IN THE 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	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT WITH DEFENDANT AMERICAN CONCRETE COMPANY, INC.

The Plaintiffs, Kort Builders, Inc., Dan Grote, Cherokee Development, Inc., Wininger/Stolberg Group, Inc., Marmax Construction, LLC, Boyle Construction Management, Inc., and T&R Contractor, Inc. (collectively "Plaintiffs"), by Interim Co-Lead Counsel, have moved this Court for an Order preliminarily approving the Settlement Agreement With American Concrete Company, Inc. ("American Settlement"), preliminarily certifying a Plaintiff Settlement Class, and directing notice of the American Settlement to members of the Settlement Class. The American Settlement, which is attached to the Motion as Exhibit "A", resolves the claims in this action of the Plaintiffs and the proposed Settlement Class as against American Concrete Company, Inc. ("American") only. The American Settlement represents the best result that could be obtained for the Settlement Class for their claims against American because: (i) American has ceased operating and sold substantially all of its assets; and (ii) the settlement secures for the Settlement Class all of the funds of American that would be available to satisfy a judgment. The Settlement Agreement follows extensive, arms-length negotiations between the Plaintiffs and American – including the assistance of Magistrate Judge Jane Magnus-Stinson – and easily satisfies the standards for preliminary approval.

Introduction

The Plaintiffs initiated several actions[1] against the named Defendants more than two years ago, seeking treble damages, costs of suit, attorneys' fees, and injunctive relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26 for the injuries sustained by plaintiffs and members of the Class arising from violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Plaintiffs have alleged that from at least July 1, 2000 through at least May 25, 2004, the Defendants and their co-conspirators, including American, entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing the price of Ready-Mixed Concrete in the central Indiana area. Plaintiffs allege that as a result of the unlawful conduct of Defendants and their co-conspirators, Plaintiffs and the other members of the Class paid artificially inflated prices for Ready-Mixed Concrete.

The Plaintiffs' actions followed an announcement by the United States Department of Justice ("DOJ"), on June 29, 2005, that Defendant Irving Materials, Inc. and four of its executives agreed to plead guilty and pay a $29.2 million criminal fine for conspiring and fixing prices for ready-mixed concrete in violation of the Sherman Act. Since the IMI Defendants' guilty pleas, a number of both individual and corporate Defendants have pleaded guilty, been convicted following a jury trial, or entered into leniency or cooperation agreements with the United States. *See* Memorandum in Support of Plaintiffs' Motion for Class Certification (Docket No. 401), p. 7 (summarizing Defendants' guilty pleas, convictions and cooperation agreements).

On November 28, 2005, at the request of the DOJ, the Court stayed most discovery in this case pending completion of the criminal proceedings. The Court lifted the discovery stay on December 19, 2006, after the jury trial conviction of the Beaver defendants. Since the lifting of

[1] Several similar actions were filed in this Court against American and the other Defendants, and were consolidated by this Court under the caption set forth above.

the discovery stay, the Plaintiffs have received and reviewed hundreds of thousands of pages of documents and large volumes of computerized data. Discovery obtained by the Plaintiffs has included extensive transactional and financial data from the Defendants from a period before and following the Plaintiffs' proposed class period of July 1, 2000 through May 25, 2004. The Plaintiffs have also obtained and reviewed testimony and exhibits from the criminal jury trial of Defendant Ma-Ri-Al Corporation d/b/a Beaver Materials, and materials and information prepared or obtained by the Federal Bureau of Investigation ("FBI").

