is participating, is that
8 right?

9 A That's correct.

10 Q And as soon as you leave that meeting everybody starts
11 doing other things, don't you?

12 A Yes.

13 Q And you are doing with your Indianapolis plants, everybody
14 else is doing it, so you don't have an agreement, do you,
15 Mr. Irving?

16 A We are not following the agreement.

17 Q Well, either you have an agreement or you don't, isn't that
18 right?

19 A The agreement was that we would attempt to try.

20 Q Okay, so you have an attempt to try an agreement?

21 A Uh-huh.

22 Q You don't have an agreement, do you?

23 A Not a very good one.

24 Q Well, you don't have any agreement. You walk out and as
25 soon as you get in your cars and you are leaving you guys are

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1 cutting each others throats that quick, aren't you?

2 A (No response)

3 Q Yes?

4 A Yes.

5 Q So you don't have an agreement?

6 MR. EPSTEIN: Objection. Asked and answered.

7 THE COURT: Sustained.

8 Q Did you, when you left there, begin bidding jobs different
9 than what everybody had talked about?

10 A I didn't, no.

11 Q Did your company?

12 A I don't think so.

13 Q But everybody else did?

14 A It is possible.

15 Q Well, you knew it because you are finding it out from your
16 people who you do business with, correct?

17 A Correct.

18 Q You learn immediately that the people that you sell
19 concrete to call you and say, "Hey, my price from so-and-so is
20 much lower than yours," and you immediately try to save that
21 customer, don't you?

22 A Yes.

23 Q And you lowered your price either lower or the same as or
24 to beat the competitor, correct?

25 A On occasion.

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1 Q How many occasions between May and the meeting that you
2 have on Halloween take place? Hundreds of times that you don't
3 have any kind of agreement, correct?

4 A Correct.

5 Q Okay. And, as a matter of fact, how many times between May
6 and October do you meet with people, other than Rick Beaver,
7 Allyn Beaver, Chris Beaver, on these telephone conversations?
8 May to October?

9 A Of 2002?

10 Q Yes, sir.

11 A None with the Beavers.

12 Q But you are meeting with everybody else, aren't you? You
13 are meeting with Richard Haehl, Philip Haehl?

14 MR. EPSTEIN: Objection, not in evidence.

15 THE COURT: He can answer yes or no.

16 A It is possible I might have met with them once.

17 Q Let's talk about a meeting --

18 THE COURT: Let's take our lunch break.

19 MR. VOYLES: Thank you, Your Honor.

20 THE COURT: It's quite all right.

21 While you are out, ladies and gentlemen, don't discuss this
22 case among yourselves or with anybody else. Don't form or
23 express an opinion on the case until I give it to your final
24 deliberations.

25 With that in mind, we will break until 1:30.

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1 (The Court recessed from 12:20 P.M. to 1:45 P.M.)

2 (Trial resumed 1:45 p.m.)

3 THE COURT: Bring down the jury, please.

4 (In the presence of the jury.)

5 THE COURT: You may be seated. Ladies and Gentlemen,
6 as you can see, the clock shows that we're 15 minutes late.
7 And I want you to be sure that you understand it's not the
8 Governor's fault there's a time problem in here, it's mine.
9 It's bad planning. Entirely my fault, got nothing to do with
10 this case.

11 You may continue with your cross-examination.

12 MR. VOYLES: Thank you, Your Honor.

13 CROSS-EXAMINATION (Resumed.)

14 BY MR. VOYLES:

15 Q Good afternoon, sir.

16 A Good afternoon.

17 Q I think we left off after the noon recess at an area where
18 you were discussing the October meeting at the horse barn?

19 A Which year.

20 Q The year 2002.

21 A Okay.

22 Q Is that correct?

23 A Could be.

24 Q It's your recollection that you attended how many meetings?

25 A At the horse barn?

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- 1 Q Yes.
- 2 A Two at the horse barn.
- 3 Q And one meeting at the Signature Inn?
- 4 A Correct.
- 5 Q And it's your recollection that the Signature Inn meeting
- 6 was in the May, June, spring of 2002, correct?
- 7 A Correct.
- 8 Q That there was a horse barn meeting in the fall of 2002?
- 9 A Correct.
- 10 Q Is that correct?
- 11 A Correct.
- 12 Q And then there was another horse barn meeting in 2003?
- 13 A Correct.
- 14 Q Was that around or near Halloween?
- 15 A Yes.
- 16 Q I think we're on second horse barn meeting?
- 17 A Okay.
- 18 Q Which would have been in 2002.
- 19 A 2003. The second.
- 20 Q I'm sorry, the second meeting in 2002?
- 21 A Okay.
- 22 Q Was really the first horse barn meeting for you?
- 23 A Correct.
- 24 Q Because you don't recall any horse barn meeting in 2000?
- 25 A No.

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1 Q Or any meeting anywhere?

2 A No.

3 Q Okay. Is it your recollection that the meeting in 2002 at
4 the horse barn lasted again about 45 minutes to an hour or so?

5 A I don't know. I cannot remember.

6 Q And it is your recollection that the individual who was
7 there from Beaver Materials was Rick Beaver?

8 A Correct.

9 Q Had Mr. Rick Beaver been at the Signature Inn meeting?

10 A Yes.

11 Q And is it your recollection and testimony that you don't
12 recall any conversation or statements that Rick Beaver made at
13 either of those two meetings?

14 A Correct.

15 Q And you have indicated that all you did at that meeting was
16 have conversations among yourselves, the first meeting at the
17 Signature Inn, you all agreed to call each other, that was the
18 only thing that you agreed to, correct?

19 A My recollection is that, yes.

20 Q And the second meeting then you discussed discounts, is
21 that correct?

22 A Correct.

23 Q And we have already talked about that nobody at the meeting
24 ever lived up to their agreement so there couldn't have been an
25 agreement, correct?

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1 MR. SCHLEEF: Objection, asked and answered.

2 THE COURT: Yes, it's a little repetition where we
3 have been with this witness.

4 BY MR. VOYLES:

5 Q All right. You did testify earlier that if there isn't an
6 agreement between the parties, if both people don't agree, then
7 you don't have an agreement, correct?

8 A I think I said that.

9 Q And after you left that meeting in the fall of 2002, or the
10 latter part of 2002, did you have any contact with your other
11 competitors?

12 A Yes.

13 Q Did you have a meeting at Burger King in the fall of 2002
14 with Scott Hughey, Dan Butler and yourself to discuss pricing?

15 A Yes.

16 Q Was Rick Beaver at that meeting?

17 A No.

18 Q Was Chris Beaver at that meeting?

19 A No.

20 Q Was Allyn Beaver at that meeting?

21 A No.

22 Q Did you have another meeting at the horse barn sometime in
23 2003?

24 A My book shows it was October, October 22nd, 2003.

25 Q If people say the meeting was in July of 2003, you don't

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1 recall a meeting in 2003 in July at the horse barn?

2 A No.

3 Q So between the fall meeting in 2002 and the horse barn
4 meeting in 2003, the same thing happened between the meeting
5 you had at the Signature Inn, nobody is doing anything so there
6 is no agreement, correct?

7 A Correct.

8 MR. SCHLEEF: Again, asked and answered. I'm not even
9 sure what that question was.

10 MR. VOYLES: Well, he answered "yes" to the question.

11 THE COURT: I think I'm going to leave it in.

12 Go ahead.

13 BY MR. VOYLES:

14 Q Now, in 2003 did you have a meeting at the Micro Brewery on
15 the south side of Indianapolis, I-465 and Southport Road?

16 A Yes.

17 Q Do you remember when that meeting was?

18 A It was at some point after the October 22nd meeting.

19 Q After the fall meeting in 2002, correct?

20 A 2003.

21 Q After the fall meeting in 2003?

22 A Correct.

23 Q And you're present, Mr. Hughey is present, Mr. Butler is
24 present, Mr. Philip Haehl is present, Mr. Nuckols is present.

25 Is that correct?

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- 1 A I think so.
- 2 Q And was Mr. Rick Beaver there?
- 3 A No.
- 4 Q Was Mr. Allyn Beaver there?
- 5 A No.
- 6 Q Was Mr. Chris Beaver at that meeting?
- 7 A No.
- 8 Q You discussed pricing?
- 9 A Yes.
- 10 Q Did you have a meeting in 2003 in the fall at the Loon Lake
11 Lodge?
- 12 A Yes.
- 13 Q Were you present?
- 14 A Yes.
- 15 Q Was Mr. Dan Butler present?
- 16 A Yes.
- 17 Q Was Butch Nuckols present?
- 18 A Yes.
- 19 Q And John Blatzheim present?
- 20 A Yes.
- 21 Q Was Mr. Rick Beaver there?
- 22 A No.
- 23 Q Chris Beaver?
- 24 A No.
- 25 Q Allyn Beaver?

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- 1 A No.
- 2 Q You discussed pricing?
- 3 A Yes.
- 4 Q Was a public place, wasn't it?
- 5 A Yes.
- 6 Q And wasn't the Micro Brewery a public place, you're sitting
7 around out in the public?
- 8 A Yes.
- 9 Q Did you also have a meeting in 2003 at the Cracker Barrel
10 at I-69 and 96th Street?
- 11 A What was the date?
- 12 Q Fall. After the horse barn meeting in the fall, it's after
13 that. You met at the Cracker Barrel at I-69 and 96th Street,
14 you and Scott Hughey?
- 15 A Yes.
- 16 Q Was Chris Beaver at that meeting?
- 17 A No.
- 18 Q Was Allyn Beaver at the meeting?
- 19 A No.
- 20 Q Was Rick Beaver at that meeting?
- 21 A No.
- 22 Q You discussed pricing, did you not?
- 23 A Yes.
- 24 Q Did you have a telephone call during that period of time
25 after the horse barn meeting, you and John Blatzheim,

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1 discussing pricing?

2 A Which meeting?

3 Q After the fall meeting at the horse barn didn't you have
4 telephone conversations with John Blatzheim three or four times
5 to discuss pricing?

6 A The 2003 meeting?

7 Q Yes, sir.

8 A Yes.

9 Q Was Mr. Rick Beaver or Chris Beaver involved in those
10 telephone conversations?

11 A No.

12 Q Was Allyn Beaver?

13 A No.

14 Q Had you had any conversation with any of them after that
15 meeting?

16 A After the second horse barn meeting?

17 Q Yes.

18 A 2003?

19 Q Yes.

20 A No.

21 Q The answer was no?

22 A No.

23 Q Okay. Did you also have some additional telephone calls
24 with Butch Nuckols, Scott Hughey and Dan Butler involving
25 yourself where you're discussing pricing?

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- 1 A Yes.
- 2 Q That's all after the fall meeting of 2003, is that correct?
- 3 A With Dan Butler, yes.
- 4 Q January of 2004 did you have a meeting at the Pyramids?
- 5 A No.
- 6 Q You did not?
- 7 A What kind of meeting?
- 8 Q Where you gave Mr. Scott Hughey some price lists, price
9 sheets. Was present was yourself and Scott Hughey. Do you
10 recall that?
- 11 A No.
- 12 Q Do you recall meeting at McDonald's in Castleton January of
13 2004, you and Mr. Hughey, to discuss pricing?
- 14 A I don't recall that.
- 15 Q Do you remember a meeting in February of 2004 at the Burger
16 King with yourself was involved, Scott Hughey, Dan Butler?
- 17 A 2004?
- 18 Q Yes, sir. February.
- 19 A No, I do not.
- 20 Q Do you remember a February meeting at the Cracker Barrel at
21 I-69 and 96th Street where you were involved with Scott Hughey?
- 22 A 2004?
- 23 Q Yes, sir.
- 24 A No.
- 25 Q You're not saying those meetings didn't happen, are you,

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1 you're just saying you don't recall them?

2 A I don't recall them. In that year.

3 Q Beg your pardon?

4 A In that year.

5 Q 2004, do you remember those meetings happening in 2004 at
6 those particular locations?

7 A Not in 2004, no.

8 Q Now after the meeting I think you indicated you had when
9 you gave a statement on June 29th, 2005 to the government that
10 the problem you all had was that all the customers lied to each
11 other and lied to the people supplying concrete, is that
12 correct?

13 A Yes.

14 Q As a matter of fact, when you left one of these meetings
15 you never even went back and told your staff anything about
16 offering discounts, your sales force, to anybody?

17 A Correct.

18 Q Is that right?

19 A Correct.

20 Q So the people who were selling concrete for your company
21 never were told to implement any kind of discount for anybody
22 by you, correct?

23 A That had to do with these meetings?

24 Q Right.

25 A Correct.

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1 Q If you had a meeting and agreed, why wouldn't you have your
2 sales force giving the discount to people consistent with the
3 agreement?

4 A When I was in charge of the salesmen our discount level was
5 higher than that, so it didn't come into play for me.

6 Q So you really never had agreement because your discount was
7 much higher than what the people at the meeting had talked
8 about?

9 A The discount wasn't higher, it was smaller. But our number
10 was higher.

11 Q You were making more money, so you never had your sales
12 force talk about anything. So you just went to the meeting for
13 the heck of it, correct?

14 A I went to observe.

15 Q You went to observe. You can go to a meeting, can't you,
16 have an observation, have a meeting, not agree to anything,
17 can't you?

18 A When I left those meetings, I was under the impression that
19 everybody was in agreement.

20 Q You were under the impression.

21 You don't know what Mr. Beaver was under the impression, do
22 you?

23 A That's correct.

24 Q You don't know what the impression that the company was
25 under, they're not even at the meeting, the president is not at

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1 any of the meetings, on any of the phone calls, correct?

2 A Correct.

3 Q And you were making more money, didn't care what they
4 talked about at this meeting, you made more money by not having
5 any of the discounts they talked about, you knew when you went
6 into the meeting you weren't going to agree to anything because
7 you were making more money, correct?

8 A Trying to make.

9 Q Yeah. That's why you didn't tell your sales force whatever
10 happened at the meeting because you knew inside in your heart
11 that you were making more money than any of these guys at this
12 meeting talking about it, including Butch Nuckols, right?

13 A I would agree with that.

14 Q Okay. Did you bother telling anybody at the meeting, stand
15 up and say, "Hey, gentlemen, this meeting doesn't make any
16 sense to me because I'm making more money. Why would I want to
17 be agreeing to any of these prices when I am making more
18 money?"

19 A No.

20 Q Does it make any sense for you to be at a meeting where
21 you're making more money and you have agreed to something that
22 doesn't make any money for you?

23 A At least I somewhat knew what the market was trying to do.

24 Q Trying to do. Okay. But nobody had an agreement to do it
25 because even your competitors who were there theoretically were

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1 making more money, offering whatever discounts they had,
2 correct?

3 A Correct.

4 Q So it's like a meeting about nothing, isn't it?

5 A It could seem that way.

6 Q It does seem that way, doesn't it? It's not could seem
7 that way, it is that way.

8 You have already told us that all the money that you're
9 making, those discounts don't mean anything.

10 MR. SCHLEEF: Objection. Argumentative.

11 THE COURT: It is.

12 BY MR. VOYLES:

13 Q Isn't it a fact you have just indicated to us that when you
14 went into the meeting and when you left the meeting, that
15 meeting meant nothing to you because you were making more money
16 and there was no agreement?

17 MR. SCHLEEF: Objection. Mischaracterizes the
18 witness's testimony. Argumentative.

19 THE COURT: It is argumentative. Have your next
20 question.

21 BY MR. VOYLES:

22 Q That same mindset was present when you went to the fall
23 meeting in 2003, wasn't it, with you and your company?

24 A For me.

25 Q Sure. Your company, you're the largest competitor, aren't

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1 you? In other words, you have more plants, more trucks, have
2 more markets than anybody else at all, correct?

3 A Correct.

4 Q And after the meeting, the fall meeting 2003, you don't
5 have any conversation with Allyn Beaver, Rick Beaver or Chris
6 Beaver, correct?

7 A Correct.

8 Q But you have all these other meetings and conversations all
9 the way through 2004 with everybody else, is that right?

10 A That's not the way I remember, sir.

11 Q You just don't remember them. But if I was correct with
12 the locations and correct about people involved, you don't deny
13 that those meetings may have taken place, correct?

14 A To two meetings after 2003.

15 MR. VOYLES: I have no further questions, thank you.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Mr. Lockwood.

18 MR. LOCKWOOD: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. LOCKWOOD:

21 Q Mr. Irving, my name is Jeff Lockwood. I represent Chris
22 Beaver and Rick Beaver.

23 The first thing I would like to do is disabuse myself of
24 some confusion that I have. Maybe you can help me. As I
25 understand your testimony, you first became, first attended a

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1 meeting at a Signature Inn sometime in the year 2002?

2 A Correct.

3 Q And the next meeting you went to was a meeting at Butch
4 Nuckols' horse barn, which I believe you said you think was in
5 the fall of 2002?

6 A Correct.

7 Q Are you sure that meeting took place, sir?

8 A I'm sure the meeting took place.

9 Q You were there?

10 A I was there.

11 Q You saw a lot of other people, including Rick Beaver I
12 think you have testified to. This is the meeting where there's
13 a sinister exchange of business cards where you get his
14 telephone number. Do you remember that?

15 A Yes.

16 Q Now nobody has ever, nobody in the government has ever put
17 Rick Beaver at more than two meetings and you didn't attend a
18 meeting in you 2000, did you?

19 A I have no knowledge of a meeting.

20 Q So if your testimony is accurate, Rick Beaver's two
21 meetings would have been the Signature Inn meeting and the
22 horse barn meeting that took place in the fall you think of
23 2002?

24 A Correct.

25 Q And then there was another horse barn meeting and that

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1 would have been in October, you have testified to, near
2 Halloween in 2003?

3 A Correct.

4 Q And again, sir, you are sure that those are the meetings
5 that you attended?

6 A Yes.

7 Q Mr. Irving, how far were some of these people willing to go
8 in order to get these agreements in place and keep them there?
9 Let's talk about Butch Nuckols.

10 MR. SCHLEEF: Objection, calls for speculation.

11 THE COURT: That wasn't a question. So let's ask the
12 question.

13 MR. LOCKWOOD: Yes, sir, I will.

14 BY MR. LOCKWOOD:

15 Q Butch Nuckols and your father met with a man by the name of
16 Allan Oremus. Did you know about that meeting?

17 A I heard about it. After the fact.

18 Q You heard about it from your dad?

19 A (Witness nodded affirmatively.)

20 Q Sir, I'm sorry?

21 A Yes. I'm sorry.

22 Q That's right. For the record.

23 And the purpose of that meeting was to get someone,
24 Mr. Oremus who owned the company, to get Gary Matney in line;
25 is that your understanding?

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1 A I'm not sure.

2 Q Well, what did you and your dad talk about when you talked
3 about that meeting?

4 A I asked him if he had a meeting, and I thought it was in
5 Chicago but it wasn't. It was in Indianapolis. I didn't know
6 that.

