

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE READY-MIXED CONCRETE)
ANTITRUST LITIGATION,) Master Docket No.
) 1:05-cv-00979-SEB-JMS
)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

**Before the Honorable
SARAH EVANS BARKER, JUDGE**

OFFICIAL REPORTER'S TRANSCRIPT OF
FAIRNESS HEARING

Court Reporter: Laura Howie-Walters, CSR/RPR
Official Court Reporter
46 East Ohio Street
Room 217
Indianapolis, Indiana 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND
TRANSCRIPT PRODUCED BY ECLIPSE NT COMPUTER-AIDED TRANSCRIPTION

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1 (Open court.)

2 THE COURT: Good morning, all. Nice to see you.
3 Be seated. I apologize for the delay while I got things in
4 order back there, but it looks like there were enough of you
5 to keep each other company. You didn't worry about where I
6 was.

7 Miss Schneeman, would you call the matter before the
8 Court, please.

9 (Call to order of the Court.)

10 All right. This matter's before the Court for
11 approval of the settlement agreement with the defendant,
12 Southfield Corporation, formerly known as Prairie Material
13 Sales, Inc., and Gary Matney.

14 We have a little calendaring issue that we need to
15 address with respect to the August 6th time at which the Court
16 can actually enter an order approving the settlement as I
17 understand; is that right, Mr. Levin?

18 MR. LEVIN: Yes, Your Honor. Under the CAFA
19 deadlines, August 6th would be the date that would be
20 appropriate to enter the order.

21 THE COURT: Right, but we're going to consider the
22 appropriateness of the order today --

23 MR. LEVIN: Correct.

24 THE COURT: -- and have you present to the Court the
25 information that would provide the legal basis and the factual

1 basis for approval of the settlement, but withhold any order
2 until August 6th to comply with the other deadlines; right?

3 MR. LEVIN: Yes, Your Honor, that would be our
4 desire.

5 THE COURT: Okay. And one of the reasons we're
6 doing this, we might as well say out loud and on the record,
7 is because on August 6th, this part of the Court does not
8 expect to be in business. So we needed to set the stage.

9 What we'll do, I think, with respect to that
10 August 6th deadline -- I'll scoot up here so can I see all of
11 you -- is hold the record open so if there's any response that
12 comes in between today and August 6th that is germane, and
13 that would change the submission to the Court, or at least
14 would be something the Court should take into consideration,
15 then I'll hold the entry of the order in abeyance.

16 I will be in town. I mean, I will be in telephone
17 range, so I'll call and make arrangements for the order to be
18 issued August 6th unless I hear something else in the interim.

19 Is that an agreeable procedure to everyone?

20 MR. LEVIN: Yes, Your Honor.

21 MR. OSBORN: Yes, Your Honor.

22 MR. GAIR: Yes, Your Honor.

23 THE COURT: Now, let me just recognize you,
24 Mr. Levin, to have you apprise the Court of the matters that
25 have occurred since we last met that were consistent with the

1 Court's prior order.

2 MR. LEVIN: Thank you, Your Honor.

3 We are -- may it please the Court, we are pleased to
4 be here today. This is the third settlement, so I won't go
5 through everything I went through on the first two.

6 THE COURT: Assume I know all of that.

7 MR. LEVIN: And I do. We have filed papers and I
8 filed a declaration which sets forth the information I believe
9 the Court needs to find the settlement to be fair, reasonable
10 and adequate.

11 Your Honor, before I begin, and I will be brief this
12 morning, I know that the Court is familiar with the counsel at
13 our table, but I'd like to introduce one of our class
14 representatives, Mike Boyle of Boyle Construction who is here
15 today as well.

16 THE COURT: Mr. Boyle, it's nice to meet you, sir,
17 and we're glad to have you in court today, sir.

18 Go ahead.

19 MR. LEVIN: Your Honor, very briefly, and this is
20 all set out in the papers, we are asking the Court today to
21 grant final approval of the settlement of \$19 million that we
22 have reached as class counsel with Southfield, formerly known
23 as Prairie, and Mr. Matney.