On August 1, 2007, the Plaintiffs filed their Motion for Class Certification, along with a supporting Memorandum and an extensive appendix of supporting exhibits. In addition to testimony from the Beaver trial, statements obtained by the FBI, and an affidavit from an FBI investigator, the Plaintiffs submitted the Declaration of John Beyer, Ph.D. *See*, Declaration of Irwin B. Levin, Exhibit 37 (Docket No. 398-55 (filed under seal)) ("Beyer Declaration"). The Beyer Declaration applied established economic analysis to show that if the Defendants conspired in the manner alleged by the Plaintiffs – and for which many have pleaded guilty or sought leniency – their conspiracy impacted all members of the proposed Class, which includes over 5,000 direct purchasers of ready-mixed concrete. The Beyer Declaration concludes that damages can fairly be determined in this case on a class-wide basis. At the time the Plaintiffs seek preliminary approval of the American Settlement, Defendants have not responded to the Motion for Class Certification.

The American Settlement

The American Settlement is the result of several months of negotiations between Interim Co-Lead Counsel and counsel for American. The negotiations included several in-person meetings between counsel, in-person and phone mediation sessions with Magistrate Judge Jane

Magnus-Stinson, and the exchange of information in addition to what had been produced by the parties in discovery. Importantly, the settlement discussions included the review by Interim Co-Lead Counsel of financial information related to American's ability to pay a settlement or satisfy a judgment. Information provided in negotiations disclosed that the cash available for American to pay a settlement or a judgment totaled $368,000.00, the sum American has now agreed to pay for the benefit of the Settlement Class.

The terms of the American Settlement are straightforward, and consistent with those found in similar settlements for claims brought under Section 1 of the Sherman Action for price fixing. The key elements of the American Settlement are as follows:

- The certification as to American, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), of a Settlement Class, the appointment of the Plaintiffs to represent the Settlement Class, and the appointment of Interim Co-Lead Counsel as Settlement Class Counsel;
- The issuance of notice of the Settlement, by mail and publication, advising members of the Settlement Class of the terms of the Settlement and their right to exclude themselves from or object to the Settlement;
- The scheduling of a final fairness hearing to consider whether the Settlement should be finally approved;
- The payment by American of $368,000 into a Settlement Fund for the benefit of the Settlement Class;
- The reasonable and continuing cooperation and assistance of American and its officers in the Plaintiffs' prosecution of this action against the remaining Defendants, including information, documents and testimony related to the conspiracy alleged by the Plaintiffs;

- An agreement by American not to oppose Settlement Class Counsel's request for Court approval of the payment of attorneys' fees in an amount not to exceed 33 1/3 % of the Settlement Amount, and reimbursement of reasonable expenses, to be paid from the Settlement Fund; and
- The release of claims that were or could have been asserted in this action against American by the Plaintiffs and Settlement Class members, and a final judgment dismissing the Plaintiffs' and Settlement Class members' claims against American.

The American Settlement does not result in a release or dismissal of the claims of the Plaintiffs and Settlement Class Members against any other Defendants. Indeed, the American Settlement is consistent with and recognizes the right of the Plaintiffs and Settlement Class members, under the Sherman and Clayton Acts, to continue to seek, from all other Defendants, treble the damages resulting from American's participation in the conspiracy.

American's settlement payment will be deposited into an escrow account established by Settlement Class Counsel at a commercial bank and maintained as the Settlement Fund. Under the American Settlement, Settlement Class Counsel may seek permission from the Court to receive payments from the Settlement Fund for distribution to Class members or to reimburse Class Counsel for reasonable expenditures made or to be made on behalf of Class Members to pursue the Lawsuit against the Defendants other than American. Because of the limited funds available under the Settlement, as compared to the total damages Settlement Class Counsel believe were caused by the alleged conspiracy, and because of the ongoing nature of the claims in the Lawsuit against the other Defendants, Settlement Class Counsel plan to defer distribution of the Settlement Fund to Class Members until a later date.