7 Q It was at the Adams Mark Hotel on the west side?

8 A I don't know.

9 Q You don't know. Okay. But didn't your dad tell you the
10 purpose of the meeting was to get --

11 MR. SCHLEEF: Objection, hearsay.

12 MR. LOCKWOOD: Well, Your Honor, this a conspiracy.

13 MR. SCHLEEF: Outside the scope of the conspiracy.

14 MR. LOCKWOOD: How is it outside the scope?

15 THE COURT: He can answer the question.

16 Go ahead.

17 A We didn't discuss the content of the meeting.

18 BY MR. LOCKWOOD:

19 Q All right. You didn't know what the purpose was?

20 A The purpose you stated was all I knew.

21 Q And this was to get Gary Matney in line?

22 A That's what I was aware of.

23 Q And so at least on this occasion you were aware that your
24 dad and Mr. Nuckols were willing to go over Mr. Matney's head
25 to his boss to get him in trouble because he wasn't playing

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1 ball?

2 A Okay.

3 Q Is that a fair assumption?

4 A That's a fair statement I guess.

5 Q If not, correct me.

6 A That's a fair statement.

7 Q Man's job may be in jeopardy, been supporting his family,
8 because he's not going to play ball. So they go over his head
9 to his boss.

10 A That's what happened.

11 Q Did you ever hear any of your co-conspirators threaten to
12 go do anything else, anything to any of the other
13 co-conspirators if they didn't go along?

14 A Not that I can recall.

15 Q Were you aware, sir, of some particular bad blood between
16 Butch Nuckols and Jason Mann?

17 A No.

18 Q Mr. Voyles has asked you a number of questions concerning
19 whether or not there was really an agreement that arose out of
20 any of these meetings. But I want to ask you, sir, because you
21 have testified that as far as you were concerned, you wanted
22 the agreement.

23 A It seemed like it would be good for the industry.

24 Q Okay. And so you wanted to agree when you went to these
25 meetings?

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- 1 A Yes.
- 2 Q And you wanted your other competitors to agree when you
3 went to these meetings?
- 4 A I assumed they all.
- 5 Q Well, I know you did, sir. But you don't speak for Beaver
6 Materials, do you?
- 7 A No.
- 8 Q And you don't speak for Rick Beaver?
- 9 A No.
- 10 Q Nor do you speak for Chris Beaver?
- 11 A No.
- 12 Q Now, sir - and I'm not trying to be funny - you can't read
13 minds, can you?
- 14 A No, sir.
- 15 Q So when you say things like Rick Beaver made a mistake by
16 taking the wrong prices back and that's why he was replaced by
17 Chris, it's just as possible that Rick Beaver never intended to
18 be involved in the agreement in the first place?
- 19 A Is that a question?
- 20 Q Yeah. I'll add the question to it. Isn't it?
- 21 A It's possible.
- 22 Q So you don't know whether Rick made some mistake or whether
23 or not he was pricing, the Beaver Materials were pricing their
24 product because they weren't agreeing to anything, do you, sir?
- 25 A I do not know what he did.

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1 Q But you have this incentive, of course, to help the
2 Government, don't you, agree as much as you can?

3 A I'm here to tell the truth.

4 Q Right. And the truth is you don't know?

5 A I don't know. I was told.

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

7 THE COURT: Redirect.

8 MR. SCHLEEF: Yeah, a little.

9 REDIRECT EXAMINATION

10 BY MR. SCHLEEF:

11 Q Hello, Mr. Irving.

12 A Hi.

13 Q Mr. Voyles asked about the 2000 horse barn meeting?

14 A 2000?

15 Q The 2000 horse barn meeting.

16 A Okay.

17 Q Do you recall him asking about that?

18 A Yes.

19 Q Were you in attendance?

20 A No.

21 Q Do you know if Dan Butler was in attendance?

22 A I don't know.

23 Q Were you involved in pricing at this time?

24 A No.

25 Q Was Dan Butler involved in pricing at this time?

IRVING - REDIRECT / SCHLEEF

1 A Not in the ready-mix pricing, no.

2 Q Is it your understanding from what Mr. Voyles was asking
3 you that the 2000 horse barn meeting involved agreements on
4 pricing?

5 A I do not know.

6 Q Before becoming involved in pricing did you attend any
7 meetings where pricing was discussed?

8 A With competitors?

9 Q With competitors.

10 A Before I became involved.

11 Q Did you attend any meetings where a pricing discounting
12 agreement was reached?

13 A No.

14 Q Would you know about agreements reached at a meeting you
15 didn't attend?

16 A No.

17 Q There was also some question about the size of IMI, the
18 pricing conspiracy that you pled guilty to.

19 A Yes.

20 Q What did that involve, what geographic area?

21 A The Indianapolis market.

22 Q How many plants did that involve?

23 A I'm not exactly sure the number, between ten and fifteen.

24 Q So any other plants outside the Indianapolis area were not
25 affected by this agreement?

IRVING - REDIRECT / SCHLEEF

- 1 A To the best of my knowledge, no.
- 2 Q And Mr. Voyles also asked you about your position with IMI
- 3 at this time.
- 4 A 2000?
- 5 Q 2004.
- 6 A 2004. Okay.
- 7 Q What was your position at that time?
- 8 A 2004 I was area manager of the Indianapolis market.
- 9 Q Were you on the Board of Directors?
- 10 A Yes.
- 11 Q Do you know what Rick and Chris's roles were with their
- 12 company?
- 13 A I didn't at the time, but I do now.
- 14 Q Do you know what their company is called?
- 15 A Beaver Materials.
- 16 Q Do you know what Rick and Chris's last name is?
- 17 A Yes, I do.
- 18 Q What would that be?
- 19 A Beaver.
- 20 Q I would like to turn your attention now again to the
- 21 Signature Inn meeting.
- 22 A Yes.
- 23 Q You indicated you were nervous at the time of the meeting,
- 24 is that correct?
- 25 A Yes.

IRVING - REDIRECT / SCHLEEF

1 Q And you -- we talked about, you indicated that that may
2 have impacted your memory at the time?

3 A Yes.

4 Q And you indicated you were new to pricing, is that fair to
5 say?

6 A Yes.

7 Q And you also told me that it's possible that an agreement
8 was reached, but you just weren't sure?

9 A An agreement on pricing?

10 Q Yes.

11 A It's possible. I don't remember one.

12 Q Nonetheless, an agreement was definitely reached at some
13 point in time?

14 A Correct.

15 Q And what meeting was that agreement reached as far as you
16 were concerned for the first time?

17 A The meeting at Butch Nuckols' horse barn in 2002.

18 Q And did we talk about that meeting fully last time we
19 talked here?

20 A I don't think so.

21 Q So let's discuss that now. Who attended that meeting?

22 A Butch Nuckols, Tim Kuebler from Builder's.

23 Scott Hughey from Carmel.

24 Richard and Phil Haehl from Shelby.

25 Rick Beaver from Beaver Materials.

IRVING - REDIRECT / SCHLEEF

1 And Dan Butler and myself from IMI.

2 Q Could you tell me a little bit about the discussions that
3 were involved?

4 A Again talked about limiting discounts, about calling each
5 other and confirming prices. Talked about limiting discounts.
6 Came up with a discount limit that we were going to try and do.
7 We talked about not having a price increase for the following
8 year.

9 Q What agreements were reached at this meeting?

10 A For sure we came away with the feeling that there was a
11 definite discount limit in place.

12 Q And was Ricky Beaver a part of this agreement?

13 A He was there and I assumed he agreed to it.

14 Q What was the agreement, what was the limit reached?

15 A I think it was between \$5 and \$5.50 as far as the discount.

16 Q Now what was the next meeting you attended after this?

17 A The next meeting was the horse barn at Butch Nuckols again
18 a year after that. 2003.

19 Q And what was the subject matter of this meeting?

20 A The same. The same subject matter.

21 Q What do you mean by the same subject matter? What did you
22 intend to accomplish?

23 A As I talked before about this meeting, Dan and I went to
24 the meeting, explained that we were going to have a \$2 price
25 increase, implement a winter service charges. We also talked

IRVING - REDIRECT / SCHLEEF

1 about calling each other, confirming prices. And we had
2 conversation on a \$5 discount that I was actively involved in.

3 Q Did you agree on a discount limit at this meeting, as well?

4 A Yes.

5 Q What discount limit did you agree upon?

6 A I think it was in the 5 to 5.50 off.

7 Q Was this the same discount you had agreed at the first
8 horse barn meeting you attended?

9 A I think so.

10 Q Was this the agreement that Ricky Beaver had joined in?

11 A Chris Beaver was at the second meeting.

12 Q The first meeting, though, was attended by?

13 A Rick Beaver.

14 Q And did he agree to a discount limit at that meeting?

15 A I assumed he did.

16 Q Now, you just mentioned that Chris Beaver attended the
17 October, 2003 horse barn meeting.

18 A Yes.

19 Q Could you remind me again why Chris Beaver was there
20 instead of Rick?

21 A Dan Butler told me that Rick had taken back the prices and
22 was -- had made a mistake on how he was pricing concrete and
23 was replaced by Chris.

24 Q What mistake had he made?

25 A I think he was pricing the concrete too high.

IRVING - REDIRECT / SCHLEEF

1 Q So you just testified that Rick Beaver attended the first
2 horse barn meeting along with you, correct?

3 A Yes, correct.

4 Q He reached an agreement to limit discounts. He then messed
5 up that agreement, is that fair?

6 MR. LOCKWOOD: My objection, leading.

7 THE COURT: Sustained.

8 Q Why wasn't the original agreement working?

9 A I guess we were all -- all the competitors were too selfish
10 or too greedy to lose our accounts that we have.

11 Q Were people cheating?

12 A Yes.

13 Q Did IMI sometimes follow the agreements?

14 A Yes.

15 Q One thing I would like to ask you about. Mr. Voyles asked
16 about IMI's internal pricing policies. Did salesmen have to
17 check with you before they discounted at a certain level?

18 A Yes.

19 Q What was that level?

20 A I recollect the number being \$3.

21 Q So if they discounted more than \$3 they had to get
22 approval?

23 A Correct.

24 Q Who did they have to get approval from?

25 A Me, Dan Butler, or Bob Haldrove.

IRVING - REDIRECT / SCHLEEF

1 Q So what again was the discount agreement that you reached
2 at the horse barn meeting?

3 A To try and limit our discounts to \$5 or \$5.50.

4 Q So a salesman that was pricing a job would never reach that
5 number, correct?

6 A Without contacting me, he couldn't, or Dan, could not reach
7 that level.

8 Q Mr. Voyles also gave you an example about an agreement.

9 And if we agreed that I would keep asking you questions and
10 then I walked away, is that an agreement or did I just violate
11 the agreement we just made?

12 A I'm not sure.

13 Q Is it possible if I --

14 MR. VOYLES: Objection, Your Honor, to what is
15 possible. He can testify to what he knows or doesn't know.

16 THE COURT: I would agree with that.

17 Q Did you, nonetheless, follow the agreements occasionally
18 that you reached at the horse barn meeting?

19 A Yes.

20 Q An agreement was reached at the horse barn, correct?

21 A Yes.

22 Q At various times was Rick and Chris Beaver a party to that
23 agreement, to your understanding?

24 A Explain a party to that agreement.

25 Q Did they agree to adhere to the discount limits set?

IRVING - REDIRECT / SCHLEEF

1 MR. LOCKWOOD: Again, Your Honor, that calls for
2 speculation.

3 THE COURT: Let's go with repetitious.

4 Q You were also asked about some of the conversations that
5 you had outside of the horse barn meetings and the Signature
6 Inn meeting.

7 A Uh-huh.

8 Q These conversations that you may have had, were they
9 pursuant to the agreement to contact one another regarding
10 prices?

11 A Yes.

12 Q Did you ever have these conversations with the Haehls?

13 A Yes.

14 Q Just because you didn't have a conversation with somebody,
15 did that make them not part of the agreement?

16 MR. LOCKWOOD: Objection.

17 THE COURT: Sustained.

18 Q I have one final question for you. When we talked again --
19 when we talked before about the FBI Mr. Voyles said you didn't
20 really talk to the FBI. Is that correct?

21 A Not very much, no.

22 Q But you did speak with them?

23 A Yeah.

24 Q You definitely didn't lie to them?

25 A No.

IRVING - REDIRECT / SCHLEEF

1 MR. SCHLEEF: I have nothing further.

2 THE COURT: Mr. Voyles.

3 MR. VOYLES: I have no further cross-examination, Your
4 Honor.

5 THE COURT: Mr. Lockwood.

6

7 RE-CROSS-EXAMINATION

8 QUESTIONS BY MR. LOCKWOOD:

9 Q I'm sorry, Mr. Irving, I will try to be brief.

10 After the 2002 horse barn meeting that you talked about you
11 had a number of contacts with other persons allegedly involved
12 in this conspiracy?

13 A Correct.

14 Q And those were by telephone and sometimes face-to-face?

15 A Correct.

16 Q And how many -- can you estimate how many times you talked
17 to your competitors, the Haehls? And, of course, Dan Butler
18 was with you. So who else would that leave? How many of those
19 kind of conversations did you have?

20 A Several. Ten to 20, possibly.

21 Q How many?

22 A In a two year period, ten to 20.

23 Q Now, tell this jury how many face-to-face conversations you
24 had with Rick Beaver about fixing prices?

25 A I didn't have any with Rick Beaver.

IRVING - RE CROSS / LOCKWOOD

- 1 Q Will you tell the jury, please, how many telephone
2 conversations you had with Rick Beaver about fixing prices?
- 3 A I had one call with Rick Beaver asking to quantify a price
4 that I heard.
- 5 Q What did he ask you?
- 6 A Huh?
- 7 Q What did he ask you, sir?
- 8 A I asked him if the price he quoted was correct, and he
9 confirmed that.
- 10 Q So you called him --
- 11 A Yes.
- 12 Q -- on that occasion and asked him what he had bid on a
13 project?
- 14 A Yes.
- 15 Q And he told you?
- 16 A Yes.
- 17 Q Okay. Now please tell the jury about all the contacts you
18 had, you know, for lunch or in other places with Chris Beaver
19 to talk about price fixing.
- 20 A None.
- 21 Q How about telephone calls with Chris Beaver about those
22 subjects?
- 23 A None.
- 24 Q Sir, Government's counsel asked you about your internal
25 pricing policies, and I would like to call your attention to

IRVING - RE CROSS / LOCKWOOD

1 that. Would it be fair to say that your internal pricing
2 policies primarily were geared toward keeping the clients that
3 you had?

4 A Correct.

5 Q Getting new clients?

6 A Correct.

7 Q Expanding your market share?

8 A Tried, that's correct.

9 Q And one of the ways you would do that would be to price
10 your product lower than your competitors?

11 A That's one way.

12 Q What are the other ways you could do it?

13 A Have a quality product. Have good, quick, timely service.

14 Q I'm sorry?

15 A Have good, timely service.

16 Q My training is legal. I have no experience in concrete.

17 But is it true, sir, that it is more profitable for me to have
18 a full truckload of cement on the road going to jobs than it
19 would be to send a half a truckload of cement? I use cement
20 because that is how I think of it. Concrete.

21 A It could be.

22 Q Was that one of the things you tried to take into
23 consideration in determining what prices you should charge?

24 A At times that has an effect on pricing. Not very often,
25 but at times.

IRVING - RE CROSS / LOCKWOOD

1 Q And how about distance from the job, how quickly you can
2 get your trucks there, get them emptied, get them filled, get
3 them off to another job? Was that part of your consideration
4 in your pricing policy?

5 A Yes.

6 Q And were there any other major tenets of your policy with
7 regard to pricing your product, sir?

8 A Major what.

9 Q I'm sorry. Major elements of your pricing. What else was
10 your policy based on, other than things we have talked about?

11 A Not a lot more that I can remember right now.

12 Q What you had to bid to get the job?

13 A That is a big one, yeah.

14 Q And that is how you did it?

15 A Yes.

16 Q And that is how your dad did it?

17 A I don't know.

18 Q Didn't he teach you?

19 A No.

20 Q He didn't?

21 A No.

22 Q You just came in there and started on your own doing it?

23 A Dad didn't train me. John Huggins didn't train me. Dan
24 Butler is the closest thing I had to a trainer.

25 Q So Dan Butler did most of the training when he got to your

IRVING - RE CROSS / LOCKWOOD

1 company?

2 A For me.

3 Q For you, okay. And one last thing. You say that Rick
4 Beaver made a mistake because he was pricing concrete too high?

5 A I was told that.

6 Q And to whom did Mr. Butler attribute this information?

7 A I'm not sure.

8 MR. SCHLEEF: Objection, hearsay.

9 THE COURT: He can answer if he knows.

10 Let's have the next question.

11 Q Did you question Mr. Butler about where he got his
12 information?

13 A No.

14 Q Did he say anything more to you than he had heard that Rick
15 was supposed to have -- may have had this mistake by pricing
16 concrete too high?

17 A He said no more to me about it than that.

18 Q That was the extent of the conversation?

19 A Yes.

20 THE COURT: All right. Thank you.

21 MR. SCHLEEF: I have nothing further for this witness.

22 THE COURT: You can step down, sir.

23 (Witness excused)

24 THE COURT: You may call your next witness.

25 MR. VONDRAK: Call Scott Hughey.

IRVING - RE CROSS / LOCKWOOD

1 THE COURT: There is a chair up here, sir. If you
2 will come up here I'll swear you.

3 There has been a motion made and sustained by the Court to
4 separate witnesses in this case, which means you are not to
5 share your testimony with anyone who has been or will be a
6 witness in this matter. Do you understand that?

7 THE WITNESS: Yes.

8 THE COURT: You may inquire.

9 MR. VONDRAK: Thank you, Your Honor.

10 SCOTT HUGHEY

11 PLAINTIFF'S WITNESS, SWORN

12 DIRECT EXAMINATION

13

14 GOVERNMENT'S WITNESS, SCOTT HUGHEY, SWORN

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. VONDRAK:

17 Q Please tell us your name, and spell your last name for the
18 court reporter.

19 A Scott Hughey. H-u-g-h-e-y.

20 Q Where do you live, Mr. Hughey?

21 A In Carmel, Indiana.

22 Q How old are you?

23 A Fifty-one.

24 Q Are you married?

25 A Yes.

HUGHEY-DIRECT

- 1 Q Do you have any children?
- 2 A Yes.
- 3 Q How old are your children?
- 4 A Twenty-seven and 30.
- 5 Q Are you employed, Mr. Hughey?
- 6 A Yes.
- 7 Q Who do you work for?
- 8 A Hughey, Inc.
- 9 Q Does Hughey, Inc. go by any other name?
- 10 A Yes. Carmel Concrete Products Company or Carmel Concrete.
- 11 Q What is your position at Hughey, Inc.?
- 12 A I'm the president.
- 13 Q Are you also a shareholder?
- 14 A Yes.
- 15 Q If I refer to your company as Carmel will you understand
- 16 what I mean?
- 17 A Yes.
- 18 Q How long have you been president of Carmel Concrete?
- 19 A Since 1991.
- 20 Q What are your responsibilities as president of Carmel?
- 21 A I'm responsible for all aspects of the operation.
- 22 Q You have responsibility for pricing?
- 23 A Yes.
- 24 Q What did you do before you became vice-president -- I'm
- 25 sorry, before you became president?