24 This settlement, we believe, is actually, in
25 antitrust terms, a wonderful settlement. It represents,

1 according to our calculations, approximately 22 percent of the
2 defendant's sales during the class period.

3 The Court is aware, I know, that we have engaged in
4 extensive discovery in this case which is ongoing and somewhat
5 adversarial, but in a collegial way, I hope. But it's a case
6 that has been litigated, how should I say, with great rigor on
7 both sides.

8 THE COURT: That very well summarizes it.

9 MR. LEVIN: And I think that I should tell you that
10 the negotiations which led to this settlement were also quite
11 rigorous. And I will say they were held on what I consider to
12 be a very professional level, and we're pleased to be able to
13 bring the settlement before the Court.

14 We engaged in extensive notice efforts which are
15 before the Court, and the CAFA notices have been given. I
16 would point out that the CAFA notices in the prior two
17 settlements did not result in a murmur from anyone. And I
18 would anticipate, and hopefully anticipate, that we would not
19 hear anything between now and August 6th, but of course we
20 have to keep it open until that date.

21 There were no objections to this settlement. There
22 were five opt-outs out of thousands and thousands of notices.
23 And there was one letter that was sent to the Court, and that
24 letter basically said that that individual wished to opt out
25 and sort of suggested that since gas -- the oil companies who

1 are responsible for the gas prices weren't being sued for
2 antitrust, maybe no one should. And that was --

3 THE COURT: An interesting thought.

4 MR. LEVIN: It is. It is. It was not accompanied
5 by a memorandum of law, so we didn't pay a whole lot of
6 attention to it, but there were only five opt-outs out of
7 those thousands of people.

8 We spoke with -- I don't know if I can say literally
9 hundreds, but a whole lot of class members who responded once
10 they got the notices.

11 Your Honor, we are not --

12 THE COURT: How did they get in touch with you? Was
13 it by phone or e-mail?

14 MR. LEVIN: Mostly by phone. Some e-mail, but
15 mostly by phone.

16 We are not asking for a distribution at this time.
17 We are not asking for distribution of class members. We are
18 not asking for attorney fees, and we are not asking for a
19 reimbursement of expenses at this time.

20 THE COURT: What are you going to do with the money?

21 MR. LEVIN: Well, the money is being held at
22 interest, and the three -- three of the remaining defendants
23 that would be --

24 THE COURT: Do the class members know that as well?

25 MR. LEVIN: Yes. The three -- three of the

1 remaining defendants, IMI, Builders and Beaver, requested a
2 settlement conference -- actually, requested a mediator of the
3 magistrate, and the magistrate indicated that she would hold
4 settlement conferences. So we now have settlement conferences
5 set in August, September, and October.

6 THE COURT: This is for the three remaining?

7 MR. LEVIN: For the three remaining defendants, yes.

8 THE COURT: Okay.

9 MR. LEVIN: So it is anticipated -- since the cost
10 of distribution is so high, it is anticipated that if we can
11 effectuate the settlement in one or more of the settlement
12 conferences, it would make sense to wrap that up before we go
13 to the expense of distributing the money. So at this point,
14 we are not asking for that.

15 And, Your Honor, at this point, we would just ask
16 based on our papers that the Court find the settlement to be
17 fair, reasonable and adequate, and approve the settlement
18 subject to the --

19 THE COURT: Now, I know part of the agreement was a
20 percentage payout for attorneys' fees from the amount that the
21 defendants paid.

22 MR. LEVIN: Actually, the agreement is that they
23 won't object up to --

24 COURT REPORTER: I'm sorry?

25 THE COURT: Up to 33 and a third?

1 MR. LEVIN: Yes.

2 THE COURT: Court reporter, he said they won't
3 object to them. I cut him off, I'm sorry.

4 I just want to remind you that of course the Court
5 will pass on the appropriateness of the fees, and since you're
6 not taking a distribution now, it will probably be at the end
7 of the process, either through trial or through other
8 settlements. So I don't want the fees arrangements stacked
9 necessarily.