Settlement Class Counsel do not know at this time when they will seek permission from the Court to make distributions from the Settlement Fund to Class Members. However, in the event that Settlement Class Counsel seek to make a distribution of the Settlement Fund or any other funds recovered in the Lawsuit to Class Members, it is anticipated that the proposed distribution of amounts from the Settlement Fund will be in direct proportion to the amount of a Class Member's purchases of Ready-Mixed Concrete from the Defendants at any time from July 1, 2000 through May 25, 2004. In the event that Settlement Class Counsel seek to make a distribution of the Settlement Fund or any other funds recovered in the Lawsuit to Class Members, they will seek Court approval of a claims protocol and a Claim Form with information about the proposed distribution and instructions for submitting a claim to be provided to Class Members.

Standard for Preliminary Approval

It is well-established that a district court's approval of a class action settlement should proceed in two (2) steps. The first step is to determine whether to conditionally certify a settlement class and to notify class members of the pending settlement and their right to participate in a final fairness hearing. The second step is the fairness hearing itself, which can occur only after class members have been notified of their right to participate in the hearing or to opt out of the class altogether. *See,* Federal Judicial Center's Manual for Complex Litigation, Fourth §§ 21.622-23 (2006).

If the district court finds a settlement proposal "within the range of possible approval," preliminary approval is granted and class members are notified of the proposed settlement and the fairness hearing at which they and all interested parties have an opportunity to be heard. *Gautreaux v. Pierce,* 690 F.2d 616, 621 n.3 (7th Cir. 1982) (citations omitted). The Seventh

Circuit has adopted a "probable cause" approach to the preliminary approval stage of considering a proposed class action settlement:

> The first step involves a preliminary determination as to whether notice of the proposed settlement should be given to members of the class and a hearing scheduled at which evidence in support of and in opposition to the proposed settlement will be received. Unless the judge is preliminarily satisfied that the proposed settlement is within the range of possible approval, there is no point in proceeding with notice and a hearing. **"Such a preliminary hearing is not, of course, a definative (sic) proceeding on the fairness of the proposed settlement ... . * * * (I)t is simply a determination that there is, in effect, 'probable cause' to submit the proposal to members of the class** and to hold a full scale hearing on its fairness at which all interested parties will have an opportunity to be heard after which a formal finding of fairness will be made."

In re General Motors Engine Interchange Litig., 594 F.2d 1106, 1133 (7th Cir. 1979) (emphasis added), *quoting* Manual for Complex Litigation § 1.46 (1977).

Generally, the court "bases its preliminary approval of a proposed settlement upon its familiarity with the issues and evidence of the case as well as the arms-length nature of the negotiations prior to the settlement." *In re Telectronics Pacing Systems, Inc.,* 137 F.Supp.2d 985, 1026 (S.D.Ohio 2001), *citing In re Dun & Bradstreet Credit Servs. Litig.,* 130 F.R.D. 366, 370 (S.D.Ohio 1990). "A preliminary fairness assessment is not to be turned into a trial or rehearsal for trial on the merits, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *In re Inter-Op Hip Prosthesis Liability Litigation,* 204 F.R.D. 330, 350 (N.D.Ohio 2001).

The management of a class action rests largely within the district court's discretion. *Mars Steel Corp. v. Continental Illinois Nat. Bank & Trust Co. of Chicago,* 834 F.2d 677, 684 (7th Cir. 1987). It is therefore within this Court's discretion whether, and to what extent, it should conduct a hearing prior to preliminary approval. *Id.* at 684. As the court in *Mars Steel* held, an evidentiary hearing plainly is not required. *See also, Patterson v. Stovall,* 528 F.2d 108

(7th Cir. 1976) (no error in district court's failure to hold evidentiary hearing either before preliminary approval or final approval); *In re General Motors,* 594 F.2d at 1133 (same). Given that American has agreed to exhaust its ability to pay in order to settle the claims of the Plaintiffs and Settlement Class members, Interim Co-Lead Counsel believe that it would be appropriate to proceed with preliminary approval either with or without a hearing.

