

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

TROTTER CONSTRUCTION COMPANY,
INC., on behalf of itself and all others
similarly situated

Plaintiff,

vs.

IRVING MATERIALS, INC. and
UNNAMED CO-CONSPIRATORS,

Defendants.

CASE NO. 1:05-CV-01216-SEB-VSS

VAN VALKENBURG BUILDERS, INC.,
individually and on behalf of a class of all
those similarly situated

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-CV-01005-SEB-VSS

R. SHANE THARP, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

IRVING MATERIALS, INC., et al,

Defendants.

CASE NO. 1:05-CV-01045-SEB-VSS

MICHAEL REISERT, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

IRVING MATERIALS, INC. and Unnamed
Co-Conspirators

Defendants.

CASE NO. 1:05-CV-01046-SEB-VSS

SINIARD CONCRETE SERVICES, INC.,
individually and on behalf of a class of all
those similarly situated,

Plaintiffs,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-CV-01056-SEB-VSS

ENVIRON, LLC, individually and on behalf
of a class of all those similarly situated,

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-CV-01057-SEB-VSS

DAN GROTE, A Sole Proprietorship,
individually and on behalf of a class of all
those similarly situated

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-CV-01055-SEB-VSS

M & M PROPERTIES OF LOUISVILLE,
LLC, MDR PROPERTIES OF LOUISVILLE,
LLC and 502 PROPERTIES, LLC., on behalf
of themselves and all others similarly situated,

Plaintiffs,

vs.

IRVING MATERIALS, INC., PRICE
IRVING, FRED R. "PETE" IRVING, JOHN
HUGGINS and DANIEL C. BUTLER,

Defendants.

CASE NO. 1:05-CV-01103-SEB-VSS

STACY M. WISSEL, Trustee of Chapter 7
Debtor GROHOFF CONSTRUCTION, INC.,
individually and on behalf of a class of all
those similarly situated

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-CV-01104-SEB-VSS

CHEROKEE DEVELOPMENT, INC.,
individually and on behalf of a class of all
those similarly situated

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-CV-01105-SEB-VSS

SCOTT PENTECOST D/B/A A&K
CONCRETE, individually and on behalf of
a class of all those similarly situated

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-CV-01133-SEB-VSS

CRAW-CON, INC., individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

IRVING MATERIALS, INC., et al.

Defendants.

CASE NO. 1:05-CV-01190-SEB-VSS

BOYLE CONSTRUCTION
MANAGEMENT, INC.,

Plaintiffs,

vs.

IRVING MATERIALS, INC., et al.

Defendants.

CASE NO: 1:05-CV- 00979-SEB-VSS

KORT BUILDERS, INC., on behalf of itself and
all others similarly situated

Plaintiffs,

vs.

IRVING MATERIALS, INC., et al.

Defendants.

CASE NO. 1:05-CV-1002-SEB-VSS

DENNIS LEON MYERS d/b/a MYERS
CONCRETE FINISHING, on its behalf and on
behalf of all others similarly situated

Plaintiffs,

vs.

IRVING MATERIALS, INC., et al.

Defendants.

CASE NO. 1:05-CV-1081-SEB-VSS

ENGELHARDT CONTRACTING, on behalf of
itself and all others similarly situated

Plaintiffs,

vs.

IRVING MATERIALS, INC., et al.

Defendants.

CASE NO. 1:05-CV-1130-SEB-VSS

**DEFENDANT IRVING MATERIALS, INC.'S MOTION FOR
ENTRY OF DEFENDANT'S PROPOSED PRETRIAL ORDER NO. 1**

Defendant Irving Materials, Inc. and, where applicable, individual defendants Fred R. Irving, Price Irving, Daniel Butler and John Huggins (collectively "IMI"), respectfully move for entry of IMI's proposed Pretrial Order No. 1. In support, IMI states:

1. Three groups of plaintiffs' counsel (the Susman Group, the Spector Group and the Levin Group) have moved to consolidate the Concrete Antitrust Cases¹ and for appointment of