HUGHEY-DIRECT

1 A I was vice-president.

2 Q What kind of business is Carmel?

3 A We are in the ready-mix concrete business and precast
4 concrete business.

5 Q What are the materials that make up ready-mix concrete?

6 A Cement, fly ash, of course, aggregate, fine aggregate,
7 various admixtures, and water.

8 Q Is cement one of the ingredients?

9 A Yes.

10 Q Where do you get the cement that you use to make ready-mix?

11 A Some of it is in Indiana and some is from out of state.

12 Q Do you know from where out of state?

13 A Not for sure.

14 Q Who are your customers?

15 A We have customers that are COD homeowners all the way up to
16 general contractors. There are ready-mix concrete finishing
17 companies that just finish it. That is pretty much the range
18 of who we sell to.

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

21 A Yes.

22 Q What area?

23 A Mostly Marion and surrounding counties. We go generally 20
24 mile radius from any of our plants.

25 Q And where are your plants located?

HUGHEY-DIRECT

1 A We have a plant on the north side of Indianapolis. We have
2 one on the northwest side. And on the south side.

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

5 A Yes.

6 Q How is it limited?

7 A It is a perishable product and, therefore, you have a
8 certain amount of time from when it is batched to when it is
9 placed -- that it needs to be placed or it will set up and get
10 hard and not have the correct quality.

11 Q During the years 2000 through 2004 did your company have
12 any competitors?

13 A Yes.

14 Q Who were your competitors?

15 A Builder's, Beaver, American, IMI, Prairie, Lebanon, which
16 became Hoosier, Plainfield Ready-Mix.

17 Q I'm sorry, are you familiar with a company called Shelby
18 Materials?

19 A Yes, Shelby Materials.

20 Q Have your competitors changed since 2004?

21 A Yes.

22 Q How have they changed?

23 A Spelino bought American Concrete.

24 Q Do you know when that happened?

25 A I think it was this year.

HUGHEY-DIRECT

1 Q Did there ever come a time when you were charged with a
2 crime related to Carmel Concrete?

3 A Yes.

4 Q When were you charged?

5 A April of this year.

6 Q Where were you charged?

7 A In Indianapolis.

8 Q Was that before Judge McKinney?

9 A Yes, it was.

10 Q What were you charged with?

11 A Price fixing ready-mix concrete.

12 Q Did you plead guilty to that charge?

13 A Yes.

14 Q When did you plead guilty?

15 A For the company?

16 Q When did you plead guilty?

17 A In April.

18 Q Was that before Chief Judge McKinney?

19 A Yes.

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

22 A Yes.

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

24 THE COURT: Yes.

25 Q I'm going to show you what has been marked as Government's

HUGHEY-DIRECT

1 Exhibit 31. Do you recognize this document, Mr. Hughey?

2 A Yes, I do.

3 Q Is this your plea agreement with the Government?

4 A Yes.

5 Q Directing your attention to page 13, is that your signature
6 on the left-hand side?

7 A Yes, it is.

8 MR. VONDRAK: Your Honor, at this time we offer
9 Government's Exhibit 31 into evidence.

10 MR. VOYLES: No objection.

11 MR. LOCKWOOD: No objection.

12 THE COURT: The exhibit is admitted.

13 (Government's Exhibit(s) 31
14 received in evidence.)

15 Q Are you testifying because of this plea agreement with the
16 Government?

17 A Yes.

18 Q Mr. Hughey, directing your attention to page 9 of this plea
19 agreement. What does this plea agreement require you to do?

20 A To cooperate fully and truthfully with the United States in
21 the prosecution of this case.

22 Q You understand what would happen to you if you don't
23 cooperate truthfully and fully?

24 A Yes.

25 Q What is your understanding of what would happen?

HUGHEY-DIRECT

1 A That this plea agreement would become null and void and I
2 would be prosecuted for price fixing.

3 Q And do you understand that you could be prosecuted for
4 anything else?

5 A Yes. Perjury.

6 Q Does the Government make a recommendation to the Court as
7 to what your sentence should be in this plea agreement,
8 referring you to page 7?

9 A Yes.

10 Q What does the plea agreement recommend as your sentence in
11 this case?

12 A Twenty-four months incarceration.

13 Q And does it also recommend a fine?

14 A Yes.

15 Q How much of a fine does it recommend?

16 A \$50,000.

17 Q Have you been sentenced yet?

18 A No, I have not.

19 Q When are you scheduled to be sentenced?

20 A December 14th.

21 Q Is that December 14th of this year?

22 A Yes.

23 Q Do you have an understanding as to who will ultimately
24 decide what your sentence will be?

25 A Yes.

HUGHEY-DIRECT

- 1 Q And who is that?
- 2 A Judge McKinney.
- 3 Q Directing your attention to Carmel Concrete. Was Carmel
- 4 ever charged with a crime?
- 5 A Yes.
- 6 Q When was Carmel charged?
- 7 A April of this year.
- 8 Q Was that also before Judge McKinney?
- 9 A Yes.
- 10 Q And what crime was Carmel charged with?
- 11 A Price fixing of ready-mix concrete.
- 12 Q Did Carmel plead guilty to that charge?
- 13 A Yes, they did.
- 14 Q When did Carmel plead guilty?
- 15 A In June of this year.
- 16 Q Did they plead guilty in June of this year?
- 17 A I'm sorry, it would have been in April.
- 18 Q And was that plea of guilty also before Chief Judge
- 19 McKinney?
- 20 A Yes.
- 21 Q Was Carmel's plea made under the terms of a plea agreement
- 22 with the Government?
- 23 A Yes, it was.
- 24 Q I show you what has been marked as Exhibit 32.
- 25 May I approach, Your Honor?

HUGHEY-DIRECT

1 THE COURT: You may.

2 Q Sir, could you tell us, is this the plea agreement that
3 Carmel Concrete made with the Government?

4 A Yes.

5 Q Let me direct your attention to page 12 of this document.
6 Is that your signature on the left-hand side?

7 A Yes, it is.

8 MR. VONDRAK: Your Honor, at this time we would move
9 Government's Exhibit Number 32 be admitted into evidence.

10 MR. VOYLES: No objection.

11 MR. LOCKWOOD: No objection.

12 THE COURT: The exhibit is admitted.

13 (Government's Exhibit(s) 32
14 received in evidence.)

15 Q Directing your attention to page 6 of this plea agreement.
16 What does this plea agreement require the company to do?

17 A To cooperate fully and truthfully with the United States in
18 the prosecution of this case.

19 Q And what does the agreement require the Government to do?
20 Directing your attention to page 8.

21 A Makes us subject to the requirements of this to cooperate
22 with the Government and accept a guilty plea.

23 Q Directing your attention to where it says "Government's
24 agreement." Does the agreement -- does the plea agreement
25 require the Government to do or not do anything?

HUGHEY-DIRECT

1 A Yeah, they will not bring further criminal charges against
2 defendant for the cooperation.

3 Q Has Carmel Concrete been sentenced in this case yet?

4 A Yes.

5 Q When did that sentencing take place?

6 A June of this year.

7 Q Was there a hearing before the sentencing?

8 A Yes.

9 Q And was the hearing before Chief Judge McKinney?

10 A Yes, it was.

11 Q When did it take place?

12 A In the afternoon. In June.

13 Q What was the purpose of that hearing?

14 A Sentencing for the company.

15 Q And what issue was discussed during that hearing?

16 A The fine that the company should pay.

17 Q After the hearing did the Judge ultimately impose a fine?

18 A Yes, he did.

19 Q How much of a fine?

20 A 225,000.

21 Q Dollars?

22 A Yes.

23 Q Did the Government make a recommendation as to what the

24 Government believed the fine should be in that case?

25 A Yes, they did.

HUGHEY-DIRECT

1 Q How did the Government's recommendation compare to the
2 \$225,000?

3 A It was higher than the fine.

4 Q Did your attorneys make a recommendation as to what the
5 fine for the company should be?

6 A Yes.

7 Q How did your attorneys recommendation compare to the
8 225,000?

9 A It was lower.

10 Q You testified earlier that you and your company pled guilty
11 to fixing the price of ready-mix concrete. Could you please
12 briefly tell the jury what you did that made you guilty of that
13 crime?

14 A I had an agreement with competitors to fix the price of
15 concrete in the Indianapolis marketplace in which we compete.

16 Q Before you pled guilty to that crime did you ever hear any
17 rumors about an FBI investigation of the ready-mix concrete
18 industry?

19 A Yes.

20 Q Were those rumors ever confirmed for you?

21 A Yes.

22 Q When were those rumors confirmed?

23 A May 25th of '06.

24 Q I'm sorry?

25 A May of '06. I'm sorry, '04.

HUGHEY-DIRECT

- 1 Q So it would have been May 25th of 2004?
- 2 A Yes.
- 3 Q How did you find out that there was an FBI investigation?
- 4 A They called me on the phone and wanted to talk to me.
- 5 Q Did they identify themselves as FBI agents?
- 6 A Yes.
- 7 Q When did that conversation take place?
- 8 A It was in the morning of the 25th.
- 9 Q And how long did that conversation last?
- 10 A Oh, a few minutes.
- 11 Q Do you recall exactly what the FBI agent said?
- 12 A Not exactly, but they wanted to meet with me and talk with
- 13 me when they called me on the phone.
- 14 Q What were you doing at the time that you got this call?
- 15 A I was having breakfast.
- 16 Q Who were you having breakfast with?
- 17 A Dan Butler.
- 18 Q Do you know where Mr. Butler works?
- 19 A Yes.
- 20 Q Where does Mr. Butler work?
- 21 A IMI.
- 22 Q Did you, during that telephone conversation, agree to meet
- 23 with the FBI?
- 24 A Yes.
- 25 Q What did you do next?

HUGHEY-DIRECT

1 A Quickly finished -- well, we hung up the phone and quickly
2 finished breakfast and then I went to the office.

3 Q What did you do when you went to the office?

4 A I had some notes in my briefcase that I carried that I
5 destroyed.

6 Q And what did those notes relate to?

7 A To conversations with respect to the agreements that we had
8 for price fixing.

9 Q Do you know about how many notes you destroyed?

10 A No, not exactly.

11 Q After you shredded those notes did you, in fact, talk with
12 the FBI?

13 A Yes.

14 Q Where did that conversation take place?

15 A At my house.

16 Q How long did that conversation last?

17 A Oh, 20 -- between 20 and 25, maybe 30 minutes.

18 Q Who was present for that conversation?

19 A Two FBI agents and myself.

20 Q At that meeting at your house did you tell the FBI
21 everything you knew about the price fixing conspiracy?

22 A No.

23 Q Why not?

24 A I didn't want to incriminate myself.

25 Q Was there any other reason?

HUGHEY-DIRECT

1 A I didn't want to discuss it with them at that point.

2 Q What did you do after the conversation with the FBI?

3 A They told me they had a search warrant for the office and
4 wanted me to open the office for them, which I agreed to do.
5 And I drove over to the office and they followed me over there.

6 Q And what happened once you got to the office?

7 A There were already other, I assume, FBI personnel there who
8 had already entered the premises and were going through the
9 office getting records.

10 Q How long did you stay at your office then?

11 A I don't know for sure. Probably 30, 40 minutes.

12 Q After you left your office what did you do?

13 A I thought I might have some more notes at home, and I went
14 to check to see if I had any. And I did and I destroyed those.

15 Q And what did those notes relate to?

16 A They were notes of the conversations that I would have had
17 relating to price fixing.

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

20 A Yes.

21 Q Which competitors have you had such meetings with?

22 A Builder's, Beaver, Shelby, IMI, and Builder's.

23 Q Did you ever have meetings for the purpose of fixing the
24 price of ready-mix concrete with anybody from American
25 Concrete?

HUGHEY-DIRECT

1 A Yes. One occasion.

2 Q Did you ever have meetings with competitors for fixing the
3 price of concrete with a competitor called Prairie?

4 A Yes.

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

7 A John Huggins, Dan Butler, Price Irving.

8 Q Who from Builder's have you met with for the purpose of
9 fixing the price of ready-mix concrete?

10 A Butch Nuckols, John Blatzheim, and Tim Kuebler.

11 Q Who from Shelby have you met with for the purpose of fixing
12 the price of ready-mix?

13 A Richard Haehl and Phil Haehl.

14 Q Who from American have you met with for the purpose of
15 fixing the price of ready-mix concrete?

16 A Jason Mann.

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

19 A Gary Matney.

20 Q Who from Beaver materials have you met with for the purpose
21 of fixing the price of ready-mix concrete?

22 A Rick Beaver and Chris Beaver.

23 Q Were there ever times that you had a meeting with more than
24 one competitor for the purpose of fixing the price of ready-mix
25 concrete?

HUGHEY-DIRECT

1 A Yes.

2 Q Did you ever meet with your competitors in a horse barn?

3 A Yes, I did.

4 Q How many times have you met with your competitors in a
5 horse barn?

6 A Two times.

7 Q What was the purpose for those two meetings with your
8 competitors in the horse barn?

9 A To adhere to agreements, or come to an agreement on
10 discount -- a discounting -- limiting discounts on bid work and
11 to discuss pricing issues.

12 Q Why did you decide to meet in a horse barn?

13 A That is where Butch decided to meet, and called the meeting
14 for everyone to meet there.

15 Q When was the first time that you met with your competitors
16 in that horse barn?

17 A July of 2000.

18 Q How long did that meeting last?

19 A Probably a couple of hours.

20 Q Was anyone else from Carmel present at that meeting?

21 A No, sir.

22 Q Which of your competitors were represented at the meeting?

23 A IMI, Builder's, Beaver, and Shelby.

24 Q Who at this first horse barn meeting represented Builder's?

25 A Butch Nuckols, and I think that Tim Kuebler may have been

HUGHEY-DIRECT

1 there.

2 Q Who at this meeting represented IMI?

3 A John Huggins.

4 Q Who at this July, 2000 meeting in the horse barn
5 represented Shelby?

6 A It would have been Richard or Phil Haehl. Possibly both of
7 them. I don't recall.

8 Q Who at the July, 2000 horse barn meeting represented Beaver
9 Materials?

10 A Rick Beaver.

11 Q How did this meeting come to be?

12 A Well, the market was -- pricing was getting out of hand,
13 meaning getting lower and lower, and we thought we needed to
14 get together and stabilize the market by limiting discounts and
15 getting the price up.

16 Q Let me ask you a question. You said "we." Who do you mean
17 by "we" at this point?

18 A Everyone at the meeting.

19 Q When I was asking you about how the meeting came to be, did
20 you have a discussion with anyone about the declining prices
21 prior to that horse barn meeting?

22 A Yes.

23 Q When did that conversation take place?

24 A It would be prior to the meeting, but I don't recall when.

25 Q Do you recall approximately how much before the meeting?

HUGHEY-DIRECT

- 1 A No.
- 2 Q Was it months --
- 3 A As far as the discussion to have this meeting?
- 4 Q How long before the horse barn meeting did you have the
- 5 discussion that you should have the horse barn meeting?
- 6 A It would have been shortly, within a few days or a week,
- 7 something like that.
- 8 Q And who did you have that discussion with?
- 9 A Butch Nuckols.
- 10 Q Was that in person or was that on the phone?
- 11 A Don't recall.
- 12 Q And was anybody else present for that conversation?
- 13 A No.
- 14 Q What was discussed during that phone call?
- 15 A That pricing was getting out of hand and we need to have a
- 16 meeting and talk about it to try and stabilize or bring the
- 17 pricing up.
- 18 Q Did you decide to contact others in the ready-mix concrete
- 19 industry?
- 20 A Yes, Butch called the other people that were in attendance
- 21 and talked to them about the meeting and set it up, and we met
- 22 at the barn there.
- 23 Q Do you know what Mr. Nuckols told the people that he
- 24 called?
- 25 A I believe he told them we were having a meeting to talk

HUGHEY-DIRECT

1 about stabilizing the prices. That is what we talked about
2 prior to him setting up the meeting.

3 Q What time of day did the July, 2000 meeting at the horse
4 barn take place?

5 A In the afternoon.

6 Q And could you describe for the jury the size of the room
7 that this meeting took place in?

8 A Oh, I don't know. It is probably 18 by 30, something like
9 that.

10 Q Did you have an opportunity to observe everyone in the
11 room?

12 A Yes.

13 Q What was discussed during this meeting?

14 A We were discussing the fact that the pricing has got out of
15 hand. It has got very low and we need to stabilize the pricing
16 in the concrete market. And we agreed to set some discounts on
17 what we would bid at no more than, so much off.

18 Q And when you say, "No more than, so much off," do you
19 recall what that amount was?

20 A Not for sure. I believe it was 3.50, but I don't remember
21 the amount for sure.

22 Q As a result of this meeting did you believe that you had an
23 agreement with Builder's as to a limit on discounts for
24 ready-mix concrete?

25 A Yes.

HUGHEY-DIRECT

1 Q What was your understanding of that agreement?

2 A That we would limit discounts on bid work to whatever the
3 amount was for bidding work.

4 Q Did you, as a result of this meeting, believe that you had
5 an agreement with IMI relating to this --

6 A Yes, I did.

7 Q What is your understanding of that agreement?

8 A That whatever the -- whatever the amount that we would
9 agree to discount would not be exceeded. And whatever that
10 amount was, it was the same agreement.

11 Q Did you believe that you had an agreement with Shelby as a
12 result of your discussions at this July meeting?

13 A Yes, I did.

14 Q And what was your understanding of the agreement with
15 Shelby?

16 A That they would adhere to the designated amount of maximum
17 discount for bidding on concrete.

18 Q Did you believe that you had an agreement with Beaver
19 Materials as a result of this meeting?

20 A Yes, I did.

21 Q What was your understanding of that agreement?

22 A That they would not discount on bid work more than the
23 agreed amount. Same agreement.

24 Q After this meeting was over did you abide by the terms of
25 that agreement?

HUGHEY-DIRECT

1 A Yes, I did.

2 Q Did you always abide by the terms of that agreement?

3 A There may have been one occasion or two where we made a
4 mistake on what the mix designs were and would have, in
5 essence, not have adhered to it. But those occasions were
6 very, very rare. It wasn't that we decided not to, it was a
7 mistake.

8 Q Did others who were present for that meeting abide by the
9 terms of the agreement afterward?

10 A Yes, they did. Sometimes they did, sometimes they didn't,
11 but mostly I think they did for awhile.

12 Q Was there anybody who always abided by the agreement?

13 A Us, other than what I have explained to you.

14 Q Was there anybody who never abided by the agreement?

15 A Not that I'm aware of. And I don't believe so.

16 Q Did you ever attend a meeting with your competitors for the
17 purpose of fixing pricing for ready-mix concrete at a hotel?

18 A Yes.

19 Q And which hotel did that meeting take place in?

20 A The Signature Inn in Castleton.

21 Q How did that meeting come to be?

22 A Well, the discounts we had agreed to were kind of eroding.
23 It seemed to be at that point in time people were not adhering
24 to it, and that was the reason for the meeting.