The Court Should Preliminarily Approve the American Settlement

As this Court has recognized, the "bar is low" when considering a settlement for preliminary approval. *In re Bromine Antitrust Litig.,* 203 F.R.D. 403, 416 (S.D. Ind. 2001). Under the standard discussed above, and circumstances leading to this agreement, there should be little question that the terms of the American Settlement are well within the range of possible approval, and that probable cause exists to certify the Settlement Class and issue notice of a final fairness hearing. The fairness of the American Settlement is chiefly informed by two factors: (i) that in 2005 American sold substantially all of its assets and is no longer an operating business; and (ii) that the settlement payment by American represents all of the funds available to American to pay a settlement or satisfy a judgment. Indeed, the terms of the American Settlement could not become better for Settlement Class members even if the Plaintiffs continue to successfully prosecute their claims. Further litigation would only serve to deplete the funds now available, to the point where little or no funds were available to satisfy a judgment against American.

A settlement under the terms now proposed, however, preserves American's available funds for the benefit of the Settlement Class while allowing the Plaintiffs and Settlement Class to pursue the full value of their claims – less any setoff for the settlement payment – against the remaining Defendants. Neither the release nor the dismissal contemplated by the American

Settlement will affect claims against the remaining Defendants, and American is required to cooperate with Settlement Class Counsel in pursuing these claims. All of the other Defendants will remain jointly and severally liable for damages caused by American's participation, with them, in a conspiracy to fix the price of Ready-Mixed Concrete.

Pursuant to the Settlement Agreement and Federal Rules of Civil Procedure 23(a) and 23(b)(3), the Court should certify the following Settlement Class:

> All Persons who purchased Ready-Mixed Concrete directly from any of the Defendants or any of their co-conspirators, which was delivered from a facility within the Counties of Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Monroe, Morgan, or Shelby, in the State of Indiana, at any time during the period from and including July 1, 2000 through and including May 25, 2004, but excluding Defendants, their co-conspirators, their respective parents, subsidiaries, and affiliates, and federal, state, and local government entities and political subdivisions.

For the reasons set forth in the Plaintiffs' Memorandum in Support of Motion for Class Certification (Docket No. 401), which is incorporated herein by reference, the proposed Settlement class easily meets the requirements of Rules 23(a) and (b). As discussed therein, the Settlement Class numbers in the thousands (numerosity); the Plaintiffs assert claims identical to, and not in conflict with, the claims of Settlement Class members (typicality); the claims of the Plaintiffs and Settlement Class members share nearly identical issues of liability and damages (commonality); the Plaintiffs have displayed their commitment to this action throughout the litigation, through answering extensive discovery and participating in depositions, and have no interest antagonistic to the Class (adequacy of Plaintiffs); and proposed Settlement Class Counsel are well experienced in complex and class action litigation, including antitrust matters (adequacy of counsel).

As Plaintiffs have illustrated in support of the certification of a litigation class, the requirements of Rule 23(b), "that the questions of law or fact common to the members of the

class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy," are easily met in this case. The Supreme Court has noted that Rule 23(b)(3)'s predominance requirement is "readily met" in antitrust cases like this one. *Amchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997). More recently, Judge Frost in the *Foundry Resins* case explained that "[a]s a general rule in antitrust price-fixing cases . . . courts have consistently found that common issues regarding the existence and scope of the conspiracy predominate over questions affecting only individual members." *In re Foundry Resins Antitrust Litig.*, --- F. Supp. 2d ---, 2007 WL 1346569, at *16 (S.D. Ohio May 2, 2007).

Indeed, in the context of settlement, the requirements of Rule 23(b) are even more easily met. In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 613 (1997), the United States Supreme Court recognized that "[s]ettlement is relevant to class certification." *Id*. at 619. Specifically, the Court explained: "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Id.* at 620 (citing Fed. R. Civ. P. 23(b)(3)(D)). Of course, the Plaintiffs do not believe that manageability should be a concern for the Court when considering certification of a litigation class in this matter. Nonetheless, the decidedly lower standard applied to this aspect of Rule 23(b) in the settlement context makes preliminary certification of the Settlement Class particularly appropriate.