¹ The cases are: *Van Valkenburg Builders, Inc., individually and on behalf of a class of all those similarly situated vs. Irving Materials, Inc.*, Cause No. 1:05-cv-1005-SEB-VSS; *Kort Builders, Inc., on behalf of itself and all others similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1002-SEB-VSS; *Boyle Construction Management, Inc. v. Irving Materials, Inc. and Unnamed Co-Conspirators*, Cause No. 1:05-cv-0979-SEB-VSS; *Michael Reisert, on behalf of himself and all others similarly situated v. Irving Materials, Inc. and Unnamed Co-Conspirators*, Cause No. 1:05-cv-1046-SEB-VSS; *R. Shane Tharp v. Irving Materials, Inc. and Unnamed Co-Conspirators*, Cause No. 1:05-cv-1045-SEB-VSS; *Dan Grote, a Sole Proprietorship, individually and on behalf of a class of all those similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1055-SEB-VSS; *Siniard Concrete Services, Inc., individually and on behalf of a class of all those similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1056-SEB-VSS; *Environ, LLC, individually and on behalf of a class of all those similarly situated*, Cause No. 1:05-cv-1058-SEB-VSS; *Dennis Leon Myers, on its behalf and on behalf of all others similarly situated doing business as Myers Concrete Finishing v. Irving Materials, Inc.*, Cause No. 1:05-cv-01081-SEB-VSS; *M & M Properties of Louisville, LLC, MDR Properties of Louisville, LLC, and 502 Properties, LLC on behalf of themselves and all others similarly situated v. Irving Materials, Inc., Price Irving, Fred R. "Pete" Irving, John Huggins and Daniel C. Butler*, Cause No. 1:05-cv-1103-SEB-VSS; *Stacy M. Wissel Trustee of Chapter 7 Debtor Grohoff Construction, Inc., individually and on behalf of a class of all those similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1104-SEB-VSS; *Cherokee Development, Inc., individually and on behalf of a class of all those similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1105-SEB-VSS; *Engelhardt Contracting, on behalf of itself and all others similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1130-SEB-VSS; *Scott Pentecost d/b/a A & K Concrete, individually and on behalf of a class of all those similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1133-SEB-VSS and *Craw-Con, Inc., individually and on behalf of a class of all those similarly situated v. Irving Materials, Inc., Daniel C. Butler, John Higgins, Fred R. "Pete" Irving, and Price Irving*, Cause No. 1:05-cv-1190-SEB-VSS; *Trotter Construction Company, Inc., on behalf of itself and all others similarly situated v. Irving Materials, Inc. and Unnamed Co-Conspirators*, Cause No. 1:05-CV-01216-SEB-VSS, *Wininger/Stolberg Group, Inc., d/b/a Wininger/Stolberg Group-Claybridge, Inc., Wininger/Stolberg Homes/Jackson Mill, Inc., Wininger/Stolberg Land Holdings, Inc., Wininger/Stolberg Homes/Brighton Point Villas, Inc., Wininger/Stolberg Homes/The Villa Glen, Inc. and American Custom Homes, Inc. v. Irving Materials, Inc., Daniel C. Butler, John Huggins, Fred R. "Pete" Irving, Price Irving and Unnamed Co-Conspirators*, Cause No. 1:05-CV-1265-SEB-VSS and *Marmax Construction, LLC, and Cal Paysinger d/b/a Genesis Concrete on behalf of themselves and all others similarly situated v. Irving Materials, Inc., Builder's Concrete & Supply Co., Inc., Hughey, Inc., d/b/a Carmel Concrete Products, and Doe's 1-25 (co-conspirators)*, Cause No. 1:05-CV-1280-SEB-VSS. Two individual-capacity lawsuits not seeking class status have also been filed, *Tippmann Construction, Inc., Elbrecht Investments, LLC and CWE Concrete Construction, Inc. v. Irving Materials, Inc.*, Cause No. 1:05-cv-1278-SEB-VSS; *Wardwell Brothers, Inc. v. Builder's Concrete & Supply Co., Inc. and Irving Materials, Inc.*, Cause No. 1:05-cv-1296-SEB-VSS. The *Tippmann* and *Wardwell* cases should also be consolidated with the Concrete Antitrust Cases.

their respective, multi-firm groups as interim counsel for the putative class under Fed.R.Civ.P. 23(g)(2).

2. For reasons described in its supporting memorandum, filed herewith, IMI opposes the appointment of any group, as presently constituted, as interim counsel and submits that interim counsel should be chosen through a competitive bidding process.

3. Plaintiffs' proposals with respect to captioning and filing are generally consistent with recommendations set forth in the *Manual For Complex Litigation (4th)* and should be adopted to the extent reflected in IMI's own proposed Pretrial Order No. 1, tendered herewith.

4. IMI's proposed Pretrial Order No. 1 also contains refinements to account for the joinder of additional defendants and to set a date certain for the Fed.R.Civ.P. 26(f) conference. This cross-motion for entry of IMI's proposed Pretrial Order No. 1 should be granted following the appointment of interim counsel for the putative class.

WHEREFORE, the Court should enter IMI's proposed Pretrial Order No. 1 following the appointment of interim counsel for the putative class.

Respectfully submitted,

s/ Edward P. Steegmann

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2005, 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 (for ECF-registered counsel) or by United States mail, first class, postage prepaid. Parties may access this filing through the Court's system.

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