25 Q How did the meeting come to be?

HUGHEY-DIRECT

1 A Butch and I were discussing the fact that people weren't
2 abiding by the agreement and that we needed to sit down and
3 talk about it.

4 Q Who organized this meeting?

5 A As in who called the meeting?

6 Q Yes.

7 A Butch Nuckols. I think he called everyone. I may have
8 called Price or Dan. I don't know that I did, but if I did
9 that is the only one I called, and Butch called the rest of
10 them.

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

12 A Because we didn't think it would be appropriate to meet at
13 anyone's office. It was a secret type meeting, didn't want
14 everyone knowing you were there.

15 Q Who reserved the conference room where the meeting took
16 place?

17 A I did.

18 Q Who paid for it?

19 A I did.

20 Q How did you pay for it?

21 A Cash.

22 Q Why did you pay cash?

23 A I didn't want to put it on my charge card.

24 Q Why not?

25 A I didn't really want a record, written record that we had

HUGHEY-DIRECT

1 the meeting.

2 Q Speaking of written records, was there an agenda that was
3 written for this meeting?

4 A No.

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

6 A Yes.

7 Q Was this a trade association meeting?

8 A No.

9 Q When you got to the meeting did you believe that others
10 knew what the purpose of the meeting was going to be?

11 A Yes, I did.

12 Q What was the purpose of the meeting?

13 A The purpose of the meeting was to get together and decide
14 if we're going to get back on track and do what we agreed to
15 do, because it had fallen apart, or sit here and say, "Hey, if
16 you're not going to do what we agreed to do, let's don't even
17 do it. Let's walk out of here and just forget it. But let's
18 do what we say we're going to do."

19 Q Which of your competitors were at this meeting at the
20 Signature Inn?

21 A IMI was there, Shelby was there, Builder's was there,
22 Beaver was there, and me.

23 Q Was there anyone present at this meeting representing
24 Carmel other than yourself?

25 A No.

HUGHEY-DIRECT

- 1 Q Who was there on behalf of Builder's?
- 2 A Butch Nuckols and I believe Tim Kuebler was there.
- 3 Q Who was there on behalf of IMI?
- 4 A Price Irving and Dan Butler.
- 5 Q Do you know why Huggins was not at this meeting?
- 6 A He had been retired I think since the end of 2000.
- 7 Q Who was there on behalf of Shelby?
- 8 A Richard Haehl or Phil Haehl or they both may have been
9 there, I'm not sure.
- 10 Q Who was there on behalf of Beaver Material?
- 11 A Rick Beaver was there.
- 12 Q How did this meeting get started?
- 13 A Butch and I started talking about what we had talked about
14 before the meeting, and I recall just saying that, "You know,
15 guys, this thing is not being adhered to. And we need to
16 decide are we going to agree on this and do what we say we're
17 going to or just walk on out of here.
- 18 You know, my point was I don't want to sit in here and
19 agree on stuff and just walk out and do what you want to do.
20 Let's stand up and be straight enough with each other we're
21 going to do this or we're not."
- 22 Q And as a result of this meeting -- well, before I ask you
23 that, let me ask you this: Did you discuss anything about
24 communications at this meeting?
- 25 A Yes. There was a lot of discussion about, well, we don't

HUGHEY-DIRECT

1 always do what each of us hear and think the others do.

2 And what I mean by that is contractors will tell you, will
3 tell us for instance that you aren't low, somebody was lower on
4 their pricing than you were. And the point was that
5 contractors will lie to you to beat your price down. And we
6 discussed that, what we would do is that we would adhere to the
7 \$3.50 off and no one would deviate from that discount unless
8 they saw it in writing or verified with someone else that, you
9 know, that the price was off more than the agreed amount.

10 Q As a result of the Signature Inn meeting did you believe
11 that you had reached an agreement with your competitors?

12 A Yes, I did.

13 Q And what was your understanding of that agreement?

14 A That on bid work no one would bid more than I believe the
15 discount was \$3.50 off. And that if anybody found a number or
16 was told they had a number less than this, they wouldn't
17 deviate from that without talking to somebody or seeing it in
18 writing.

19 Q Was it \$3.50 or was it another amount?

20 A I think it was \$3.50, but I'm not positive.

21 Q Did anyone at this meeting -- how large was this conference
22 room by the way?

23 A Oh, I don't know. 15 x 20 something.

24 Q Did anyone at this meeting disagree with the limit on
25 discounts?

HUGHEY-DIRECT

1 A No.

2 Q Did anyone at this meeting disagree about the agreement to
3 communicate with each other?

4 A No.

5 Q You testified earlier that Ricky Beaver was there. Do you
6 recall Ricky Beaver saying anything at this meeting?

7 A Not specifically what he had said. But there was general
8 discussion among everyone in the room.

9 Q Do you recall specifically what one of the Haehls said
10 during this meeting?

11 A No.

12 Q Do you recall generally what they said during this meeting?

13 A The Haehls?

14 Q Yes.

15 A Well, the only thing that I think I can remember might have
16 been discussed, it might have been another meeting, is that was
17 this a discount off of net or is it a discount off of list?

18 Because in most of their markets they think in terms of list
19 and the term discount, where in our marketplace we all think in
20 terms of the net after the term discount.

21 Q Was anybody -- were any of your other competitors ever
22 confused about the limit on discounts?

23 A I believe that Rick was.

24 Q That Rick Beaver?

25 A Yes.

HUGHEY-DIRECT

1 Q After this meeting was over, did you abide by the agreement
2 to limit discounts?

3 A Yes.

4 Q Did you always abide by the agreement to limit discounts?

5 A Yes. Unless we made a mistake, which from that period on
6 there would have been one I specifically remember, but there
7 may have been one other. But we usually very thoroughly
8 checked specifications to be sure that we're bidding correctly
9 for the proper mix.

10 Q Did Builder's live up to the terms of the agreement that
11 was reached at the Signature Inn?

12 A Some of the time, yes. Not all of the time.

13 Q Was there anybody who lived up to the agreement all of the
14 time other than yourself?

15 A I don't think so.

16 Q Was there anybody who was present at the Signature Inn that
17 never lived up to the agreement?

18 A No.

19 Q Now directing your attention back to the horse barn, I
20 believe you testified earlier that you had a second -- two
21 meetings at the horse barn, is that correct?

22 A Yes, it is.

23 Q When did the second meeting take place?

24 A October of 2003.

25 Q And how did that meeting come to be?

HUGHEY-DIRECT

1 A The pricing here again was, seemed to be eroding as far as
2 where people were on the agreed discount. It was kind of, you
3 know, adherence to the agreement was falling apart, was not
4 being adhered to to a greater degree and felt we needed to have
5 a meeting. And here again are we going to get there, are we
6 not?

7 Q Now when you say "we" at this point, who is we?

8 A Everyone at that meeting.

9 Q Before the meeting started -- I'm asking you now about the
10 point in time where you said we decided to have another
11 meeting.

12 A Butch and I would have had the discussion.

13 Q Did you and Butch in fact meet?

14 A To have that discussion, yes.

15 Q And where did that meeting take place?

16 A At the Flowing Well on 116th Street.

17 Q Was there anybody else present for that?

18 A No.

19 Q And how long did that meeting last?

20 A Oh, 15 minutes, maybe -- 15 to 30 minutes.

21 Q What did you discuss at that meeting?

22 A We would have been discussing that somebody, so and so, or
23 I don't know who I would have been discussing, but on a certain
24 job we heard they were off. And yes, someone else was off over
25 here more than the agreed discount. And that sort of thing.

HUGHEY-DIRECT

1 And that we needed to get together and try to get this thing
2 reeled in back to the agreement.

3 My thought was get it there or, you know -- get it there.
4 If we can.

5 Q So did you decide to meet with your competitors again?

6 A Yes. Butch said we probably needed to get together again,
7 words to that effect, and let's have it at the horse barn. And
8 he called them and called me back, told me when it was and what
9 time.

10 Q Did you contact anybody for this meeting?

11 A No.

12 Q What time of day did this meeting at the horse barn take
13 place?

14 A In the afternoon.

15 Q Which of your competitors were present for that meeting?

16 A IMI, Shelby, Builder's, Beaver and myself.

17 Q I'm sorry, there was a cough. Did you say Shelby?

18 A Yes.

19 Q Thank you.

20 Who from Builder's was at this meeting?

21 A Butch Nuckols -- from Builder's?

22 Q From Builder's.

23 A Butch Nuckols and John Blatzheim.

24 Q And who from IMI was at this meeting?

25 A Dan Butler and Price Irving.

HUGHEY-DIRECT

1 Q Who represented Shelby at this meeting?

2 A Richard and Phil Haehl.

3 Q Who represented Beaver Materials at this meeting?

4 A Chris Beaver.

5 Q What time of day did this October 2003 horse barn meeting
6 take place?

7 A I think it was 2:30.

8 Q How did the conversation get started at this meeting?

9 A Butch started talking about what he and I had talked about
10 when I met him at the Flowing Well; that, you know, pricing is
11 getting off, not adhering to the agreement, and that he and I
12 had discussed that we should get together and discuss what
13 we're going to do, get it put back on track and where we're
14 going with the discounts.

15 Q As a result of those discussions, did you feel that you had
16 reached an agreement with your competitors?

17 A Yes.

18 Q What was your understanding of that agreement?

19 A The understanding was that the maximum discount would be
20 \$5.50 off of net and at a time in the future that they would go
21 to \$3.50 off.

22 Q Did you have an opportunity to observe everybody who was in
23 the room?

24 A Yes.

25 Q Did anybody object to the limit on discount?

HUGHEY-DIRECT

1 A No.

2 Q Did anybody object to further taking away discounts?

3 A The \$3.50 later?

4 Q Yes.

5 A Yes.

6 Q Did anybody object to that?

7 A No.

8 Q After the meeting was over, did you feel that you had an
9 agreement with Builder's as to how much of a discount you would
10 offer?

11 A Yes.

12 Q What was your understanding of that agreement?

13 A That we would be at maximum discount of \$5.50 and at a
14 point in the future it would go to \$3.50.

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

18 A Yes, I did.

19 Q What was your understanding of that agreement?

20 A That we would be at \$5.50 off and that at a point in the
21 future go to \$3.50 off.

22 Q After the October 2003 horse barn meeting was over did you
23 believe that you had an agreement with Shelby as to how much of
24 a discount?

25 A Yes.

HUGHEY-DIRECT

1 Q What was your understanding of that agreement?

2 A \$5.50 discount maximum going to \$3.50 at a point in the
3 future.

4 Q After the meeting was over did you feel that you had an
5 agreement with Beaver as to how much of a discount you would
6 offer?

7 A Yes.

8 Q What was your understanding of that agreement?

9 A \$5.50 off going to \$3.50 in the future.

10 Q During the horse barn meeting October of 2003 did you
11 discuss anything else?

12 A Yes.

13 Q What did you discuss?

14 A We discussed the possibility of environmental charges, some
15 people around the country are charging for that. We discussed
16 a winter surcharge for winter concrete, and we discussed price
17 increase, general price increase.

18 Q Did you have any discussions about communication?

19 A Yes.

20 Q What did you discuss about communication?

21 A Well, Gary Matney was not at the meeting, so we discussed
22 who was going to get this information to Gary Matney. And Dan
23 Butler said he was going to be talking to him soon, and that he
24 would contact Gary.

25 And someone -- we were talking about who was going to tell

HUGHEY-DIRECT

1 American Concrete about it. And I think Butch started to say
2 something that he would, and then Chris said we're talking to
3 them about either they sold them some old software or they had
4 talked to them about some software they had and that he would
5 try to get hold of Jason Mann and get him the message on what
6 we agreed on.

7 Q When you say Chris, who do you mean by Chris?

8 A Chris Beaver.

9 Q And do you see Chris Beaver in the room here?

10 A Yes.

11 Q Could you tell the jury who Chris Beaver is?

12 A It's the gentleman sitting right over there.

13 Q Would you describe what he's wearing?

14 A I would say suit and tie, but everyone has one. It's the
15 dark tie over there. He's the one furthest to the right.

16 Q And did you in fact meet with Gary Matney of Prairie
17 Material?

18 A Yes.

19 Q And how many times did you meet with Mr. Matney?

20 A Over what period of time?

21 Q From the time of the end of the October 2003 horse barn
22 meeting.

23 A I have to think about that. Probably three times.

24 Q Now you testified earlier that Ricky Beaver was at the
25 horse barn meeting in July of 2000, is that correct?

HUGHEY-DIRECT

1 A Yes.

2 Q And I believe that you also testified that Ricky Beaver was
3 at the Signature Inn meeting, is that correct?

4 A Yes.

5 Q And you just testified that Chris Beaver was at the second
6 horse barn meeting, is that correct?

7 A Yes.

8 Q Do you know why Chris was at the last horse barn meeting
9 instead of Ricky?

10 A I know what Butch told me. And when Butch called me to
11 tell me when the meeting was in the last meeting at the horse
12 barn, he said that Chris will be there instead of Rick. And he
13 told me the reason was that Rick seemed to be confused about
14 the discount.

15 Q And did he explain to you how Rick was confused about the
16 discount?

17 A I don't recall if he did or not the specifics, but I think
18 I knew what he meant, which may have been like is it off of net
19 or list? I don't recall if he told me that specifically, but
20 when I think about it, that's what it would have been.

21 Q What makes -- first of all, let me ask you what makes you
22 think that's what it would have been?

23 A Well, because if he's screwed up about the discount, it was
24 pretty clear what the amount was supposed to be off the
25 discount when you bid the concrete. The maximum discount.

HUGHEY-DIRECT

1 Okay?

2 I don't know how anybody could be confused about that. But
3 as I mentioned earlier, Shelby gets a little confused in these
4 meetings as to whether it's the discount off of list, you know,
5 or net. And I'm not sure how Beaver's people think about that.

6 And that's why I would think that that would probably be
7 what he was talking about or that's what he was talking about.

8 Q Do you know whether they were discounting too much or too
9 little off of net?

10 A No. If they were doing what I thought it might be, they
11 wouldn't have been discounting enough.

12 Q I'm sorry, could you repeat?

13 A If they were confused in this way, and that is that they
14 would take the agreed discount off of the list amount, their
15 number would be higher.

16 Q At the end of the October 2003 horse barn meeting, did you
17 feel you had an agreement with your competitors about
18 communication with each other?

19 A Yes.

20 Q What was your understanding of that agreement?

21 A Same thing as it had been in the past, we get talking about
22 how people lie to you, meaning contractors, and not to deviate
23 unless you see it in writing or call somebody.

24 Would you repeat the question, because I may have more to
25 say than that.

HUGHEY-DIRECT

1 Q Let me ask you another question.

2 A Okay.

3 Q Did you ever meet -- did you ever call any of your
4 competitors as a result of your meetings at the horse barn or
5 at the Signature Inn?

6 A Yes.

7 Q Did you ever have any phone calls with Ricky Beaver as a
8 result of your meetings with him at the horse barn in July of
9 2000 and the Signature Inn?

10 A Yes.

11 Q How many phone calls did you have with Ricky Beaver as a
12 result of those meetings?

13 A Several.

14 Q Do you recall when those phone calls took place?

15 A Not specifically, no.

16 Q Do you recall generally when those phone calls took place?

17 A Yeah, it would have been between the first meeting and
18 before the last meeting, because after Chris was there, I
19 mostly would talk to Chris.

20 Q And in those phone calls, those phone calls, were they
21 calls that you made to Ricky or were they calls that Ricky made
22 to you?

23 A I made the phone calls.

24 Q And do you recall exactly what you said during those phone
25 calls?

HUGHEY-DIRECT

1 A I would have been calling them because we would bid a
2 particular job and a contractor who got it would tell us that
3 we weren't low.

4 Well, who beat us? How much? And they would tell us in
5 these cases that it was Beaver beat you.

6 So I called Rick to ask him did you deviate or were you off
7 the number where it was supposed to be?

8 Q And when you made those calls to him, what was his
9 response?

10 A His response was no, we didn't deviate. We were where we
11 were supposed to be.

12 Q And when he said they didn't deviate, what did you
13 understand him to mean?

14 A Well, they were adhering to the agreement. They were where
15 they were supposed to be on the discount, no more than the
16 maximum amount.

17 Q Was Ricky Beaver -- did Ricky Beaver ever seem surprised to
18 you when you made these calls to him?

19 A No.

20 Q Did you ever have any telephone conversations with Chris
21 Beaver about the limits on discounting?

22 A Yes.

23 Q How many phone calls did you have with Chris Beaver?

24 A One or two.

25 Q And were those calls that Chris Beaver made to you or that

HUGHEY-DIRECT

1 you made to him?

2 A No, I called him.

3 Q And what was your reason for calling him?

4 A Project we would bid on, contractor would tell us we
5 weren't low, that Beaver had cut the price, was lower than our
6 price, cut our price, and that was why I would call Chris.

7 Q Did you ever tell anyone that you were quitting the
8 conspiracy?

9 A Yes.

10 Q Who did you tell that to?

11 A I told that to Price Irving and Dan Butler in the fall of
12 '03.

13 Q Did you ever tell anyone from Beaver Materials?

14 A Yes.

15 Q Who did you tell from Beaver Materials?

16 A Rick Beaver. I also told Butch Nuckols and I'm -- I don't
17 recall calling Gary Matney, but I know I would have told
18 everybody, because I told them, you know, if it falls apart,
19 we're out of it, I'll call you and tell you. So I wanted to be
20 sure I did that.

21 Q In relation to the Signature Inn meeting and the second
22 horse barn meeting, when was this conversation, when were these
23 conversations that you had?

24 A About us getting out?

25 Q Yes.

HUGHEY-DIRECT

1 A It would have been the fall of '02. I'm sorry. Yes, it
2 was '02.

3 Q So was that before or after the Signature Inn meeting?

4 A It would be after the Signature Inn.

5 Q And was it before or after the October horse barn meeting?

6 A It was before.

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

8 THE COURT: All right. We'll take a break at this
9 point.

10 (A recess was held from 3:20 to 3:37 p.m.)

11 THE COURT: We're ready for the jury. They're ready
12 for us certainly because they're standing right there at the
13 door.

14 (In the presence of the jury.)

15 THE COURT: You may be seated.

16 Cross-examine.

17 MR. LOCKWOOD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LOCKWOOD:

20 Q Mr. Hughey, my name is Jeff Lockwood. I represent Chris
21 Beaver and Rick Beaver.

22 You testified on direct examination, sir, that you had
23 several telephone conversations with Rick Beaver which you
24 initiated during which you pointed out to Rick that he had bid
25 under the agreed price. Is that an accurate summary of your

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1 testimony?

2 A No, sir. I called him to ask him if he had underbid the
3 agreed amount.

4 Q And did he tell you yes?

5 A He told me that yes, he did underbid what the agreed amount
6 was?

7 Q Yes.

8 A No.

9 Q He told you no, didn't he?

10 A He told me that they had been where they were supposed to
11 be.

12 Q In other words, his bids had always abided by the agreement
13 that you and your other co-conspirators had, that's what he
14 told you?