In addition to the certification of a Settlement Class, the American Settlement sets forth a comprehensive method of providing notice of the Settlement to Class members. Due process requires direct notice to all class members who can be identified through reasonable effort. *See, Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 173-77 (1974); *Phillips Petroleum Co. v. Shutts*,

472 U.S. 797 (1985). The American Settlement calls for direct mail notice to all persons falling within the Settlement Class definition, based upon information that has been provided by Defendants or is in the process of production. American has also specifically agreed to provide information for this purpose. The mailed notice, in the question-and-answer format proposed by the Federal Judicial Center for class action settlement notices, provides a thorough explanation of the Settlement and Class members' rights. The form of the proposed mailed notice is attached to the American Settlement as Exhibit "A".

The American Settlement also calls for published notice to appear twice in the *Indianapolis Star*. Though a summary notice, the proposed published notice also provides a thorough explanation of the Settlement and Class members' rights, as well as a means to obtain additional information from Settlement Class Counsel. With regard to potential class members who cannot be identified through reasonable effort, or who have changed addresses, notice by publication is recognized as a suitable method for providing notice of the litigation and certification order. WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D, § 1786. *See also,* ALBA CONTE & HERBERT NEWBERG, NEWBERG ON CLASS ACTIONS (4TH ED.), § 8:2. The form of the proposed published notice is attached to the American Settlement as Exhibit "B".

The combined form of mailed and published notice proposed under the American Settlement provides "the best notice practicable under the circumstances." Fed. R. Civ. P. 23(c)(2). The proposed forms of notice will adequately inform Class members of the terms of the settlement, the Court's preliminary approval and certification of a Settlement Class, the rights of Class members to exclude themselves from or object to the Settlement, and the setting of a final hearing to consider the fairness of the settlement. The Court should therefore approve the

proposed methods and form of notice and direct its consummation according to the terms of the American Settlement.

Conclusion

In light of the foregoing, the Plaintiffs respectfully request the Court's preliminary approval the Settlement Agreement With American Concrete Company, Inc., preliminary certification of the Settlement Class, approval of the form and method of notice of the American Settlement to members of the Settlement Class, and approval and entry of the Preliminary Approval Order in the form attached to the American Settlement as Exhibit "C" and submitted herewith.

Dated: October 29, 2007

Respectfully submitted,

/s/ Irwin B. Levin
Irwin B. Levin

Irwin B. Levin
Richard E. Shevitz
Scott D. Gilchrist
Eric S. Pavlack
Vess A. Miller
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
ilevin@cohenandmalad.com

Stephen D. Susman
Barry C. Barnett
Jonathan Bridges
Warren T. Burns
Garrick B. Pursley
SUSMAN GODFREY LLP
901 Main St., Ste. 4100
Dallas, TX 75202
Telephone: (214) 754-1903
Facsimile: (214) 754-1933

PLAINTIFFS' INTERIM CO-LEAD COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Anthony P. Aaron
ICE MIILER
anthony.aaron@icemiller.com

Arend J. Abel
COHEN & MALAD
aabel@cohenandmalad.com

Bryan H. Babb
BOSE McKINNEY & EVANS, LLP
bbabb@boselaw.com

Steven M. Badger
McTURNAN & TURNER
sbadger@mtlitigation.com

Barry C. Barnett
SUSMAN GODFREY LLP
bbarnett@susmangodfrey.com

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
steve@hbsslaw.com

Robert J. Bonsignore
BONSIGNORE & BREWER
rbonsignore@aol.com

Michael W. Boomgarden
United States Department of Justice
michael.boomgarden@usdoj.gov