10 MR. LEVIN: No, Your Honor, I mean, to be frank with
11 you --

12 THE COURT: As you always are.

13 MR. LEVIN: As plaintiffs, you know, we sort of are
14 hand in hand with our clients. There is no incentive for us
15 to prolong litigation. There's no incentive for us to do
16 anything that isn't consistent with the interest of our
17 clients for that reason.

18 So it is anticipated that when it comes time to ask
19 for a fee, the Court will look at all of our efforts and what
20 we've accomplished and award an appropriate fee.

21 THE COURT: Yes, of course. And I don't want you to
22 think that I'm suspicious of the arrangements you've made.
23 Hardly that. I'm familiar with your work in this case and
24 many other class actions that you litigate. So I know -- I
25 think I have a window into your practices, and I have no

1 concerns about that as such; but, of course, if there were no
2 role for the Court to play, if your interests were absolutely
3 identical to your clients, there would be no role for the
4 Court to play.

5 But we all know that sometimes the litigants in a
6 class action can't pay as close attention to all the matters
7 and don't have the interest in watching out for the whole as
8 the Court must do.

9 MR. LEVIN: Yes.

10 THE COURT: So I simply say that because we're
11 engaged in a process of partial settlements, and each time,
12 appropriately, you make those arrangements for your part of
13 that resolution. I repeat again: Appropriately.

14 But at the end, I'll look at the whole and make sure
15 that whatever remuneration you have negotiated for meets all
16 the appropriate standards.

17 MR. LEVIN: Absolutely, Your Honor. We would expect
18 nothing less.

19 THE COURT: Okay. Take three minutes, because we
20 have a gallery full of eager ears back there, to state for the
21 record and so that they can hear what this litigation is
22 about.

23 MR. LEVIN: Certainly, I'd be happy to, Your Honor.

24 This litigation arises under the antitrust laws of
25 the United States.

1 THE COURT: In fact, I'll let you just stand sort of
2 at an angle here so that they can hear because I want them to
3 know about how this goes. Put your back towards the jury box.
4 Now, you don't get to do that very often.

5 MR. LEVIN: Your Honor, that was the first thing I
6 was taught by a federal judge was to never do that.

7 THE COURT: But I'm letting you today.

8 MR. LEVIN: This case arises under the antitrust
9 laws of the United States.

10 THE COURT: Back up a little bit so the court
11 reporter can hear you as you say it.

12 MR. LEVIN: Only three minutes? Okay.

13 The allegations of the complaint are that certain
14 concrete companies in Indiana conspired to fix prices. And
15 the way they did that was to agree that -- among other ways --
16 was to agree that certain -- that every -- that no one would
17 charge below a certain price for a discount, or however you
18 want to describe it, but they would all agree that they
19 wouldn't charge below a certain price.

20 So that if I was a contractor and I went to three
21 different concrete companies, those three concrete companies
22 would tell me how much they would charge me, but they would
23 know amongst themselves that there would be a floor. The
24 antitrust laws say that capitalism provides that I'm entitled
25 to bargain freely with the seller of goods.

1 These concrete companies that are most of which --
2 and not Prairie, not Southfield, which is the settling
3 defendant here, but the remaining were indicted. Most of them
4 pled guilty. Their principals served executed time in prison,
5 and they paid civil fines.

6 The civil fines don't go to the purchasers. The
7 civil fines go to the government. So there's -- within the
8 antitrust laws, there's a recognition that private actions
9 will be brought for remuneration, and that's what this case is
10 about.

11 Interestingly, in Indiana, only direct purchasers
12 can bring an action under the antitrust laws. What that means
13 is this: If I want to build a building, and I go get a
14 contractor, like Mr. Boyle, and I say "Build my building," and
15 he says "We're going to need a bunch of -- you're going to
16 need a bunch of concrete," we can do it one of two ways.

17 He can charge me a million dollars to build my
18 building, and then he goes and he buys the concrete directly.
19 He's then the direct purchaser.

20 Now, from an economic standpoint, I still paid more
21 money if there was a price-fixing arrangement, okay, because
22 he would have calculated the price into what he was charging.
23 But in Indiana, I can't bring an action. Only he can bring
24 that action. And that's because there is a United States
25 Supreme Court case called Illinois Brick that said only a

1 direct purchaser can bring that.