15 MR. VONDRAK: Objection, Your Honor, that's not what
16 the answer was.

17 THE COURT: Well, I think the witness can answer the
18 question.

19 Go ahead.

20 BY MR. LOCKWOOD:

21 Q Wasn't that how you took it?

22 A I called Rick because someone had told us that their number
23 was lower than the amount it should have been to the agreed
24 discount and inquired to Rick, "Were you guys lower than the
25 agreed discount?"

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1 And he told me no. We were where we were supposed to be.

2 Q So when you said were you below the agreed discount, that
3 was a direct reference to the conspiratorial agreement to fix
4 prices, was it not?

5 A Yes.

6 Q And that happened several times?

7 A Yes.

8 Q You made several calls to Rick, did you not testify to
9 that?

10 A Yes.

11 Q And you made several direct references to whether or not
12 Beaver Materials was abiding by the conspiratorial agreement?

13 A Yes.

14 Q And each time he said that he was?

15 A Abiding by the amount that we agreed upon.

16 Q Yes. And then you made at least two telephone calls to
17 Chris Beaver?

18 A One to two, yes.

19 Q I'm sorry, one to two calls.

20 One or two, and each of those times that was motivated by
21 the fact you had heard that Beaver had undercut the agreed
22 discount price, is that right, sir?

23 A Yes.

24 Q And that each time you asked Chris Beaver, "Chris, is your
25 company undercutting our conspiratorial agreement?" not maybe

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1 in those words, but that's what your intent was?

2 A Yes, that was the question.

3 Q And each time he said no.

4 A He may have had to check with somebody and get back with
5 me, but ultimately yes, he said no, we're where we're supposed
6 to be.

7 Q He even took the time to research it maybe?

8 A Yeah.

9 Q Before he called you back and said no, we're abiding by
10 this agreement.

11 A Correct.

12 Q Mr. Hughey, this is not the first time you have been
13 questioned about conversations that you have had with Rick
14 Beaver concerning this alleged agreement, is it?

15 A No, sir.

16 Q And it's not the first time that you have been questioned
17 about conversations you had with Chris Beaver about this
18 agreement?

19 A That's correct.

20 Q When you were first confronted on May 25th, 2004 with FBI
21 investigators, you declined to make any statement to them at
22 the time?

23 A No, I made statements to them.

24 Q Yes, your statement was, "I will talk to my lawyer."

25 A Yes.

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- 1 Q Okay. But you didn't talk to them about the conspiracy?
- 2 A No.
- 3 Q Instead of that, you called your lawyer?
- 4 A Correct.
- 5 Q And you and he met?
- 6 A Yes.
- 7 Q You discussed your situation?
- 8 A Yes.
- 9 Q And you decided that it would be in your best interest to
- 10 cooperate with the government and give them statements, is that
- 11 correct?
- 12 A Yes.
- 13 Q And you knew that those statements, it was important to
- 14 your own welfare those statements be accurate?
- 15 A Yes.
- 16 Q And that they be complete?
- 17 A Truthful, yes.
- 18 Q Do you know what I mean by complete?
- 19 A You might explain that.
- 20 Q That you not leave out anything important.
- 21 A Right.
- 22 Q That was your clear understanding?
- 23 A (Witness nodded affirmatively.)
- 24 Q Now between the time you first met with them and the time
- 25 they took your initial statement in the Antitrust Division,

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1 Midwest Field Office at 209 South LaSalle Street in Chicago,
2 Illinois on August 19th, 2004, do you believe you had
3 sufficient time to think about what you were going to say to
4 them?

5 A Yes.

6 Q And you had gone over it with your lawyer?

7 A All the things I was going to say?

8 Q Yes.

9 A Yeah, we discussed it.

10 Q You told him everything you knew about this conspiracy,
11 didn't you?

12 A Yes.

13 Q Because you knew how important it was that you cooperate
14 fully with the government?

15 A I don't know if we went over every single thing I knew
16 about it before we went there. We went up to talk to them and
17 answer all their questions.

18 Q And when you got there your lawyer was there?

19 A Yes.

20 Q And you were not hurried?

21 A Beg your pardon?

22 Q You weren't rushed?

23 A No, sir.

24 Q You had plenty of time to answer the questions of the
25 agents, Agent Schlobohm that I believe was involved in that

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1 interview?

2 A I think was interviewed by more people than him, but, yes.

3 Q I think Agent Schlobohm is the one who made a summary of
4 your statement?

5 A Okay.

6 Q Would that be fair to say?

7 A Are you asking who signed off on the paperwork you had?

8 Q Do you know?

9 A I don't recall who signed off on it.

10 Q Do you remember him having a recorder?

11 A In the meeting?

12 Q Yes.

13 A In Chicago?

14 Q Yes.

15 A No, I don't remember having -- a tape recorder?

16 Q Yes.

17 A I don't recall that.

18 Q Nor a video machine either?

19 A No.

20 Q But he took notes?

21 A Yes.

22 Q Okay.

23 A Others were taking notes.

24 Q Pardon?

25 A Others were taking notes. Some were writing in shorthand.

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1 Q You're familiar with the occurrence that I'm referring to?

2 A Yes.

3 MR. LOCKWOOD: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 BY MR. LOCKWOOD:

6 Q I'm going to hand you your statement, sir, you gave on
7 August 19, 2004. I wonder if you would take a look at that. I
8 have done some highlighting and notes, but just --

9 A That's the documents. You want me to read the whole thing?

10 Q If you will silently if you need to.

11 MR. VONDRAK: Objection, Your Honor, that's not the
12 witness's document and it's not admitted into evidence.

13 MR. LOCKWOOD: Well --

14 THE COURT: You want him to read this now to --

15 BY MR. LOCKWOOD:

16 Q Well, let me ask you a question. Would you read to us just
17 that portion, sir, where you told Special Agent Schlobohm -- am
18 I pronouncing that incorrectly? Schlobohm, in the presence of
19 your lawyer and others, that you had telephone conversations
20 with Rick Beaver concerning abiding by the price agreement?
21 Please tell us where that is there.

22 A I don't know if it's in this document.

23 Q Please read it and see.

24 A Would it be in the highlighted area? Do you want me to
25 read this whole document?

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1 Q You tell me where it is, sir.

2 MR. VONDRAK: Your Honor, this is improper
3 impeachment.

4 THE COURT: Well, I'm not sure that it is. I'm going
5 to let him read it and answer the question.

6 A It is not in this document.

7 Q Does it appear to be an accurate summary of what you told
8 the FBI?

9 THE COURT: Excuse me just a second. When I made the
10 ruling on the last objection you had indicated to me that was
11 this witness' statement.

12 MR. LOCKWOOD: Yes, sir.

13 THE COURT: And now it sounds like it is the FBI's
14 notes.

15 MR. LOCKWOOD: I'm sorry, it is the 302. I don't
16 mean -- it is a summary of his interview by the FBI.

17 THE COURT: By the FBI?

18 MR. LOCKWOOD: Yes, sir. I don't mean to mislead.

19 Q Would you tell the Judge and the jury what this is?

20 A It is a summary, I assume, from notes, or shorthand, or
21 whatever, from the meeting in the office in Chicago the first
22 time I met with them.

23 Q I didn't mean to mislead you. Does that appear to be an
24 accurate summary of what you told these people when you met
25 with them in Chicago?

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1 A What they have there is fairly accurate from what I said to
2 them, yes.

3 Q Did you forget about these telephone calls to Rick Beaver?

4 A I believe I didn't remember them at that point.

5 Q So you didn't recall them at that time?

6 A That's correct.

7 MR. LOCKWOOD: May I approach to retrieve the summary?

8 THE COURT: Yes.

9 Q So even though you had been involved in this conspiracy for
10 a period of time, in excess of three years, and even though you
11 had had a number of conversations, you say, with Rick Beaver
12 and Chris Beaver, and even though you knew how important it was
13 that you cooperate fully, you forgot that you had made these
14 phone calls?

15 A At that time, yes.

16 Q Then you had another chance to give a statement to the FBI,
17 did you not, sir?

18 A Right.

19 Q That was on October 6th, 2004?

20 A Uh-huh.

21 Q Did you forget to tell them that time too?

22 A I don't recall. I have not seen the document.

23 Q Would you like to see a summary of what the agent wrote
24 down on October 6th of 2004?

25 May I approach?

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1 THE COURT: You may.

2 (Witness reviewed document)

3 THE WITNESS: I don't see it in the report.

4 THE COURT: The record doesn't reflect from the
5 witness what this document is.

6 MR. LOCKWOOD: I'm sorry, sir. I apologize.

7 THE COURT: The record does not reflect from the
8 witness what the document is.

9 Q Would you tell us what that appears to be to you?

10 A I believe it is a summary from the last meeting I had in
11 Chicago with the people from the DOJ.

12 Q The last meeting you had in Chicago with them?

13 A Yes.

14 Q Does it appear to be an accurate summary of what you told
15 Agent Schlobohm?

16 A Fairly so, yes.

17 Q Did you forget about these phone calls at this time?

18 A Apparently so, just because it isn't in the report. I'm
19 not going to say it didn't happen. I'm not going to say
20 something that is not true. I know the consequences of that.
21 I'm under the oath here and I'm telling you the truth.

22 Q So you didn't, apparently, think these statements -- these
23 phone calls were important at all to the Government's
24 investigation?

25 A I'm saying I don't recall recalling that at that point.

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1 Q So you didn't remember it then, either?

2 A That's what I would think, yes.

3 Q Now, you gave another statement, this time in the
4 Indianapolis office of the United States Attorney, and that
5 statement was given by you on May the 31st of 2006.

6 THE COURT: I hate to keep telling you, but that is
7 not a statement.

8 MR. LOCKWOOD: You are right. I'm sorry.

9 Q Well, you met with the FBI on May 31st, 2006?

10 A I don't recall the date, and I'm trying to process this.
11 It was in Indianapolis?

12 Q Yes. Do you remember meeting in the United States
13 Attorney's Office, Southern District of Indiana, located at 10
14 West Market Street in Indianapolis with attorney Frank Vondrak,
15 Your lawyer, and Agent Schlobohm of the Federal Bureau of
16 Investigation?

17 A Yes, sir.

18 Q Do you remember doing that in May of this year?

19 A Uh-huh.

20 Q Did you answer questions at that time?

21 A Yes, sir.

22 Q Do you know whether a summary of the questions that you
23 answered was made at that time?

24 A I don't recall seeing one, no.

25 Q So no one has ever shown you the summaries of the

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1 statements you have made to the Federal Bureau of Investigation
2 in this case?

3 A I don't recall seeing that one. I have seen the others in
4 the past, yes.

5 MR. LOCKWOOD: May I approach, Your Honor?

6 THE COURT: Yes.

7 Q Would you take a moment, just long enough to identify that.
8 See if you can identify it.

9 (Witness reviewed document)

10 A Same sort of report.

11 Q Would it be fair to characterize it as a summary of what
12 you said to Mr. Vondrak here of the Justice Department and
13 agent -- Special Agent Schlobohm?

14 A Schlobohm, yes.

15 Q Did you have a chance to see whether it appears to be an
16 accurate summary of what you said?

17 A Well, I thought you asked me to see if I thought -- I
18 didn't read it all.

19 Q But it is a summary of your statement?

20 A It is not my summary, no, sir.

21 Q It is the FBI's summary of your statement?

22 A Yes.

23 Q Now, did you forget to tell them about these conversations
24 at that time too?

25 A I believe I was answering questions at that time.

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1 Q So you remembered it, but nobody asked you, so you
2 didn't --

3 A I'm not saying I remembered it or it was discussed. I'm
4 just saying I answered their questions.

5 Q Do you know, without reviewing that, whether or not you
6 were asked about these phone calls?

7 A I don't recall.

8 Q Would you mind reviewing it and seeing if there is any
9 reference in there? Please show us where there is a reference
10 to any statement you made concerning these phone calls.

11 (Witness reviewed document)

12 A There is no reference to the phone calls in here, but this
13 is -- after reading this it is -- these points are numbered and
14 I think they are mostly responses to questions they had with
15 respect to information they were sharing with me.

16 MR. LOCKWOOD: I see.

17 May I approach, Your Honor, for the purpose of retrieving
18 the document?

19 THE COURT: Yes.

20 Q So let me make sure I understand completely what your
21 testimony is about these telephone calls. You forgot it twice
22 and you weren't asked about it the last time?

23 A Could you repeat that question, please?

24 Q Yes. You forgot to mention it twice when you were
25 interviewed August 19th and October 6th?

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1 A I would say a more accurate assessment of what happened is
2 I didn't recall it. It is not that I knew it, remembered it,
3 and thought it wasn't important to mention. It is that I
4 didn't recall it at that time.

5 Q I'm sorry, Mr. Hughey, when I say you don't remember that
6 is the same as you don't recall. So you didn't recall it twice
7 when you had statements?

8 A Yes.

9 Q And then when you were interviewed just in May of this year
10 nobody asked you about it?

11 A Well, if they asked me about it I would have told them
12 about it if I recalled it at that time.

13 Q How would they know to ask you about it if you didn't --

14 A Well, they wouldn't.

15 Q So did you forget to tell them, or did you not tell them
16 just because they didn't ask you?

17 A This last meeting was pretty much answering their
18 questions, and anything that I would think about relating to
19 what they were asking me about I would talk to them about.

20 Q You didn't feel at liberty to relate to these gentlemen
21 phone calls that more directly implicate Rick Beaver in this
22 conspiracy than any other testimony we have heard in this
23 trial?

24 A I didn't feel what --

25 MR. VONDRAK: He hasn't heard the testimony in this

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1 trial.

2 THE WITNESS: Could you ask the question again,
3 please?

4 Q You did not believe it was important to volunteer to the
5 Government that you had had these telephone conversations with
6 Rick Beaver, which directly implicate him in this conspiracy?

7 A I don't think that would be a fair statement. You are
8 asking if I thought it wasn't important enough to tell them
9 what I knew about it or when I recalled it?

10 Q No, I'm asking if you didn't think it was important enough
11 to tell them about?

12 A No, it was important enough to tell about.

13 Q Why didn't you tell them?

14 A I told them when I recalled thinking about these things.
15 We are talking about a long term of time and a lot of things
16 are in your mind and, you know, sometimes it takes a while to
17 come out.

18 Q And part of what is in your mind is saving yourself. You
19 have a plea agreement, don't you?

20 A Yes, sir.

21 Q And you, in this plea agreement -- Mr. Vondrak has
22 introduced it into evidence in this case -- says that you are
23 to give full and truthful cooperation and you are to relate all
24 facts, all material facts relating to your involvement in the
25 changed offense and all other relevant conduct?

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1 A That's correct.

2 Q And you did not believe that these telephone conversations
3 were material enough or relevant enough to share with the
4 Government?

5 A No, sir. When I recalled them I shared it with them. And
6 I do have a plea agreement --

7 Q When was the last time you met with your lawyer and the
8 Government lawyer?

9 A With my lawyer and the Government lawyer at the same time?

10 Q Yes. How about today?

11 A Did I meet with my attorney today? No, sir.

12 Q You didn't meet with your attorney? He is not here with
13 you?

14 A He is here. I didn't meet and discuss anything about this
15 with him. He is here to observe. And I thought you asked me
16 when was the last time I met with my attorney and the
17 Government simultaneously.

18 Q I did ask that. When was that?

19 A As I recall, it was in Chicago. I met with the Government
20 people here in Indianapolis on three occasions, as I recall,
21 without my attorney.

22 Q Obviously, I'm not making myself clear. My question is,
23 when was the last time you met with your lawyer and Government
24 lawyers to discuss your testimony in this case?

25 A I believe that was in Chicago.

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1 Q When?

2 A The last time -- I don't remember the date? Whatever that
3 report was.

4 Q October the 6th, 2004?

5 A That is my recollection.

6 Q When was the last time you met with your lawyer and the
7 Government attorneys, period, whether in Chicago or elsewhere?

8 A As I recall, that is the last time we all met together.

9 Q You just looked at the summary of information you gave the
10 police -- the FBI and Mr. Vondrak dated May 31st, 2006.

11 A Yes.

12 Q Was that the last time you met with them?

13 A With who?

14 Q With your lawyer and the Government --

15 A No, sir, my lawyer was not present at that meeting.

16 Q All right. Was that the last time you met with the
17 Government lawyers?

18 A No, sir.

19 Q When was the last time you met with the Government lawyers?

20 A Saturday. This past Saturday.

21 Q This past Saturday?

22 A Yes, sir.

23 Q Is that the first time you disclosed to them about these
24 telephone calls?

25 A No, I don't recall when I disclosed to them the telephone

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1 calls.

2 Q Well, who was present when you disclosed it?

3 A Well, the Government people were present when I disclosed
4 it to them.

5 Q Who?

6 A It would have been Mr. Vondrak, possibly Mr. Schlobohm, if
7 I am pronouncing that --

8 Q Special Agent Schlobohm?

9 A Yes.

10 Q The same Special Agent Schlobohm that has made a summary of
11 all your other statements?

12 A Yes.

13 Q Do you know if any summary of your statement was made at
14 that time?

15 A Last Saturday?

16 Q Last Saturday.

17 A I do not know.

18 Q Did you see anybody taking notes?

19 A Yes.

20 Q And so if these notes were taken, then you don't know what
21 happened to them?

22 A I haven't seen them, no.

23 Q Is that the first time you disclosed to anybody from the
24 Government that these telephone calls that you allege took
25 place between you and Ricky --

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1 A I told you, I don't recall when I recalled that and shared
2 that with them.

3 Q Well, help me out here. I'm trying to figure out how many
4 meetings you have had. We have got three of them documented.
5 You say there was another one last Saturday. When would the
6 others have taken place, sir?

7 A Other meetings without my attorney with the Government?

8 Q Yes.

9 A Earlier that week.

10 Q So last Saturday and earlier that week. How many times did
11 you meet with them?

12 A In total?

13 Q Just during that week.

14 A During that week. Twice last week.

15 Q That includes Saturday?

16 A Yes.

17 Q So at which meeting did you tell them about these telephone
18 calls?

19 A I don't recall if I told them that at either one of those
20 meetings or before. I don't recall when I shared that
21 information with them.

22 Q So you may not have even told them last week?

23 A I told you I don't recall when I --

24 Q You don't remember?

25 A That's right.

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1 Q Not important?

2 A I'm not saying it is not important. I'm saying I don't
3 recall when I shared with them the information about the phone
4 calls with Rick and Chris.

5 Q Mr. Hughey, in the summaries that we do have you recalled
6 that you believe that everyone had agreed to a conspiracy
7 because no one objected?