Jonathan Bridges
SUSMAN GODFREY LLP
jbridges@susmangodfrey.com

W. Joseph Bruckner
LOCKRIDGE GRINDAL NAUEN PLLP
wjbruckner@locklaw.com

James A.L. Buddenbaum
PARR RICHEY OBREMSKEY & MORTON
jbuddenbaum@parrlaw.com

David M. Bullington
HOPPER & BLACKWELL
dbullington@hopperblackwell.com

Jason R. Burke
HOPPER & BLACKWELL
jburke@hopperblackwell.com

Warren T. Burns
SUSMAN GODFREY LLP
wburns@susmangodfrey.com

Bryan L. Clobes
MILLER FAUCHER & CAFFERTY LLP
bclobes@millerfaucher.com

Jay S. Cohen
SPECTOR ROSEMAN & KODROFF P.C.
jcohen@srk-law.com

Stephen E. Connolly
SCHIFFRIN & BARROWAY LLP
sconnolly@sbclasslaw.com

Jeffrey J. Corrigan
SPECTOR ROSEMAN & KODROFF P.C.
jcorrigan@srk-law.com

Isaac L. Diel
LAW OFFICES OF ISAAC L. DIEL
dslawkc@aol.com

Jonathan A. Epstein
United States Department of Justice
jonathan.epstein@usdoj.gov