2 Most states have what are called Illinois Brick
3 repealers. If this had happened in other states, then the
4 indirect purchaser, like myself in my example, would be able
5 to sue as well.

6 Indiana has tried to pass Illinois Brick repealers,
7 and was an -- in the Legislature, there was a bill that would
8 have done that this session. And I can tell you, because this
9 is all public record, it was opposed by the tobacco companies
10 and Microsoft, I forget who else, pharmaceutical companies.
11 And as a result, Indiana still does not have an indirect
12 purchaser.

13 So this case is a little different than cases that
14 you might see in other states because it only involves direct
15 purchases.

16 THE COURT: Pretty good, Professor.

17 MR. LEVIN: Thank you.

18 THE COURT: Thank you, Mr. Levin.

19 Ms. Osborn?

20 MR. OSBORN: Yes.

21 THE COURT: Nice to have you in court today, as
22 always.

23 MR. OSBORN: May it please the Court, Your Honor.
24 Mr. Levin, would you like your notes? I don't suppose you
25 want me to see them.

1 MR. LEVIN: Sure. My life's an open book for you.

2 MS. OSBORN: Your Honor, Southfield is here today to
3 request that you approve this settlement. While Southfield
4 very much believes that it would ultimately prevail in this
5 matter, this litigation, as you know, has been going on a long
6 time. We still have not concluded the class certification
7 phase.

8 As you noted earlier -- as Mr. Levin noted earlier,
9 there has been extensive discovery, as there always is, in
10 antitrust matters, a lot of depositions, a lot of document and
11 data gathering and issues, and a lot of expert-related issues
12 and costs.

13 And despite Baker & Daniels' very reasonable fees
14 and efficiencies, that has been costly for Southfield, and
15 they would like to extract themselves from it. Southfield is
16 no longer in the ready-mixed concrete business. They sold
17 their ready-mixed operations at the beginning of this year.

18 THE COURT: Where is the company located?

19 MR. OSBORN: The company, Southfield Holding, the
20 assets now are located in Chicago, but Prairie Materials still
21 operates under that name by the buyer here in Indianapolis, in
22 the Indianapolis area.

23 THE COURT: Okay. So the percentage of assets that
24 was referenced in the settlement, was that from Prairie as
25 opposed to Southfield or both?

1 MR. OSBORN: Yes, Your Honor, that number
2 plaintiffs, I believe, have calculated based on the numbers we
3 provided them for sales to the settlement class during the
4 class period which was 2000 to 2004, I believe.

5 THE COURT: Okay.

6 MR. OSBORN: And as plaintiffs like to regularly
7 point out, this does represent approximately 22 percent of
8 Southfield's sales for that period. And we believe this is a
9 significant payment, and extremely fair to the settlement
10 class, particularly in light of the proof issues that
11 plaintiffs have acknowledged in their papers.

12 Southfield was never indicted, tried, or as far as
13 we are aware even implicated by the DOJ in any of its
14 proceedings. And in light of the fact that they have that
15 significant proof issue, and Southfield wanted to be extracted
16 from this, and Southfield's recognition that while we believe
17 Southfield will prevail, the risks in an antitrust matter are
18 quite significant with treble damages and attorneys' fees
19 ultimately at stake in the end of this proceeding if it's
20 tried.

21 THE COURT: Has Southfield agreed to assist the
22 prosecution, or I should say the plaintiffs, in any subsequent
23 litigation? Is that part of the --

24 MR. OSBORN: Your Honor, it was part of the
25 settlement agreement in fairly minimal ways. We have agreed

1 to respond to their questions regarding data that we provided
2 to the extent they still have questions about that.
3 Mr. Matney has agreed to continue to provide information to
4 them or testify if necessary if this case goes to trial.

5 I believe there's some other details in the
6 settlement agreement regarding the cooperation, but there is
7 some of that, yes.