8 A I believe everyone agreed to what we talked about in those
9 meetings.

10 Q Because nobody objected to them?

11 A Well, I think because no one objected and they agreed to do
12 it.

13 Q Tell me in what words Rick Beaver agreed to do it?

14 A I don't recall specific conversation that Rick stood up and
15 said, "I will do this."

16 Q Well, you said on direct-examination that nobody did that.

17 A No one stood up and said, "I will do this."

18 Q Yes.

19 A What we talked about in those meetings, are we all in
20 agreement with this --

21 Q Mr. Hughey, who stood up at the meeting and said, "I'm for
22 this?"

23 A Pardon me.

24 Q Who stood up at the meeting and said, "I'm for this
25 agreement?"

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- 1 A Made that statement, "I'm for that agreement?"
- 2 Q Yes.
- 3 A I don't recall anyone made that precise statement, "I'm for
4 this statement."
- 5 Q What statement do you remember Rick Beaver making?
- 6 A In the two meetings he was at?
- 7 Q Yes.
- 8 A I don't redirect statements from Rick Beaver that I agree
9 with this agreement.
- 10 Q So he never said directly that he was in agreement or that
11 Beaver was in the agreement, am I right, sir?
- 12 A Never said, not that I recall, that I'm in this agreement
13 or I'm out of this agreement.
- 14 Q And there were no votes taken?
- 15 A That's correct.
- 16 Q No show of hands?
- 17 A That's correct.
- 18 Q You or was it Mr. Nuckols -- it was you, wasn't it, that
19 summarized what you thought the agreement was?
- 20 A At which meeting?
- 21 Q At any of the meetings.
- 22 A Any of them? Yes, I think there was a summation of what
23 was agreed to at the end of meetings.
- 24 Q And then silence?
- 25 A At some point the meeting was over and everyone had

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1 discussed it and we agreed that that is what we are doing.

2 Q You agreed. At one point in time at one of the meetings

3 didn't you say to everyone, "Let's either get in this

4 agreement --" I think this was the Signature Inn meeting --

5 "either get in this agreement or leave it alone?"

6 A Either get with this or let's walk out of here and forget

7 it. If we are in it, if you are not, let's don't BS each

8 other, let's just be straight and let's just walk out of here.

9 Q If you don't want to agree --

10 A If you don't want in on this thing, just leave.

11 Q And everybody left?

12 A No.

13 Q No?

14 A No one left.

15 Q But no one abided by any kind of a price agreement either,

16 did they?

17 A Yes, they did.

18 Q Oh, really?

19 A Some of the time and some of the time they did not.

20 Q Let me ask you a question. Are you privy to all the bids

21 made by Shelby during this period of time?

22 A No, sir.

23 Q Are you privy to all the bids on jobs made by Beaver

24 Materials?

25 A No.

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1 Q MA-RI-AL. What percentage of the time did the Beaver
2 Company -- Beaver Materials abide by this agreement and what
3 period of the time did they not?

4 A I don't have direct knowledge of every bid they made. The
5 way we would find out, or have a concern as to whether they did
6 or didn't, is when someone would say to us, you know, your
7 number is higher than theirs and they beat your price. That is
8 how far I would know. That is how I would come to knowledge
9 that it may or may not be, but it could be.

10 Q And that is not following any agreement, is it, sir, if
11 they are beating your price?

12 A I don't understand your question.

13 Q Well, the idea was to keep a price above a certain level.
14 Isn't that what this is all about?

15 A Yes, not to discount beyond a certain level. Same thing,
16 yes.

17 Q The bottom line is what the price is, right?

18 A Yes.

19 Q The bottom line is what I bid on the project as opposed to
20 what you bid on the project?

21 A Yeah.

22 Q And if my bid is lower I might get the job?

23 A I'm sorry, I missed --

24 Q If my bid is lower I might get the job?

25 A That's correct.

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1 Q So the idea of the price fixing was for me not to bid lower
2 than a certain price?

3 A Right. We should be the same or no more than that amount
4 for a level playing field.

5 Q So if I bid under that figure, I'm not in the agreement?

6 A No, you are not abiding by the agreement.

7 Q All right. You, at one time, decided you weren't going to
8 abide by the agreement?

9 A That's correct.

10 Q And you told Rick Beaver this?

11 A Yes.

12 Q You mentioned that in your statements?

13 A Yes.

14 Q To the Federal Bureau of Investigation. And for a good
15 period of time, as far as you were concerned, there was no
16 agreement?

17 A No, I was out of the agreement.

18 Q Okay. And were you monitoring everybody at the same time
19 that was in this agreement?

20 A We are competing in the marketplace and we would have the
21 same type of information that we would have whether we were in
22 the agreement or out of the agreement. So, you know, we are
23 still bidding in the marketplace, following what is out there,
24 but not adhering to, you know, the agreement. I will not be
25 lower than this amount anywhere.

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1 Q You were kind enough, were you not, sir, to go back through
2 your day planner, and other places, and look at notes that you
3 had been taking?

4 A Yes.

5 Q And you shared those with the Government?

6 A What I found in my day planner?

7 Q Yes.

8 A Yes.

9 Q And you even made them a little time line, didn't you?

10 A Yes.

11 Q And, according to that time line that you provided, you had
12 a meeting with Phil Haehl and John Huggins at the Cracker
13 Barrel sometime in 2000 and -- or sometime in the year 2000 to
14 discuss the IMI and Shelby bids on jobs, is that right?

15 A No, that is not correct. I met with Phil Haehl at the
16 Cracker Barrel and discussed with him about him being off on a
17 number that IMI told me they were off on. John Huggins was not
18 at that meeting.

19 Q Were either of the Beavers at that meeting?

20 A No.

21 Q You met with Butch Nuckols and Tim Kuebler in 2002 to
22 discuss sharing business on the Estridge project?

23 A Yes.

24 Q And that was a price fixing discussion?

25 A Yes.

HUGHEY - CROSS / LOCKWOOD

- 1 Q None of the Beavers were there?
- 2 A Correct.
- 3 Q Then also in that year you met with Dan Butler to agree on
- 4 a price in the Lipberger, L-i-p-b-e-r-g-e-r, account, is that
- 5 right, sir?
- 6 A Ripberger, yes.
- 7 Q Rip not Lip?
- 8 A Yes.
- 9 Q And that was a price fixing discussion?
- 10 A Yes.
- 11 Q Then you had a meeting with Dan Butler in which you rode
- 12 around in his truck and discussed pricing on the Wilhelm job?
- 13 A Yes.
- 14 Q That was a price fixing discussion?
- 15 A Yes.
- 16 Q Then you had a meeting -- lunch with Richard Haehl at
- 17 Chi-Chi's and you told Haehl to stick to the agreement?
- 18 A Well, we had a discussion about how things were going out
- 19 there, and some people were off, you know, on occasion, but,
- 20 you know --
- 21 Q Did you tell him --
- 22 A I did not order him, if that is what you mean. I told him
- 23 I think it is good we stick with the agreement. There are
- 24 going to be times when people are off.
- 25 Q Did you tell him that Prairie was undercutting everybody?

HUGHEY - CROSS / LOCKWOOD

1 A I don't recall if I told him that at this time.

2 Q Then also in 2002 you had a meeting with Richard Haehl at
3 the Bob Evans?

4 A Yes.

5 Q That was for the purpose of a price fixing discussion?

6 A Discussing that, yes.

7 Q And then you had a meeting in January, I think, of 2002,
8 with Dan Butler at Sam's Bar and Grill because you were not
9 comfortable with the price agreements?

10 A Yep.

11 Q That is all according to your time line?

12 A That's correct.

13 Q And then in March of 2002 you had a meeting with Richard
14 Haehl and Philip Haehl at the Cracker Barrel on West 38th
15 Street and you discussed prices and price increases?

16 A Would you repeat that one again, please?

17 Q Yes. March 12th or 13th, 2002, you met with Philip Haehl
18 and Richard Haehl to discuss prices and discounts. That
19 meeting was at the Cracker Barrel on west 38th?

20 A I think I met with Richard. I don't think I met with both
21 of them.

22 Q Oh, just Richard?

23 A As I recall.

24 Q The purpose of that was to discuss fixing prices, was it
25 not?

HUGHEY - CROSS / LOCKWOOD

1 A Yes.

2 Q Then you were at the Signature Inn meeting in May, or
3 sometime in 2002, correct?

4 A Yes, sir.

5 Q Then you had a meeting at the Burger King with Dan Butler
6 and Price Irving to discuss the fact that you didn't believe
7 that people were abiding by the agreement?

8 A Correct. That's when I told them I was not going to do it
9 anymore.

10 Q That was a price fixing meeting too, wasn't it, sir?

11 A Well, I guess you would say that. It was to tell them I
12 was getting out of it. I don't know, I wouldn't call that a
13 price fixing meeting, no.

14 Q Then do you remember, sir, in 2003, after the second horse
15 barn meeting, that you had a conversation and a meeting with
16 Butch Nuckols in order to discuss the fact that the horse barn
17 meeting -- last horse barn meeting was falling apart?

18 A I don't recall that in my mind. If I put it on there, then
19 yes.

20 Q If it is on your time line, as far as you are concerned, it
21 is accurate?

22 A Yes, sir.

23 Q Then you had a meeting in September of 2003 with Greg
24 Matney?

25 A With who?

HUGHEY - CROSS / LOCKWOOD

- 1 Q Greg Matney?
- 2 A Gary Matney.
- 3 Q I'm sorry, Gary Matney. Do you know who he is?
- 4 A Yes.
- 5 Q Who is he?
- 6 A He was the manager of Prairie Materials.
- 7 Q Prairie was not going along with these agreements, either?
- 8 A They were a part of the time, yes.
- 9 Q They were? Well, wasn't it necessary for Dan Butler and
10 Pete Irving to have a meeting with Allan Oremus?
- 11 A Yes.
- 12 Q You knew about that meeting?
- 13 A Yes, I did.
- 14 Q How did you find out about that?
- 15 A From Butch Nuckols.
- 16 Q From Butch Nuckols. And wasn't the purpose of that to get
17 Mr. Oremus to bring pressure on Mr. Matney to get in line with
18 the price fixing?
- 19 A In essence, yes, and that is late on that time line.
20 Earlier there were times when --
- 21 Q And that made Mr. Matney angry, didn't it?
- 22 A Yes, it did.
- 23 Q And you met with him several times in which he expressed to
24 you his dismay that these kinds of pressures were being brought
25 upon him?

HUGHEY - CROSS / LOCKWOOD

1 A Well, I met with him one time and he made that statement
2 about it. I don't recall several times.

3 Q He was so mad he wore a wire for the FBI, didn't he, sir?

4 A He did in some of those meetings, yes, sir. I don't know
5 the reason why he did, but --

6 Q Well, the reason why he did, part of it, was to get you on
7 tape trying to get him to go along with price fixing
8 agreements, isn't that right?

9 A The question again, please.

10 Q Part of the reason he wore the wire was to try to get you
11 on tape?

12 MR. VONDRAK: No basis for him to know why he did what
13 he did.

14 THE COURT: Sustain that objection.

15 Q Well, you met with him while he was wearing the wire?

16 A Yes, sir.

17 Q On three different occasions?

18 A Yes.

19 Q And each time you had price fixing discussions with him?

20 A Yes, sir.

21 Q Which were recorded by the Kel set, or wire he was wearing
22 for the Federal Bureau of Investigation?

23 A Yes.

24 Q You continued to meet with him up through when, sir?

25 A I don't recall the last date.

HUGHEY - CROSS / LOCKWOOD

1 Q Does the end of 2003 sound accurate?

2 A I was thinking there was one in February of '04. Yeah,
3 February of '04.

4 Q Do you also recall confronting Jason Mann about the fact
5 that he had undercut your bid on a project?

6 A I met with him. He had cut the price on a customer, not a
7 bid project.

8 Q And did you threaten to retaliate if he did that again?

9 A Yes.

10 Q Is that one of your ways of getting everybody to get in
11 line with the agreement?

12 A No, I just met with him and told him, "If you go cutting a
13 price on our customer we are going to return the favor." I
14 wasn't threatening him to -- I didn't mean it in a threatening
15 way, just a matter of that is what we are doing.

16 Q You are going to retaliate?

17 A We are going to cut price on one of his customers.

18 Q I would call that retaliation. What you would call it?

19 A Telling him how we feel about it.

20 Q Just the facts, not a threat?

21 A Well, I just told him how it was going to be. He could
22 take it however he wanted. I didn't mean it as a threat. It
23 was just what we were going to do.

24 Q Sir, in reviewing all the summaries of all of these
25 statements and -- strike that.

HUGHEY - CROSS / LOCKWOOD

1 You didn't testify before the grand jury?

2 A No, sir.

3 Q Reviewing all of these summaries of all the statements you
4 have made until just today the only reference you have to Rick
5 Beaver was that you met him at a Dairy Queen and told him you
6 weren't going to be in the agreement?

7 A On the time line?

8 Q Yes.

9 A That's correct, it is not on there. You went through it.

10 Q No reference to any phone calls in which he said yeah, we
11 will go along, or we are not undercutting. None of that on
12 your time line that you prepared?

13 A That's right, and I think I gave that to them the second
14 meeting in Chicago, whatever date that was. I don't recall.

15 Q I'm confused. Is that before you remembered it or after
16 you weren't asked about it?

17 A Could you repeat your question?

18 Q Your time line.

19 A Yes.

20 Q Did you do that before you forgot that you made these calls
21 or after nobody asked you about it?

22 A I still don't understand the question.

23 Q When did you make your time line, sir?

24 A It made the one that you are looking at, I believe that I
25 gave to them in the second meeting in Chicago.

HUGHEY - CROSS / LOCKWOOD

1 Q So that would have been October of 2004?

2 A Yeah.

3 Q And so that would have been before you remembered it?

4 A Yes.

5 Q And you were never asked about it until last week?

6 A I don't believe I was -- what do you mean by I was asked
7 about it? Did these guys make any phone calls, do you remember
8 anything like that? I don't think that is how I gave them -- I
9 don't think I gave them that information based on them asking
10 me a question about phone calls.

11 Q Okay. So May of 2006 they didn't ask you, and then you
12 remembered it and volunteered it last week?

13 A I don't remember when I volunteered that information.

14 Q But it has been within the last week, is that right, sir?

15 A I don't remember when it was that I gave them that
16 information and recalled it.

17 Q Well, sir, while you were forgetting these phone calls and
18 talking to Mr. Matney you also were busy meeting with Price
19 Irving on several occasions --

20 A Yes.

21 Q -- to talk about price. And you were in a meeting with
22 Richard Haehl on a number of occasions to talk about price?

23 A That's correct.

24 Q But you never met with Chris Beaver to talk about price?

25 A No.

HUGHEY - CROSS / LOCKWOOD

1 Q And you never met with Ricky Beaver to talk about price?

2 A Just the Dairy Queen and our meetings -- let me back up.

3 Do you mean individually, other than the three meetings with
4 the group?

5 Q Yes.

6 A I never met with them, that's correct, with the exemption
7 of meeting with Rick at the Dairy Queen.

8 Q And at that time it was for you to tell him that you were
9 out of the agreement?

10 A To ask him if he was.

11 Q No, you told him you were out of the agreement, isn't that
12 right? That is what you said.

13 A I'm sorry, I thought you meant the phone calls. Could you
14 repeat the question, please?

15 Q At the time you met him at the Dairy Queen it was for the
16 purpose of telling him you were no longer involved in the
17 agreement?

18 A That's correct.

19 Q And that is the only reference to any meeting that you have
20 had with anybody from the Beaver organization from the
21 beginning of this thing until the end if we are talking about
22 individual face-to-face meetings?

23 A Other than the three meetings they were at with all the
24 others.

25 Q Individual one-on-one face-to-face?

HUGHEY - CROSS / LOCKWOOD

1 A Yes, sir, that's correct.

2 MR. LOCKWOOD: That's all.

3 THE COURT: Mr. Voyles.

4 MR. VOYLES: Thank you.

5

6

CROSS-EXAMINATION

7

QUESTIONS BY MR VOYLES:

8 Q Good afternoon, Mr. Hughey. My name is Jim Voyles. I

9 represent the MA-RI-AL Corporation, Beaver Materials.

10 Do you know Allyn Beaver?

11 A Yes, sir.

12 Q Was Allyn Beaver at any meeting that you testified about on

13 cross or direct?

14 A No, sir.

15 Q You remember just testifying a few moments ago on a

16 question asked by Mr. Lockwood, and I think your answer -- you

17 don't recall bidding against any Beaver project, is that

18 correct?

19 A I don't recall bidding against any Beaver project? They

20 wouldn't have a project. I'm not sure I understand your

21 question.

22 Q Would you have bid against anything Beaver did?

23 A Would I compete with Beaver and bid on any projects that

24 they bid on? Yes.

25 Q Did you?

HUGHEY - CROSS / VOYLES

- 1 A Did we bid on some that they bid on? Yes.
- 2 Q When?
- 3 A I don't recall. I mean, we bid in that time period --
- 4 Q What time period are you talking about?
- 5 A 2000-2004.
- 6 Q You don't recall what projects you may have bid on, is that
- 7 correct with Beaver?
- 8 A No, I don't recall specific ones.
- 9 Q You said you have three plants, is that right?
- 10 A Yes. Well, we have five plants in three locations.
- 11 Q Okay, you have five plants in three locations?
- 12 A Correct.
- 13 Q I think you said one on the north side, one on west side,
- 14 one on the south side, is that right?
- 15 A Yes.
- 16 Q Now, your recollection of the first meeting that you ever
- 17 attended -- we will talk about them really as kind of three
- 18 meetings. The Signature meeting, the horse barn meeting, and
- 19 there may have been two of those, is that right?
- 20 A There were two horse barn meetings, yes.
- 21 Q When was the first meeting of that group that you ever
- 22 remember attending?
- 23 A With multi people there? Multiple --
- 24 Q Did you have separate meetings with people at horse barns?
- 25 A No. There were two meetings at horse barns with the people

HUGHEY - CROSS / VOYLES

1 we have discussed.

2 Q My question to you, sir, is, of those three meetings you
3 have discussed, when was the first meeting you ever attended
4 and where?

5 A It was at the horse barn in July of 2000.

6 Q In 2000?

7 A Yes.

8 Q Okay. You are sure?

9 A Uh-huh.

10 Q It wouldn't have been in 2002?

11 A No, sir.

12 Q It would have been in 2000, correct?

13 A Yes.

14 Q And who did do you say was at that meeting?

15 A People?

16 Q Yes, sir.

17 A The people were myself, Butch Nuckols, maybe Tim Kuebler,
18 one of the Haehl brothers, possibly both, but I think it was
19 one, John Huggins, and Rick Beaver.

20 Q And did you call anybody and request they come to the
21 meeting?

22 A No, sir.

23 Q And you knew about the meeting because Mr. Nuckols told you
24 about the meeting?

25 A He and I discussed having a meeting.

HUGHEY - CROSS / VOYLES

- 1 Q Were you deemed to be the organizers of the meeting, you
2 two? Did you consider yourself in that role or capacity?
- 3 A We precipitated it, yes.
- 4 Q And so did you make any calls to people yourself?
- 5 A For the first meeting, no.
- 6 Q So you assume Mr. Nuckols did?
- 7 A Yes, sir.
- 8 Q And you say that Mr. Beaver showed up at the meeting, Rick
9 Beaver?
- 10 A Yes.
- 11 Q And you are sure it is in 2000 in July?
- 12 A I believe it is.
- 13 Q Did you make a time line of that? In other words, did you
14 put something in your calendar that you were going to go to a
15 meeting like that? Do you have any record of it?
- 16 A I don't recall at this point if I did, or not.
- 17 Q Did you keep a calendar?
- 18 A Sort of. Back then I don't recall whether I was using a
19 palm pilot, or a daytimer, or whatever.
- 20 Q All right.
- 21 Q At this meeting nobody took a vote?
- 22 A As in all in favor?
- 23 Q Yeah, like raising your hand.
- 24 A That's correct.
- 25 Q Or putting it on a piece of paper.