Vincent J. Esades
HEINS MILLS & OLSON
vesades@heinsmills.com

Lara E. FitzSimmons
JENNER & BLOCK LLP
lfitzsimmons@jenner.com

Yvonne M. Flaherty
LOCKRIDGE GRINDAL NAUEN PLLP
jmflaherty@locklaw.com

Lisa J. Frisella
THE MOGIN LAW FIRM
lisa@moginlaw.com

Chris C. Gair
JENNER & BLOCK LLP
cgair@jenner.com

Jerry A. Garau
FINDLING GARAU GERMANO & PENNINGTON
jgarau@fggplaw.com

Scott D. Gilchrist
COHEN & MALAD
sgilchrist@cohenandmalad.com

Michael D. Gottsch
CHIMICLES & TIKELLIS LLP
michaelgottsch@chimicles.com

Thomas J. Grau
DREWRY SIMMONS VORNEHM, LLP
tgrau@drewrysimmons.com

Mark K. Gray
GRAY & WHITE
mkgrayatty@aol.com

Betsy K. Greene
GREENE & SCHULTZ
bkgreene@kiva.net

Abram B. Gregory
SOMMER BARNARD PC
agregory@sommerbarnard.com

Geoffrey M. Grodner
MALLOR CLENDENING GRODNER & BOHRER
gmgrodne@mcgb.com

Theresa Lee Groh
MURDOCK GOLDENBERG SCHNEIDER & GROH LPA
tgroh@mgsglaw.com

James H. Ham, III
BAKER & DANIELS
jhham@bakerd.com

Marshall S. Hanley
FINDLING GARAU GERMANO & PENNINGTON
mhanley@fggplaw.com

Gregory P. Hansel
PRETI FLAHERTY BELIVEAU PACHIOS & HALEY LLP
ghansel@preti.com

Edward W. Harris III
SOMMER BARNARD PC
eharris@sommerbarnard.com

William E. Hoese
KOHN SWIFT & GRAF PC
whose@kohnswift.com

George W. Hopper
HOPPER & BLACKWELL
ghopper@hopperblackwell.com

Troy J. Hutchinson
HEINS MILLS & OLSON
thutchinson@heinsmills.com

Curtis T. Jones
BOSE McKINNEY & EVANS LLP
cjones@boselaw.com

Daniel R. Karon
GOLDMAN SCARLATO & KARON PC
karon@gsk-law.com

G. Daniel Kelley, Jr.
ICE MILLER
daniel.kelley@icemiller.com

Jamie R. Kendall
PRICE WAICUKAUSKI RILEY & DEBROTA
jkendall@price-law.com

Jay P. Kennedy
KROGER GARDIS & REGAS
jpk@kgrlaw.com

Jeffrey L. Kodroff
SPECTOR ROSEMAN & KODROFF P.C.
jkodroff@srk-law.com

Joseph C. Kohn
KOHN SWIFT & GRAF PC
jkohn@kohnswift.com

Offer Korin
KATZ & KORIN
okorin@katzkorin.com

Matthew D. Lamkin
BAKER & DANIELS
Matthew.lamkin@bakerd.com

Shannon D. Landreth
McTURNAN & TURNER
slandreth@mtlitigation.com

Gene R. Leeuw
LEEUW OBERLIES & CAMPBELL PC
grleeuw@indylegal.net

Joseph M. Leone
DREWRY SIMMONS VORNEHM, LLP
jleone@drewrysimmons.com

Irwin B. Levin
COHEN & MALAD
ilevin@cohenandmalad.com

Jennifer Stephens Love
FINDLING GARAU GERMANO
& PENNINGTON
jlove@fggplaw.com

James R. Malone, Jr.
CHIMICLES & TIKELLIS LLP
jamesmalone@chimicles.com

Chad M. McManamy
THE MOGIN LAW FIRM
chad@moginlaw.com

J. Lee McNeely
McNEELY STEPHENSON
THOPY
& HARROLD
jlmcneely@msth.com

John M. Mead
LEEUW OBERLIES &
CAMPBELL PC
jmead@indylegal.net

Vess A. Miller
COHEN & MALAD, LLP
vmiller@cohenandmalad.com

Thomas E. Mixdorf
ICE MILLER
thomas.mixdorf@icemiller.com

Christopher A. Moeller
PRICE WAICUKAUSKI RILEY
& DEBROTA
cmoeller@price-law.com

Daniel J. Mogin
THE MOGIN LAW FIRM
dmogin@moginlaw.com

John C. Murdock
MURDOCK GOLDENBERG
SCHNEIDER & GROH LPA
jmurdock@mgsglaw.com

Casandra Murphy
SCHIFFRIN & BARROWAY, LLP
cmurphy@sbclasslaw.com

Cathleen L. Nevin
KATZ & KORIN
cnevin@katzkorin.com

Patrick B. Omilian
MALLOR CLENDENING
GRODNER
& BOHRER LLP
pomilian@mcgb.com

Kathy L. Osborn
BAKER & DANIELS
klosborn@bakerd.com

Eric S. Pavlack
COHEN & MALAD
epavlack@cohenandmalad.com

Bernard Persky
LABATON SUCHAROW
& RUDOFF LLP
bpersky@labaton.com

Jonathan G. Polak
SOMMER BARNARD PC
jpolak@sommerbarnard.com

Henry J. Price
PRICE WAICUKAUSKI RILEY
& DEBROTA
hprice@price-law.com

John R. Price
JOHN R. PRICE & ASSOCIATES
john@johnpricelaw.com