8 THE COURT: Okay, thank you.

9 Anything else, Ms. Osborn?

10 MR. OSBORN: I don't believe so.

11 THE COURT: You gestured to Mr. Matney. Is he here?

12 MR. GAIR: He is, Your Honor. I'm Chris Gair on
13 behalf of Gary Matney. May I approach, Your Honor?

14 THE COURT: Of course you may.

15 MR. GAIR: Thank you.

16 MR. OSBORN: Thank you, Your Honor.

17 THE COURT: Thank you, Ms. Osborn.

18 MR. GAIR: Your Honor, Chris Gair, Jenner & Block,
19 Chicago for Gary Matney.

20 THE COURT: Yes, sir.

21 MR. GAIR: At first, I just want to say I'm honored
22 to appear pro hac vice in this court.

23 THE COURT: Happy to have you.

24 MR. GAIR: Thank you, Your Honor.

25 It is with some mixed feelings that I come before

1 the Court today. Like at the others, I have to say that this
2 is a more than fair settlement to the class members, but
3 probably for a different reason than the others have
4 articulated.

5 The gentleman who's here with me today, Gary Matney,
6 is a genuine American hero, Your Honor. I was a federal
7 prosecutor in Chicago for many years. I've done a lot of
8 plaintiffs' work as Mr. Levin has in the antitrust field, and
9 Gary Matney is truly an unusual individual.

10 Gary Matney was the whistle blower here, but he was
11 not a whistle blower who was ever involved in the conspiracy.
12 He was a fellow who earned a paycheck and who was being
13 threatened. Both his job and his family were threatened by
14 other members -- by members of the conspiracy to try and
15 browbeat him into joining this conspiracy.

16 Mr. Matney repeatedly over the years told them he
17 didn't want to have any part of it. And eventually, after
18 members of the conspiracy went over his head to his bosses in
19 Chicago to try and get him fired, Mr. Matney finally had had
20 enough and went to the FBI.

21 Now, as Mr. Levin knows well, the usual picture in
22 these situations is that the first guy in asks for what's
23 known as amnesty under the Justice Department's amnesty
24 policy. Mr. Matney didn't even have a lawyer. He didn't ask
25 for amnesty. He didn't ask for immunity. He didn't need

1 immunity because he didn't do anything wrong, Your Honor. He
2 simply told the FBI what the others, especially Scott Hughey
3 of Carmel Concrete, had tried to do over the years to try and
4 get him involved in this conspiracy.

5 And despite the fact that he had been threatened,
6 Mr. Matney, at the request of Special Agent Steve Schlobohm of
7 the FBI here in Indianapolis, wore a recording device -- a
8 secret recording device, and met with Scott Hughey on three
9 occasions in the fall of 2003.

10 Those recordings conformed exactly with what
11 Mr. Matney had already told the FBI, that he had been
12 approached, and they had been trying to get him to join on
13 behalf of Prairie, to join the price-fixing conspiracy that
14 had run for several years here in Indianapolis.

15 That tape made the case. Agent Schlobohm and the
16 Justice Department approached a federal magistrate judge with
17 a search warrant in the following spring to search the homes
18 and offices of all the conspirators.

19 The affidavit for the search warrant extensively
20 quoted Mr. Matney's testimony and the tapes that Mr. Matney
21 had made. And as I'm sure the Court knows better than anyone,
22 everybody with the exception of one company ended up folding,
23 pleading guilty. The principals went to prison. And the
24 Justice Department achieved the largest fines it has ever
25 secured in the history -- in its history in a domestic-only

1 price-fixing conspiracy.

2 So when I say that Gary Matney is a hero, it's no
3 exaggeration. I put him on the level of someone like my
4 personal hero, Terry Hake, who was the undercover lawyer who
5 made the Operation Greylord case against the Cook County
6 judges 25 years ago, and sacrificed his career in the process.

7 Gary Matney is an unrecognized cost of this
8 conspiracy. A lot of damage may have been done to people, but
9 none more than to Gary Matney, who eventually did lose his job
10 and who has found himself embroiled in a lawsuit. And now,
11 unfortunately found himself, although he's not paying a dime,
12 found himself tainted with the idea that by Prairie paying
13 \$19 million to settle this case, perhaps Mr. Matney or Prairie
14 has done something wrong.