HUGHEY - CROSS / VOYLES

- 1 A Signed my name to some written agreement, no, sir.
- 2 Q Do you recall specifically what Mr. Rick Beaver said at the
3 meeting?
- 4 A No, sir.
- 5 Q And when you left that meeting, and I think you used the
6 term everybody BS'd everybody, didn't they?
- 7 A At the meeting?
- 8 Q All the time.
- 9 A Not all the time, no.
- 10 Q They didn't?
- 11 A That's correct.
- 12 Q So when you walked out of that meeting, everybody knew
13 exactly what they were doing?
- 14 A I believe they had agreed to the discount.
- 15 Q Did you ask Mr. Beaver when he left?
- 16 A No.
- 17 Q When you walked out, you're kind of all standing in the
18 parking lot getting ready to leave, did you go up to him and
19 say, "Now we have an agreement, don't we? I want to confirm
20 what we did here."
- 21 A No, I didn't have a conversation like that in the parking
22 lot or after the meeting with Chris.
- 23 Q You didn't have any conversation at all with him at all
24 about that, did you?
- 25 A After the meeting?

HUGHEY - CROSS / VOYLES

1 Q After the meeting.

2 A Immediately after the meeting, no, sir.

3 Q Well, did you call him that night and say, "I want to make
4 sure"?

5 A No.

6 Q You learned within that week that people weren't abiding by
7 the agreement, didn't you?

8 A No, I don't know that I learned within that week that
9 people weren't abiding.

10 Q How soon did you know what you thought you'd talked about
11 really wasn't an agreement?

12 A I don't believe I learned that what we talked about wasn't
13 an agreement. Some point down the line I realized people
14 weren't adhering to the agreement on occasion.

15 Q Well, if you --

16 A It got worse as time went on.

17 Q If you have an agreement that means everybody agrees we're
18 going to do the same thing, correct? Isn't that what an
19 agreement means to you?

20 A Yeah, you have an agreement that people are going to abide
21 by what we talked about.

22 Q And if you're not doing it, that means you don't have an
23 agreement?

24 A No, it doesn't mean you don't have an agreement. It means
25 you're not abiding by the agreement or you're violating the

HUGHEY - CROSS / VOYLES

1 agreement.

2 Q How would you know you had an agreement, wouldn't you have
3 to have somebody say we have an agreement?

4 A I would think the fact that we had the kind of discussion
5 we did, the time we took to discuss the agreement, that that's
6 what it was when we walked out of there.

7 Q Is it your testimony in this courtroom that you know what
8 everybody is thinking and what they agreed without ever having
9 a conversation with them?

10 A I would never say that I know what everyone is thinking.

11 Q Why not?

12 A Because I can't read their minds.

13 Q Oh, why?

14 A I'm not clairvoyant.

15 Q Can you testify what was in Mr. Beaver's mind when he
16 walked out of that meeting, Rick Beaver?

17 A No, sir.

18 Q Can you testify what his mind was when he was in the
19 meeting listening to you guys talk about your businesses?

20 A No, sir.

21 Q How long was the meeting?

22 A Couple hours as I recall. That was 2000. That was a long
23 time ago.

24 Q You don't recall exactly the length. You know it was over
25 an hour?

HUGHEY - CROSS / VOYLES

1 A I believe it was.

2 Q And who -- was there a chair in the meeting, in other
3 words, somebody leading the discussions?

4 A No. It was open discussion.

5 Q But you don't recall at all what Mr. Rick Beaver, if he
6 said anything, do you?

7 A I don't recall what he said.

8 Q And then you had to have another meeting because the
9 meeting that you supposedly had in July of 2000 wasn't really
10 working out, correct?

11 A At the point we had the Signature Inn, yeah, it had broken
12 down, and that was some period of time afterward.

13 Q In between all this period you're going back and forth
14 calling Nuckols, calling other people talking about --

15 A If you look at the timeline, the instances of communication
16 on that are not as great from the first meeting to the horse --
17 or to the Signature Inn meeting. And it was a gradual erosion
18 of that.

19 Q How many calls do you think or meetings you had between
20 2000 and the second horse barn meeting in 2002, or the next
21 meeting in 2002?

22 A I don't recall how many meetings or conversations.

23 Q Ten? Twenty? Thirty?

24 A I don't recall.

25 Q Well, you're talking to Nuckols, aren't you? You're

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1 talking to the Haehls, you're talk --

2 A Between 2000 and 2002 I don't recall how many conversations
3 I would have with the people you mentioned.

4 Q But you know you're talking to them, don't you?

5 A Yes.

6 Q And you know it's Mr. Nuckols, it's Mr. Haehl, it's other
7 people, not Mr. Beaver, correct?

8 A In that period of time, yes.

9 Q It's not Rick Beaver, it's not Chris Beaver, and it is
10 certainly not Allyn Beaver.

11 A That's correct.

12 Q Okay. And then in 2002 you decide to have another meeting.
13 Now you and Mr. Nuckols, are you the organizers of this
14 meeting?

15 A Yes.

16 Q Who do you call?

17 A I didn't call anyone that I recall. I may have called IMI,
18 but I'm not positive.

19 Q But you show up at a designated location?

20 A That's correct.

21 Q Where was it?

22 A At the Signature Inn.

23 Q And all these meetings that you're talking about at the
24 Signature Inn particularly, was it in the middle of the working
25 day?

HUGHEY - CROSS / VOYLES

- 1 A In the afternoon of a working day.
- 2 Q And who is it your recollection was there besides yourself?
- 3 A Price Irving, Dan Butler, one or both of the Haehls, Butch
4 Nuckols and Rick Beaver. Possibly Tim Kuebler.
- 5 Q And the same thing kind of happens, people walk in and the
6 group kind of talks. And you talk about a number of things,
7 did you not, other related business matters, is that correct?
- 8 A Other what?
- 9 Q Other related business matters.
- 10 A Such as?
- 11 Q Things that are going on in the ready-mix business.
- 12 A Well, most of what we had to talk about was the price
13 discounts and, you know, that people aren't adhering to the
14 agreement that we had.
- 15 Q So there were complaints that the agreement that supposedly
16 was in place wasn't an agreement?
- 17 A No. That people were not adhering to the agreement all the
18 time.
- 19 Q Did you ask Rick Beaver when he walked in anything about
20 what had happened since July, or since 2000?
- 21 A The last one? A specific reference to what he had not
22 adhered to?
- 23 Q Or what he had done or what he had been involved in,
24 anything, did you ask him?
- 25 A No, not that I recall.

HUGHEY - CROSS / VOYLES

- 1 Q After the meeting was over did you ask him?
- 2 A No.
- 3 Q Did you ever talk to him during the meeting?
- 4 A Yes.
- 5 Q Say hello?
- 6 A Yeah, probably did.
- 7 Q Okay. Do you remember what he said at the meeting?
- 8 A No. Not specifically.
- 9 Q Okay. Well, I'm looking for specifics. You talk about
- 10 what you say was going on, and you can do that, can't you, by
- 11 having people say things that you remember that would indicate
- 12 that they may have agreed or had some context of what you're
- 13 talking about, doesn't that happen when you have meetings?
- 14 A What was the question again?
- 15 Q When people have meetings, isn't it a fact that when people
- 16 are in meetings they say things that would indicate what
- 17 they're doing, what they're saying, what they're thinking?
- 18 A Yes.
- 19 Q Okay. You don't recall any of that with Mr. Beaver at
- 20 either of the two meetings we have now discussed, do you?
- 21 A I don't recall specific things he would have said in those
- 22 two meetings. I don't recall specific things that any one
- 23 individual would have said in those meetings.
- 24 Q Mr. Hughey --
- 25 A But I know what was discussed.

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1 Q -- since you told us you're not clairvoyant, but what we do
2 as human, don't we, is we remember things that happen in
3 context of where we have met with people or talked about, and
4 we kind of know from that what they're thinking, don't we?

5 A In context of a conversation, you should know what someone
6 is thinking and communicate.

7 Q Certainly. That's how we have conversations. The people
8 are asked questions, they respond, and you get some idea about
9 what they're thinking; correct?

10 A In conversations, yes.

11 Q Well, that's what you were doing in that meeting, weren't
12 you, having conversations?

13 A Yes, sir.

14 Q And that's what you were doing in July, having
15 conversation?

16 A Yes.

17 Q Okay. But you don't recall anything about those
18 conversations from Rick Beaver that would give you any idea
19 what he was thinking, do you?

20 A I don't and I don't -- I wouldn't recall specific
21 conversations for anyone else in that room and what they were
22 thinking.

23 Q You can sure recall what your conversations were and you
24 remember the whole context of the meeting?

25 A I recall what I said, yes.

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1 Q But you can't ascribe to a certain person what they're
2 thinking, what they're believing, what their intent is unless
3 they tell you, can you?

4 A That's a fair assessment.

5 Q It's a very good assessment, isn't it?

6 A Yes.

7 Q Now let's move to the last meeting. When do you think that
8 was?

9 A In October of 2003.

10 Q Okay. And in October of 2003 same place, horse barn?

11 A Yes.

12 Q Owned by Mr. Nuckols?

13 A Correct.

14 Q How do you get there? Are you invited? Do you organize
15 it?

16 A Yeah, I was -- I had a conversation with Butch Nuckols and
17 it was decided we needed to have a meeting. And he called
18 everyone to the meeting. Called me back, says when it was and
19 what time.

20 Q Isn't it a fact --

21 A I drove there.

22 Q Excuse me, sir.

23 Isn't a fact between the last meeting you had at the
24 Signature Inn and the last horse barn meeting we're talking
25 about now there is all of these multiple conversations,

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1 telephone, meeting at Chi-Chi's, meeting wherever, to talk
2 about these prices?

3 A Yes.

4 Q Okay. Mr. Lockwood went through most of them on your
5 timeline that you specifically wrote down for the Government.

6 A Yes.

7 Q Correct?

8 A Yes.

9 Q Was Rick Beaver at that meeting?

10 A Which meeting?

11 Q Any of those.

12 A Oh -- not -- no.

13 Q Was Allyn Beaver?

14 A No, sir.

15 Q Was Chris Beaver?

16 A No, sir.

17 Q So when you're now at the last horse barn meeting, do you
18 know how or who called Chris Beaver?

19 A I believe that Butch called Chris Beaver.

20 Q But you're surprised when Chris Beaver shows up instead of
21 Rick Beaver?

22 A No.

23 Q Butch told you?

24 A Before the meeting.

25 Q Mr. Nuckols?

HUGHEY - CROSS / VOYLES

1 A Butch told me when he called me to tell me what time it was
2 that Chris would be there instead of Rick Beaver this time.

3 Q Because Rick couldn't get anything right, is that kind of
4 the context that Butch put it in?

5 A Well, what he said was that Rick was confused about the
6 agreement or the discount.

7 Q Well, if you're confused it means you don't understand,
8 correct?

9 A Yeah, I guess that would be right.

10 Q So if you don't understand what you have done or had
11 anything, would that be an indication something in a
12 conversation that would tell you that somebody doesn't
13 understand?

14 A If you have an agreement and someone has got it goofed up
15 or wrong doesn't mean there's no agreement. It means they have
16 a misunderstanding about it.

17 Q Okay. But again Mr. Beaver has never given you any
18 indication that he knew about the agreement, did he?

19 A He was --

20 Q What did he say?

21 A Which Beaver are you talking about?

22 Q Rick Beaver. Did he ever say to you he knew the agreement?
23 "Hey, Scott, I know about this agreement. Thanks for inviting
24 me to this meeting. I had a great time. Good to see my
25 friends." Did he ever say that?

HUGHEY - CROSS / VOYLES

- 1 A He was in the meeting. He knew what the agreement was.
- 2 It's like -- it's not like he would not have any idea what the
- 3 agreement was. He was at those meetings.
- 4 Q Does going to a meeting indicate to you you agree to it?
- 5 A Anyone going to any meeting?
- 6 Q Any meeting.
- 7 A No.
- 8 Q If I show up at a school board meeting, does that mean I
- 9 support everything the school board did?
- 10 A No.
- 11 Q Why not? I was there.
- 12 The school board votes to increase my taxes. Does that
- 13 mean I go along with that?
- 14 A If it passes you do.
- 15 Q I may get stuck with it, but does that mean that I agree to
- 16 it?
- 17 A No.
- 18 Q Why not?
- 19 A Because you didn't agree to it. You're at the board
- 20 meeting.
- 21 Q You can just be at a meeting and walk right out of the
- 22 meeting and not have any agreement whatsoever or not even think
- 23 about what, other than the fact you physically were present,
- 24 correct?
- 25 A That is a possibility.

HUGHEY - CROSS / VOYLES

1 Q You have done that yourself. You have been at a lot of
2 places you didn't agree to things and you walked out.

3 Everybody thought when you left you agreed to it?

4 You called them back, didn't you, said, "I didn't agree to
5 that. You thought I did, I didn't."

6 A What are you talking about?

7 Q Anything in your business world where people say that you
8 show up, does that mean you agree because you're there?

9 A No, it doesn't.

10 Q And why not?

11 A Because if you don't discuss it, you don't agree to it. I
12 mean if --

13 Q Yeah, that's right, if you don't discuss it and if you
14 don't voice your opinion or some indication, then you can't be
15 tagged with you agree, can you?

16 A That would be correct.

17 Q Thank you.

18 A But when you call somebody --

19 Q There's not a question pending in front of you, sir. You
20 have answered the question. Thank you.

21 A Okay.

22 Q Now this last meeting that you attended at the horse barn
23 where Chris Beaver is now present, is that correct?

24 A Yes.

25 Q Do you have conversation with Chris Beaver in the meeting?

HUGHEY - CROSS / VOYLES

1 A Yes.

2 Q Say hello, talk to him?

3 A Yes.

4 Q Does he talk to you about anything else?

5 A Other than what we're talking about in the meeting?

6 Q Yeah. Does he stand up in the meeting and say I agree or I
7 go along with it or anything like that?

8 A I don't recall specifically what anyone had said in the
9 meeting. No one stood up and said I agree, this is what we're
10 going to do.

11 Q But other people like yourself and Mr. Nuckols were very,
12 very vocal, weren't you?

13 A Yes.

14 Q People didn't have any doubt where you stood because of
15 what you were saying?

16 A That's right.

17 Q But people who are not talking, you have no idea where they
18 stood, do you?

19 A Well...

20 Q We have already been down this road once and you indicated
21 to me that unless somebody said something or does something,
22 you don't know what they think.

23 A I don't know why Rick Beaver would -- Chris Beaver in that
24 last meeting would say I'll deliver the message to Jason Mann
25 if he didn't know what was going on or wasn't agreeing to what

HUGHEY - CROSS / VOYLES

1 we were doing.

2 Why would he deliver a message to somebody?

3 Q Did he?

4 A I don't know that he did, but he said he would. Why would
5 he say he would do that?

6 Q Do you know whether he did any of that?

7 A I don't know if he did.

8 Q Okay. Do you know what message he was delivering?

9 A What the discounts were supposed to be, the \$5.50 going
10 to --

11 Q Is that what he said, or he said I'll deliver a message?

12 Didn't he say, "I'll talk to Mr. Mann myself?"

13 A Yeah, he said he'll talk to him about what we were -- he
14 said I'll talk to him about -- first of all, I think Butch said
15 I'll get hold of Jason, let him know.

16 And Chris volunteered at that point, he said: We have been
17 talking to him about software and software, either they sold
18 him some software, talking something about software program.
19 He said, "I'll be talking to him. I'll get with him on it."

20 Q Yeah, he just said I'll talk to him because he had been
21 dealing with him on software matters, didn't he?

22 A He would talk to him about what we discussed.

23 Q Did he say that? He didn't say that, Mr. Hughey. Now
24 don't add that because that was never said and you know it.

25 Don't you?

HUGHEY - CROSS / VOYLES

1 A I know that in the context of the conversation --

2 Q No, Mr. Hughey, I don't mean context. I want to have you
3 tell this jury exactly what he said. Not what you think he
4 said. What he said.

5 A He said that he would deliver, talk to Jason Mann. We were
6 talking about who's going to talk to --

7 Q That's all he said, I'll talk to --

8 A Can I answer the question?

9 MR. VONDRAK: Let answer the question.

10 THE COURT: Let him answer the question.

11 BY MR. VOYLES:

12 Q I would try to have him answer that question. Go right
13 ahead.

14 A Okay. You asked me what did -- what is the question again?

15 Q The question is to you, recite to the jury, not in context,
16 but specifically what Mr. Chris Beaver said.

17 A When -- Butch said, "I will talk to Jason Mann about the
18 agreement that we have reached here today," which was the \$5.50
19 going to \$3.50.

20 And then Chris said -- we're talking about who's going to
21 talk to -- who's going to talk to Jason, okay? And Butch I
22 think said something like --

23 Q You think?

24 A Well, Butch -- my recollection, Butch said: "Well, I guess
25 I can get with Jason."

HUGHEY - CROSS / VOYLES

1 And Chris said, "I can tell him. I can talk to him because
2 we are talking to him about software."

3 Q That's right. He said I can talk to him because we're
4 talking about software. That's all he said, wasn't it? That's
5 all he said.

6 A I don't know exactly what he said, but what I believe I
7 heard was --

8 Q That's pretty good --

9 A -- he was going to talk to him about what we had agreed on
10 because he's talking to him about software or sold them an old
11 software program, something like that.

12 Q All right. Did you meet with Rick or Chris or Allyn Beaver
13 after that meeting?

14 A No.

15 Q Did you have any conversation with Allyn Beaver?

16 A No.

17 Q Did you have any conversation with Rick or Chris Beaver
18 after that meeting?

19 A Excuse me, after the horse barn meeting?

20 Q Yes.

21 A In October? Yeah, I would have talked to Chris, yes.

22 Q You talked to Chris after that meeting?

23 A On one or two occasions. The one I talked about calling
24 him about --

25 Q These are the ones you didn't remember until today?

HUGHEY - CROSS / VOYLES

1 A No, I remembered them for some time. What I stated was I
2 don't remember when I recalled it and gave that information to
3 the government. I didn't recall that today.

4 Q And these are from the statements that you previously gave
5 the government over a two year period where it's never
6 mentioned in the FBI agent's notes of talking to you, that's
7 what you're talking about?

8 A They're not in those notes, that's correct.

9 Q And those are notes that the FBI agent was taking while he
10 was having conversation with you when you were unburdening
11 yourself, is that correct?