Garrick B. Pursley
SUSMAN GODFREY L.L.P.
gpursley@susmangodfrey.com

Gayle A. Reindl
SOMMER BARNARD PC
greindl@sommerbarnard.com

Mindee J. Reuben
WEINSTEIN KITCHENOFF &
ASHER LLC
reuben@wka-law.com

Brady J. Rife
McNEELY STEPHENSON
THOPY
& HARROLD
bjrife@msth.com

William N. Riley
PRICE WAICUKAUSKI RILEY
& DEBROTA
wriley@price-law.com

Steve Runyan
KROGER GARDIS & REGAS
ser@kgrlaw.com

Kellie C. Safar
LABATON SUCHAROW
& RUDOFF LLP
ksafar@labaton.com

Hollis L. Salzman
LABATON SUCHAROW\
& RUDOFF LLP
hsalzman@labaton.com

Robert S. Schachter
ZWERLING SCHACHTER
& ZWERLING LLP
rschachter@zsz.com

Eric L. Schleef
United States Department of Justice
eric.schleef@usdoj.gov

Robert J. Schuckit
SCHUCKIT & ASSOCIATES, P.C.
rschuckit@schuckitlaw.com

Anthony D. Shapiro
HAGENS BERMAN SOBOL SHAPIRO LLP
tony@hbsslaw.com

Richard E. Shevitz
COHEN & MALAD
rshevitz@cohenandmalad.com

Eugene A. Spector
SPECTOR ROSEMAN & KODROFF P.C.
espector@srk-law.com

Robert K. Stanley
BAKER & DANIELS
rkstanley@bakerd.com

Edward P. Steegmann
ICE MILLER
ed.steegmann@icemiller

Stephen D. Susman
SUSMAN GODFREY LLP
ssusman@susmangodfrey.com

Justin M. Tarshis
ZWERLING SCHACHTER & ZWERLING LLP
jtarshis@zsz.com

Frank J. Vondrak
United States Department of Justice
frank.vondrak@usdoj.gov

David B. Vornehm
DREWRY SIMMONS PITTS & VORNEHM
dvornehm@drewrysimmons.com

Ronald J. Waicukauski
PRICE WAICUKAUSKI RILEY & DEBROTA
rwaicukauski@price-law.com

Lawrence Walner
LAWRENCE WALNER & ASSOCIATES
walner@walnerclassaction.com

Randall B. Weill
PRETI FLAHERTY BELIVEAU PACHIOS & HALEY LLP
rweill@preti.com

Stewart M. Weltman
WELTMAN LAW FIRM
sweltman@weltmanlawfirm.com

Joseph R. Whatley, Jr.
WHATLEY DRAKE LLC
jwhatley@whatleydrake.com

Matthew L. White
GRAY & WHITE
mattwhiteatty@aol.com

Judy Woods
BOSE McKINNEY & EVANS, LLP
jwoods@boselaw.com

Robert J. Wozniak, Jr.
MUCH SHELIST
rwozniak@muchshelist.com

Kendall S. Zylstra
MARCUS AUERBACH & ZYLSTRA LLC
kzylstra@marcusauerbach.com

I hereby certify that on October 29, 2007, a copy of the foregoing was mailed, by first-class U.S. Mail, postage prepaid and properly addressed to the following:

Steven A. Asher
WEINSTEIN KITCHENOFF & ASHER, LLC
1845 Walnut St., Ste. 1100
Philadelphia, PA 19103

Kathleen C. Chavez
CHAVEZ LAW FIRM
416 S. Second St.
Geneva, IL 60134

Robert Foote
FOOTE MEYERS MIELKE & FLOWERS, LLC
416 S. Second St.
Geneva, IL 60134

Samuel D. Heins
HEINS MILLS & OLSON PLC
3550 IDS Center
80 South Eighth St.
Minneapolis, MN 55402

Ellen Meriwether
MILLER FAUCHER & CAFFERTY LLP
One Logan Square
18th & Cherry Streets, Ste. 1700
Philadelphia, PA 19103

Marvin Miller
Jennifer Sprengel
MILLER FAUCHER & CAFFERTY LLP
30 N. LaSalle St., Ste. 3200
Chicago, IL 60602

Krishna B. Narine
LAW OFFICE OF KRISHNA B. NARINE
7839 Montgomery Avenue
Elkins Park, PA 19027

L. Kendall Satterfield
Richard M. Volin
FINKELSTEIN, THOMPSON & LOUGHRAN
1050 30th St., N.W.
Washington, D.C. 20007

United States of America
U.S. Dept. of Justice – Antitrust Division
209 S. LaSalle St., Ste. 600
Chicago, IL 60604

Daniel E. Gustafson
Renae D. Steiner
GUSTAFSON GLUEK PLLC
650 Northstar East
608 Second Avenue South
Minneapolis, MN 55402

Richard A. Lockridge
LOCKRIDGE GRINDAL NAUEN P.L.L.PL
100 Washington Avenue South
Suite 2200
Minneapolis, MN 55401

/s/ Irwin B. Levin
Irwin B. Levin

Irwin B. Levin
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
E-mail: ilevin@cohenandmalad.com