15 And Judge, nothing could be further from the truth.
16 This court is very sophisticated, and I know you understand
17 these issues, both the risks of litigation and so forth, and
18 why Prairie might have agreed to pay \$19 million.

19 I'd point out in addition to that that Prairie sold
20 its business earlier this year, and I would submit to the
21 Court that while I have no inside information, my guess is
22 that \$19 million is a small rounding error in what was paid
23 for that business. And it made perfect sense for the people
24 who had cashed out of that business to settle this case for a
25 substantial amount.

1 But I want to emphasize for the Court that while the
2 settlement is fair to the class, the lawsuit was not fair to
3 Mr. Matney; and therefore without -- and I cast no aspersions
4 on counsel, Your Honor, because I think counsel is doing his
5 job, but it was a mistake. And it can be rectified in part
6 today by this Court's order approving the settlement as fair
7 and reasonable to the class.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Gair. I appreciate your
10 bringing to my attention the role that Mr. Matney played early
11 on in this investigation.

12 Mr. Matney, the rocky course on which you embarked a
13 long time ago, in probably a fairly lonely way, where you
14 weren't sure that it was worth -- the effort wasn't worth the
15 price that was being exacted for your integrity and for your
16 persistence and so forth, today is the time we can say it was.

17 So it doesn't irradicate all that's gone before, but
18 it puts it in perspective, and in contrast to many of the
19 other people who were inculcated in this conspiracy, you have
20 a clean conscience. You can sleep. And that's, as they say
21 in the TV ad, priceless.

22 So if nothing else, you stand as a very good example
23 for what people need to do and ought to do, hopefully will do
24 in the future, because they know of your example. So you have
25 the Court's compliments.

1 Ms. Woods, do you want to address this issue on
2 behalf of your client?

3 MS. WOODS: I do, Your Honor. Would you prefer that
4 I approach?

5 THE COURT: Yes, that would be easier for the court
6 reporter. Then I don't have to peek at you over the monitor
7 here.

8 MS. WOODS: I'm Judy Woods. I'm here on behalf of
9 the Builders defendants.

10 THE COURT: Yes. Nice to have you in court always.

11 MS. WOODS: Sorry?

12 THE COURT: Nice to have you in court always.

13 MS. WOODS: Thank you, Your Honor.

14 I know we're not here to debate the merits of the
15 case today, and I would remind everyone present that we've
16 only heard one side of the story. And of course --

17 THE COURT: Do you want to turn around and tell
18 these young people your side of the story?

19 MS. WOODS: Only if Your Honor asks me to, Your
20 Honor.

21 THE COURT: Well, maybe we will do that.

22 Go ahead. Finish your presentation.

23 MS. WOODS: I just want to say that I would ask that
24 the Court make an entry or make clear in its entry approving
25 its settlement if, in fact, it does approve it on the 6th, the

1 same type of caveat that we had with respect to the other
2 settlements; specifically that all factual findings and legal
3 conclusions of the Court regarding the settlement are binding
4 only as to the settling parties and have effect only as to
5 this settlement, and are not binding on the non-settling
6 parties and have no preclusive or binding effect on the
7 nonsettling defendants.

8 THE COURT: Is that written into the order?

9 MS. WOODS: I do not believe it is, Your Honor.

10 THE COURT: So you'll tender some language to that
11 effect?

12 MS. WOODS: I would be happy to do that, Your Honor,
13 yes.

14 MR. LEVIN: Perhaps if she would perhaps --

15 THE COURT: You're sort of a maladroit when it comes
16 to this technology, aren't you?

17 MR. LEVIN: I'm just shy, Your Honor.

18 THE COURT: How do you do with your garage opener?
19 Is that any easier for you?

20 MR. LEVIN: Well, I'm trying to get a garage, and
21 then I'll worry about the opener.

22 If Ms. Woods would be kind of enough to just share
23 some language, perhaps we can just agree on the language
24 together and submit it.