12 A As I was giving them information, yes.

13 Q But those just didn't happen to appear in that note, any of
14 those notes, right?

15 A That's right.

16 Q Thank you.

17 A But it did happen.

18 MR. VOYLES: No further questions.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 MR. VONDRAK: Thank you, Your Honor.

22 BY MR. VONDRAK:

23 Q Mr. Hughey, can you understand what somebody is thinking
24 even if they don't specifically say it to you?

25 A No.

HUGHEY - REDIRECT / VONDRAK

1 Q Do you understand generally by action what somebody is
2 thinking even though they don't specifically say it?

3 A Yes.

4 Q So, for instance, if I kiss my wife, everybody here has
5 some idea of what I'm thinking about, right?

6 A Possibly, yes.

7 Q I didn't have to say anything?

8 MR. VOYLES: Maybe not.

9 (Laughter.)

10 MR. VOYLES: Maybe it's not your wife.

11 (Laughter.)

12 THE COURT: Let's get something relevant here, what do
13 you say, on this redirect.

14 BY MR. VONDRAK:

15 Q In fact, you can have an agreement with someone without
16 saying the word agreement or I agree, is that true?

17 A Yes.

18 Q For instance, at the beginning of your testimony you
19 testified that your company was Hughey, Inc. d/b/a Carmel
20 Concrete, do you recall that?

21 A I think it was said Hughey, Inc. and you asked me something
22 about Carmel Concrete is that same thing. I don't remember
23 saying d/b/a but...

24 Q Do you recall when I asked you if I refer to your company
25 as Carmel, will you know what I mean?

HUGHEY - REDIRECT / VONDRAK

1 A Yes, I recall that. And I responded yes.

2 Q And I didn't say do we agree to refer to the company as

3 Carmel, did I?

4 A No, you did not.

5 Q But we understood each other, is that right?

6 A Absolutely.

7 Q We didn't say agreement?

8 A No, we didn't say agreement.

9 Q Directing your attention to the first meeting that you had

10 at the office of the Antitrust Division in Chicago. You said

11 that that happened in August of 2004, is that correct?

12 A I'm not good with dates, but I was up there twice, and the

13 date on the statements speak for themselves. But there were

14 two times I was up there, yes.

15 Q During that meeting were you specifically asked if you had

16 any telephone conversations with Ricky Beaver?

17 A No.

18 Q Were you specifically asked if you had any telephone

19 conversations with Chris Beaver?

20 A No.

21 Q During the next meeting at the Antitrust Division in

22 Chicago, how long was that meeting?

23 A Several hours.

24 Q Were you specifically asked whether you had any telephone

25 conversations with Rick Beaver?

HUGHEY - REDIRECT / VONDRAK

1 A No.

2 Q Were you specifically asked if you had any telephone
3 conversations with Chris Beaver?

4 A No.

5 Q When you were met, when you met with Special Agent
6 Schlobohm in May of this year in Indianapolis, what were you
7 discussing with Special Agent Schlobohm that day?

8 A Mostly the tape recordings with Gary Matney that the
9 conversations I had with him.

10 Q I'm sorry?

11 A Mostly I was listening to the tapes and clarifying
12 information that was in there.

13 Q During that meeting in Indianapolis at the United States
14 Attorney's office were you specifically asked whether you had
15 any telephone conversations with Ricky Beaver?

16 A No.

17 Q During that meeting at the United States Attorney's office
18 in Indianapolis were you specifically asked whether you had any
19 telephone conversations with Chris Beaver?

20 A No.

21 Q Directing your attention to your conversation with Rick
22 Beaver at the Dairy Queen which Mr. Lockwood asked you about,
23 and I believe you testified you told Rick Beaver that you were
24 out of the agreement?

25 A That's correct.

HUGHEY - REDIRECT / VONDRAK

1 Q Did Mr. Beaver ask you what agreement you were talking
2 about?

3 A No. He knew what I was talking about.

4 Q Did he seem surprised about the word agreement coming up?

5 A No.

6 Q Did he say I don't know what you're talking about?

7 A No. He knew what I was talking about.

8 He actually said: Well, you know Butch hadn't been doing
9 it. We have seen quotes where he's not where he's supposed to
10 be. We have seen quotes or heard from people that Butch was
11 not adhering to the agreement and giving special discounts for
12 term discounts to pay early, a way of getting around it, and
13 specifics about what Butch had done and wasn't doing it anyway.

14 So he wasn't surprised when I was telling him where we were
15 coming from. He certainly knew what I was talking about.

16 Q Sir, I'd like to show you what has been marked as
17 government's exhibit number 34. Could you tell us what this
18 document is, please?

19 A The first page is a timeline I put together to put
20 different instances of meetings or conversations that I had had
21 with various people that were involved in this.

22 Q Was that in preparation for your meeting with the
23 Department of Justice and the FBI?

24 A Yes.

25 Q And is this the timeline that Mr. Lockwood was referring to

HUGHEY - REDIRECT / VONDRAK

1 earlier?

2 A Yes, it is.

3 MR. VONDRAK: Your Honor, at this point I would like
4 to move government exhibit number 34 into evidence.

5 MR. LOCKWOOD: We have no objection, Your Honor.

6 MR. VOYLES: MA-RI-AL has no objection, Your Honor.

7 THE COURT: Exhibit is admitted.

8 (Government's Exhibit 34
9 entered into evidence)

10 MR. VONDRAK: May we publish, Your Honor?

11 THE COURT: Yes.

12 BY MR. VONDRAK:

13 Q Once again could you please explain to the jury what this
14 diagram is?

15 A It is a timeline that I put together to the best of my
16 recollection of the times that events happened that were
17 pertinent to this price fixing agreement that we had with our
18 competitors.

19 Q Now does this timeline include every single meeting that
20 you had with competitors during the time period?

21 A No, sir.

22 Q Does this include every telephone conversation that you had
23 during the time period --

24 A I don't think it has any -- I'm sorry.

25 Q Let me ask the question. Does this include every telephone

HUGHEY - REDIRECT / VONDRAK

1 conversation that you had during the period of July 2000
2 through May of 2004?

3 A No.

4 Q What is this document?

5 A It's mostly meetings that I had with people.

6 Q Directing your attention to the top left-hand side where it
7 says 00. What does that mean to you?

8 A That's the year 2000, and the line below that would be
9 2001, etc., etc.

10 Q If we can focus your attention on the first half of the
11 first line. Can you read that?

12 A Yes.

13 Q If perhaps we could...

14 Okay. After it says 00, could you please tell us what it
15 says after that?

16 A It says July possible barn meeting number one.

17 Q And when you say July possible, what does that mean to you?

18 A It means I wasn't sure of the date. I remember these
19 things but the dates are hard for me to remember.

20 Q And what does the word barn mean to you?

21 A That's Butch's horse barn.

22 Q Now, directing your attention to further on down on --
23 going to '03, the line that says '03. Do you see that?

24 A Yes.

25 Q On the time line --

HUGHEY - REDIRECT / VONDRAK

1 A Yes.

2 Q -- and going over towards a little bit to the right of the
3 middle of the page where there is an 11 with a circle. What
4 does that -- is that your handwriting?

5 A Yes, it is.

6 Q What does that notation say?

7 A "Second barn meeting, October 22nd."

8 Q And going -- I'm sorry?

9 A And then the slash calendar.

10 Q Now, going to '02, the line that says -- that is on the
11 right-hand side, says '02 about a quarter of the way in after
12 the number 3. There is a number written about an inch above --
13 or some writing an inch above that line. Could you please read
14 that to the jury?

15 A "Signature Inn meeting," and then the arrow pointing down
16 with a question. I wasn't sure of the time of it.

17 Q But at the time that you made this chart in anticipation of
18 your meeting with the United States Department of Justice and
19 the FBI --

20 A Yes.

21 Q -- that was your recollection as to when that meeting took
22 place?

23 A That's correct.

24 Q Now, also associated with Government's Exhibit Number 34
25 are some handwritten notes that you provided to the Government,

HUGHEY - REDIRECT / VONDRAK

1 is that correct?

2 A Yes.

3 Q Now, do those notes list every single meeting that you had
4 with your competitors during the period of July, 2000 through
5 May 25th of 2004?

6 A No, sir.

7 Q What do those notes include?

8 A Those include meetings, conversations that I recalled in
9 thinking about what had happened during that time period, in
10 order to meet with you.

11 Q Now, directing your attention a little bit further down,
12 Mr. Hughey.

13 A From the time line?

14 Q On the time line going down to the line of '04.

15 A Yes.

16 Q And going to the number 30.

17 A Uh-huh.

18 Q You see that?

19 A Yes, I do.

20 Q Going a little bit -- going to that point, number 30, could
21 you read for us what your handwriting is there?

22 A It says, "FBI looking."

23 Q And what does that mean?

24 A That means -- that is somewhere around the time line I had
25 heard there was a rumor that the FBI was looking for someone to

HUGHEY - REDIRECT / VONDRAK

1 wear a wire in a meeting.

2 Q Now, moving to the right of that time line, and that would
3 be later in time, is that correct?

4 A Yes.

5 Q Moving to the right of that time line you see a notation
6 that says "May 25th?"

7 A Yes.

8 Q What does that notation mean to you?

9 A That is the day that the FBI called me and showed up with
10 the search warrants.

11 Q So in relation to your notation about FBI looking, was that
12 before -- was May 25th, 2004, before that notation or after?

13 A That is after.

14 Q Now, you testified earlier that in a telephone conversation
15 that you had with Chris Beaver after the October 23rd, 2000
16 horse barn meeting he said that they were where they were
17 supposed to be. Is that what you said?

18 A Yeah, that is what he told me when he got back with me, or
19 if he knew. I don't remember if both times, or one or two, he
20 had to probably get with Rick. He is the sales manager to get
21 back with me to tell me what -- yeah, he said they were -- they
22 had not -- I don't know his exact words, but his indication was
23 no, we didn't cut the price. We were aware we where we were
24 supposed to be.

25 Q When he said "supposed to be," what did you understand that

HUGHEY - REDIRECT / VONDRAK

1 to mean?

2 A I understand that he was -- he was adhering to the
3 agreement, and he was at the discount that was established in
4 the agreement with everyone. I mean, he didn't say, "What are
5 you talking about? What agreement? I don't know what you are
6 talking about. I didn't agree to anything." He just answered
7 my question like anyone else would that I would talk to, any of
8 the other competitors.

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

10 THE COURT: Mr. Lockwood.

11 MR. LOCKWOOD: Thank you, Judge.

12 RE-CROSS-EXAMINATION

13 QUESTIONS BY MR. LOCKWOOD:

14 Q Mr. Hughey, Mr. Vondrak asked you the fact that you were
15 not specifically asked about phone calls to Rick Beaver when
16 you met with him in August of 2004. Do you remember that line
17 of questioning?

18 A Yeah.

19 Q But somebody at that meeting said to you, didn't they, was
20 IMI in this agreement?

21 A I don't know if they asked me that specific question.

22 Q Well, gee, isn't that what you met with them for, to find
23 out who was in the agreement and who wasn't?

24 A I was meeting them, telling them everything I knew about
25 the price fixing agreement that we all had.

HUGHEY-RECROSS

1 Q We all, including IMI?

2 A Yes.

3 Q And including Shelby?

4 A Yes.

5 Q And including American?

6 A Yes.

7 Q And including Beaver?

8 A Yes.

9 Q And didn't you have an opportunity to tell them all the
10 reasons that you believed that Beaver was involved in this
11 conspiracy?

12 A Yes, I would have had that opportunity.

13 Q So it wasn't a matter of being asked specifically about it.
14 You were asked to tell them all the reasons you believed that
15 Beaver Corporation, Rick Beaver, entered into this agreement?

16 A I was asked to share all the information that I had. I
17 don't recall that specific line of questioning.

18 Q You never said anything about the phone call?

19 A Did not.

20 Q Because you didn't remember it?

21 A That's correct.

22 Q The same thing happened again. You went down and met with
23 them and this time you brought with you your time line?

24 A That's correct.

25 Q That is the time line they asked you to sit down and put

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1 together?

2 A Yes.

3 Q And you did sit down --

4 A Well, I don't know they specifically asked me for a time
5 line. They said, "Sit down and think about what happened and
6 try and get it organized for us." So, yes.

7 Q So they specifically invited you to sit down and make
8 notations after you had thought about it?

9 A That's correct.

10 Q And you did that?

11 A Between the first and second meeting, yes.

12 Q How much time did that take you?

13 A A couple of hours.

14 Q Did you check your day planner?

15 A To see when I did it or how long it took? No.

16 Q In the preparation did you just do it off the top of your
17 head?

18 A Yeah. I may have looked -- well, as a matter of fact,
19 yeah, I would have looked at whatever information I had. If
20 you look at that time line there is something there about
21 something from Poultry to help me navigate into --

22 Q I'm not asking you about the Poultry entry. I'm asking you
23 how long it took you to put it together, and you said a couple
24 of hours?

25 A A couple or three hours.

HUGHEY-RECROSS

1 Q Then I asked you if you referred to your day planner in
2 order to help you put it together.

3 A Well, let me back up.

4 Q Did you refer to your day planner in order to help you put
5 together your time line, sir?

6 A Well, let me clarify something.

7 Q Is there anything about that question you don't understand?

8 A No, but there is something I want to --

9 Q Did you refer to your day planner in order to put together
10 your time line, sir?

11 A I don't recall.

12 Q Did you refer to anything else, any other records, in order
13 to put together the time line?

14 A Yes.

15 Q What?

16 A Looking for a quote. No, I want to clarify that. I
17 believe I found something in my day planner for -- I don't
18 remember which one of the horse barn meetings it was, but I was
19 looking through records for quotes because of some conversation
20 I had with someone about somebody wanting a price on a tract
21 builder to nail down the date in 2000 when we had the horse
22 barn meeting. And so I would have asked our sales manager, "Do
23 you remember when I called you and said we need to get in and
24 see this home builder about getting work?" Because a flat work
25 person called me and said, "Hey, you need to get in and see

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1 they guys. I think you can get in." So, Yes, I was doing
2 those kind of things to try and remember mostly the time
3 sequence of things.

4 Q So you referred to your day planner?

5 A I believe I did.

6 Q You referred to your records to find a bid?

7 A Yes.

8 Q You consulted with your own staff?

9 A With respect to the quote.

10 Q All right. Did you refer to anything else?

11 A Not that I recall.

12 Q Over how long a period did you make reference to these
13 various sources of information to help you put together your
14 time line?

15 A I don't recall the time.

16 Q More than two hours?

17 A Yeah, that is what I was trying to clarify earlier. You
18 asked me how long --

19 Q Let me ask you. You didn't sit down and do your time line
20 in two hours just off the top of your head?

21 A Correct.

22 Q So in order to gather the information that you needed to
23 put your time line together did it take you a matter of days?

24 A I had thought about things for a period of time, just kind
25 of rolling around in my mind, then I sat down. I went to the

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1 library so I could not be disturbed and wrote all the things
2 down that I could remember, and that was a several hour period.

3 Q So you gave this project enough time to -- so you rolled
4 these things over in your mind and you considered all the
5 things you thought you could remember?

6 A Yes.

7 Q And you went to the library where it was quiet?

8 A Yes.

9 Q And you referred to your day planner?

10 A Not at the library, no.

11 Q No, sir, you referred to your day planner in putting
12 together your time line?

13 A At some point.

14 Q And you talked to personnel in your organization?

15 A With respect to --

16 Q And you looked at bids?

17 A No, I looked at a quote.

18 Q Looked at a quote. I'm sorry, I stand corrected. During
19 all of this thinking it never occurred to you to mention to the
20 Government when you met with them in October that you had
21 telephone conversations with Rick Beaver that you have
22 described to us today?

23 A If I would have thought of it at that time I would have
24 written it down.

25 Q You didn't remember it after all of that?

HUGHEY-RECROSS

1 A That's correct.

2 Q What miraculous event took place that jogged your memory a
3 week ago?

4 A I'm not saying that I remembered it a week ago and told
5 them. I told you I don't recall when I recalled it and told
6 them it happened.

7 Q So you don't know when you remembered it?

8 A Precisely. No, I don't.

9 Q I'm sorry, you don't remember when you remembered?

10 A That's correct.

11 Q What did you do when you remembered?

12 A Well, when I was talking to the Government I shared that
13 with them.

14 Q Excuse me, sir. What did you do immediately upon
15 remembering this information?

16 A I don't recall what I did immediately.

17 Q So you don't remember when you remembered it, and you don't
18 remember what you did when you first remembered it, but when
19 you had a chance to get together last week, that is the first
20 time you disclosed it?

21 A I stated that I don't recall when I told them when it was.
22 You keep telling me I did it last week.

23 Q Well, I'm sorry. Correct me if I'm wrong. I believe you
24 testified that you had two meetings with them without your
25 lawyer last week?

HUGHEY-RECROSS

- 1 A That's correct.
- 2 Q And the last one was on Saturday?
- 3 A That's correct.
- 4 Q And you had the permission of your lawyer to meet with the
5 Government without him being present?
- 6 A That's correct.
- 7 Q And was that an interview, sir? Did they interview you?
- 8 A Well, define an interview.
- 9 Q Asked you questions?
- 10 A Yes.
- 11 Q And they didn't ask the question about, hey, by the way,
12 did Rick Beaver ever say to you we are on --
- 13 A No, they knew before last -- the last two meetings,
14 Saturday and the other meeting, they knew before Saturday. I
15 don't remember when I told them. I don't remember when I
16 remembered it, but what I remember is a fact.
- 17 Q Well, if you don't remember what you told them, Mr. Hughey,
18 how do you know --
- 19 A No, I said I don't remember when I told them, not what I
20 told them.
- 21 Q If you don't remember when you told them, how do you know
22 you didn't tell them Saturday?
- 23 A I remember I know I didn't tell them Saturday.
- 24 MR. VONDRAK: Your Honor, asked and answered.
- 25 THE COURT: Yes, let's go to the next issue.

HUGHEY-RE CROSS

1 MR. LOCKWOOD: I understand.

2 Q There is not another single thing that you have had this
3 loss of recollection about concerning this --

4 A Oh, there is lots of things I have had loss of recollection
5 about.

6 Q So there are lots of things out there that you have
7 evidence about that you have that the Government would like to
8 have, but they can't have it because you don't remember it?

9 A Yeah.

10 MR. LOCKWOOD: Okay, thanks.

11 THE WITNESS: I don't remember everything.

12 THE COURT: Mr. Voyles.

13 MR. VOYLES: No questions, Your Honor.

14 THE COURT: Mr. Vondrak.

15 MR. VONDRAK: No questions, Your Honor.

16 THE COURT: You may step down, sir.

17 (Witness excused)

18 THE COURT: So, ladies and gentlemen, that will be all
19 the evidence you will hear today.

20 While you are out don't express or form an opinion on the
21 case and avoid the media yeah presentation of the case.

22 And I'll see you in the morning at 9:00 o'clock.

23 (The Court adjourned at 5:20 P.M.)

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

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GLEN L. CUNNINGHAM
OFFICIAL COURT REPORTER

DATE

PATRICIA CLINE
OFFICIAL COURT REPORTER

DATE

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