25 MS. WOODS: We would be happy to do that, Your

1 Honor.

2 THE COURT: Okay, that'd be fine.

3 MS. WOODS: So that's all. Thank you.

4 THE COURT: Well, now you just turn around. You
5 invited the Court's request and so I make it now, and you tell
6 about your client and what the litigation looks like from your
7 perspective. Now you might want to -- give her that lapel mic
8 so she can do it so they can hear.

9 This is Ms. Judy Woods, ladies and gentlemen.

10 MS. WOODS: Well, I would suggest that it's a pretty
11 thin pancake that doesn't have two sides. It's probably
12 something that all of you might want to remember as you embark
13 on your legal careers.

14 The primary issue here is the difference between a
15 criminal and a civil antitrust case. Mr. Levin is correct
16 that a number of the defendants in this case did plead guilty
17 to participating in meetings that amounted to a conspiracy to
18 fix prices. No question about that. But there is a huge
19 chasm between a criminal conspiracy to fix prices case and the
20 particular case that is presented to the Court with respect to
21 the defendants, particularly the remaining defendants in this
22 case.

23 The civil antitrust laws contain a very specific
24 proximate cause aspect. It is necessary to show that the
25 particular agreement that was made with respect to price

1 fixing is the actual and proximate cause of the prices that
2 were paid by the plaintiffs; and in fact, not only is there a
3 proximate cause aspect of it, but there is a huge damages
4 aspect of this case.

5 In this case, we have many questions as to what that
6 particular agreement that was discussed that led to the
7 criminal convictions, what that agreement was, what particular
8 products it covered, what particular types of arrangements it
9 covered. There are many ways to sell concrete. All of the
10 defendants in this case participated in a number of different
11 pricing mechanisms and approaches anywhere from annual
12 contracts to bidding work out on a closed basis to picking up
13 the phone and calling for a COD delivery for somebody's patio.

14 So we have a variety of types of sales, a variety of
15 types of transactions, and many contexts, not all of which are
16 relevant to the particular price-fixing agreement that is at
17 issue in this case; and many, many, many damages issues to be
18 proved.

19 THE COURT: What went into your client's decision to
20 resolve this matter by settlement?

21 MS. WOODS: My clients have not settled, Your Honor.

22 THE COURT: Okay, I see. That's why you wanted to
23 put that little caveat in the order. I see, I see. I get it
24 now. Okay.

25 So in going forward, the things you outlined as your

1 client's view of the evidence and so forth are what will
2 inform your strategies as you continue to litigate; is that
3 right?

4 MS. WOODS: Well, I believe that the primary -- a
5 couple of issues. One, we have a major issue in this case to
6 be resolved yet in terms of class certification. Is the case
7 appropriate for class certification? What are the parameters
8 of certification? Who's going to be in the class? What sort
9 of findings is the Court going to make with respect to
10 certification?

11 We have -- those issues are only partially briefed
12 at this stage and will be determined by the Court later this
13 year. So with that, we have numerous questions regarding the
14 expert basis for class certification on both sides of the
15 table. We have discovery yet to be done on that issue. So
16 those are all things that are pending that's still before the
17 Court undecided.

18 Those are primary issues as well as the damages and
19 the proximate cause issues that I just alluded to. Those are
20 all merits-based considerations that defendants always take
21 into consideration as they go forward. As Mr. Gair indicated,
22 there are many practical issues with respect to cases like
23 this. They are very large and cumbersome and expensive, and
24 there are many, many issues that parties on both sides of the
25 table have to take into consideration from a practical point

1 of view as to whether or not they continue to litigate.

2 THE COURT: Thank you, Ms. Woods. I know you'll
3 continue to represent your client well.

4 MS. WOODS: Thank you.

5 THE COURT: Ms. Reindl, did you want to speak, too?

6 MS. REINDL: Your Honor, I represent the Beaver
7 defendants, and I came today only as Judy did to ask the Court
8 to make sure that whatever order you enter on certifying the
9 settled classes does not preclude or foreclose or preordain
10 any arguments the nonsettling defendants might want to make.

11 THE COURT: Maybe you'll to want to consult with
12 Ms. Woods so that the language you give to Mr. Levin is at
13 least agreeable to both of you.

14 MS. REINDL: I shall.

15 THE COURT: Then if you can stipulate to it, you can
16 put it into your tendered order, Mr. Levin.

17 MR. LEVIN: Yes. Your Honor, actually, the existing
18 order says that it's for settlement purposes only, but I
19 understand their concerns, and we're happy to work with them
20 on language.

21 THE COURT: Okay. Thank you very much.

22 MR. LEVIN: Your Honor, can I respond just briefly?

23 THE COURT: Yes.

24 MR. LEVIN: I think it's important, first of all,
25 when Ms. Woods was giving her illuminating speech as opposed

1 to an argument, I thought it was *deja vu* and I was back at the
2 Bromine argument when both sides made all those arguments.

3 I want to say one thing with regard to Mr. Gair's
4 comments. This is -- we have no reason to quibble with each
5 other today, and I don't intend to do that. And I don't
6 dispute some of the representation about what Mr. Matney
7 actually did. But I don't want there to be any tacit
8 admission on my part that there isn't more to that story.

9 THE COURT: I always assumed that.

10 MR. LEVIN: Okay, I didn't want my silence to
11 reflect that.

12 THE COURT: Okay.

13 MR. LEVIN: Other than that, unless the Court has
14 any further questions, I have nothing further to present.

15 THE COURT: I don't have anything further by way of
16 inquiry of you, but I will state for the record upon review of
17 the submissions, and consideration of the statements that have
18 been made to the Court, I find that the settlement agreement
19 is fair, reasonable and adequate as to the settling defendants
20 in this case: Southfield Corporation, formerly known as
21 Prairie Material Sales, Inc., and Gary Matney. And so I will
22 approve the settlement and grant final approval on that basis
23 and on the basis of the representations that have been made,
24 which I accept as well as the basis for the Court's ruling.

25 I will withhold a final entry of the order approving

1 the settlement agreement until August 6th, which date complies
2 with the CAFA notices that have been given. And if anything
3 comes to the Court's attention or if it comes to counsels'
4 attention before then, you'll, of course, have to make that
5 fact known to me so that I can determine whether there is
6 clear record for entry of the order on August 6th.

7 If there's nothing that is forthcoming between now
8 and then, the order will issue effective or as of August 6th,
9 2008.

10 MR. LEVIN: Thank you very much.

11 THE COURT: I compliment counsel for the hard work
12 that has gone into the settlement process, working out the
13 difficult issues that were placed in your hands on behalf of
14 your clients. When you alluded to the fact rather quickly and
15 in simplistic ways that there's been a lot of discovery and a
16 lot of discussion and a lot of negotiations, I know that that
17 is the tip of the iceberg, and that what is represented in
18 that is really some very hard, creative work and some
19 stick-to-itiveness by all of you to keep talking, keep
20 talking, keep trying to work it out. And that's how the
21 settlements always get effectuated, but particularly in a case
22 of this magnitude involving this number of people, this amount
23 of money, and this amount of damages. And so I do compliment
24 you. You deserve the Court's highest compliments for your
25 efforts.

1 MR. LEVIN: Thank you, Your Honor.

2 THE COURT: So we'll see you again, I hope, along
3 the way, Mr. Levin, on other remaining matters either as they
4 need the Court's rulings to resolve the adversarial issues or
5 to consider future settlements.

6 MR. LEVIN: One way or another, we'll be there.

7 THE COURT: You know which one I would prefer, don't
8 you?

9 MR. LEVIN: We understand.

10 THE COURT: Okay. Thank you all very much.

11 (Off the record discussion.)

12 (Court adjourned at 10:53 a.m.)

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CERTIFICATE OF REPORTER

I, Laura Howie-Walters, RPR, CSR, the undersigned Official Reporter for the United States District Court, Southern District of Indiana, 46 East Ohio Street, Room 217, Indianapolis, Indiana 46204, do hereby certify that the foregoing transcript, Pages numbered 1 through 29, inclusive, constitutes a true, full and correct transcript of my shorthand notes taken as such Official Reporter of the proceedings hereinbefore entitled, and reduced to typewriting by computer to the best of my ability.

August 27, 2008

Laura Howie-Walters, RPR/CSR
Official Court Reporter