

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

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BOYLE CONSTRUCTION  
MANAGEMENT, 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-0979-SEB-VSS

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

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

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

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

Plaintiff,

v.

IRVING MATERIALS, INC.,

Defendant.

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CASE NO. 1:05-cv-1005-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-1045-SEB-VSS

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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-1056-SEB-VSS

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

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

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CASE NO. 1:05-cv-1057-SEB-VSS

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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-1055-SEB-VSS

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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-1103-SEB-VSS

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

Plaintiff,

v.

IRVING MATERIALS, INC.,

Defendant.

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

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

Plaintiff,

v.

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,

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

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

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

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

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

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

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

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

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

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

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

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

Plaintiff,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-cv-1046-SEB-VSS

WININGER/STOLBERG GROUP, INC.,  
d/b/a WININGER/STOLBERG GROUP-  
CLAYBRIDGE, INC.,  
WININGER/STOLBERG  
HOMES/BRIGHTON POINT VILLAS, INC.  
WININGER/STOLBERG HOMES/THE  
VILLA GLEN, INC., and AMERICAN  
CUSTOM HOMES, INC.,

Plaintiffs,

vs.

IRVING MATERIALS, INC., DANIEL C.  
BUTLER, JOHN HUGGINS, FRED R.  
IRVING, PRICE IRVING, and UNNAMED  
CO-CONSPIRATORS,

Defendants.

CASE NO. 1:05-cv-01265-SEB-VSS

WARDEWELL BROTHERS, INC.,

Plaintiff,

vs.

BUILDER'S CONCRETE & SUPPLY CO.,  
INC. and IRVING MATERIALS, INC.,

Defendants.

CASE NO. 1:05-cv-01296-SEB-VSS

MARMAX CONSTRUCTION, LLC, on behalf of themselves and all others similarly situated d/b/a GENESIS CONCRETE, and CAL PAYSINGER, on behalf of themselves and all others similarly situated d/b/a GENESIS CONCRETE,

Plaintiffs,

vs.

IRVING MATERIALS, INC., BUILDER'S CONCRETE & SUPPLY CO., INC., HUGHEY, INC. d/b/a CARMEL CONCRETE PRODUCTS, and DOE'S 1-25 (CO-CONSPIRATORS),

Defendants.

CASE NO. 1:05-cv--SEB-VSS

TRIPPMANN CONSTRUCTION, INC., ELBRECHT INVESTMNETS, LLC, and CWE CONCRETE CONSTRUCTION, INC.,

Plaintiffs,

vs.

IRVING MATERIALS, INC.,

Defendant.

CASE NO. 1:05-cv--SEB-VSS

**CASE MANAGEMENT ORDER NO. 1**

WHEREAS, the above-referenced actions and all related actions allege violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and such actions involve common questions of law and fact;

WHEREAS, the Court has determined that formal consolidation of all related actions and appointment of Lead Counsel for Lead Plaintiff is appropriate and consistent with the recommendations of the *Manual for Complex Litigation* (4<sup>th</sup> ed. 2004) (“*Manual*”) and with Rule 23(g) of the Federal Rules of Civil Procedure;

NOW, THEREFORE, the COURT hereby ORDERS as follows:

**I. CONSOLIDATION OF RELATED ACTIONS**

1. The above-captioned actions and any action arising out of the same operative facts now pending or hereafter filed in or transferred to this Court (collectively, “Consolidated Action”) will be consolidated pursuant to Rule 42(a) of the Federal Rules of Civil Procedure. The Consolidated Action shall be referred to as *In re Ready-Mixed Concrete Antitrust Litigation*, Master File No. 1:05-CV-0977-SEB-VSS.

**II. CAPTION OF CASES**

2. Every pleading filed in the Consolidated Action shall bear the following caption:



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

\_\_\_\_\_  
IN RE READY-MIXED CONCRETE  
ANTITRUST LITIGATION  
\_\_\_\_\_

MASTER FILE: 1:05-CV-0977-SEB-USS

\_\_\_\_\_  
THIS DOCUMENT RELATES TO:  
\_\_\_\_\_  
\_\_\_\_\_

3. When a pleading or other court paper filed in the Consolidated Action is intended to apply to all actions therein, the words “All Actions” shall appear immediately after the words “THIS DOCUMENT RELATES TO:” in the caption set out above. When a pleading or other court paper is intended to be applicable to less than all such actions, the party filing the document shall indicate, immediately after the words “THIS DOCUMENT RELATES TO:” the action(s) to which the document is intended to be applicable by last name of the plaintiff(s) and the docket number(s).

**III. MASTER DOCKET**

4. A Master Docket is hereby established for the Consolidated Action, including actions subsequently consolidated herein pursuant to this Order. Entries in said Master Docket shall be applicable to the Consolidated Action, and entries shall be made therein in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order.

5. When a pleading is filed and the caption, pursuant to this Order, shows that it is applicable to “All Actions,” the Clerk shall file such pleading in the Master File and note such filing in the Master Docket. No further copies need be filed nor other docket entries made.

6. When a paper is filed and the caption shows that it is applicable to fewer than All Actions, the Clerk shall file the original of the paper in the Master File and a copy in the file of each separate action to which it applies and shall note such filing in the Master

Docket and in the docket of each separate action. The party filing such paper shall supply the Clerk with sufficient copies of any such paper to permit compliance with this paragraph.

**IV. MASTER FILE AND SEPARATE ACTION FILES**

7. A Master File is hereby established for the consolidated proceedings in the Consolidated Action. The Master File shall be Civil Action No. 1:05-CV-0977-SEB-USS. The original of this Order shall be filed by the Clerk in the Master File herein established. The Clerk shall maintain a separate file for each of the Consolidated Actions and filings shall be made in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order. The Clerk shall file a copy of this Order in each such separate file. The Clerk shall mail or email a copy of this Order, according to its regular procedures for distributing orders, to counsel of record in each of the Consolidated Actions.

**V. NEWLY FILED OR TRANSFERRED ACTIONS**

8. When a case that arises out of the same operative facts as the above-referenced actions is hereafter filed in or transferred to this Court, it shall be consolidated with this action as provided in Section I above and the Clerk of Court shall:

- (a) File a copy of this Order in the separate file for such action;
- (b) Mail a copy of this Order to the attorneys for the plaintiff(s) in the newly-filed or transferred case and to any new defendant(s) in the newly-filed or transferred case; and
- (c) Make the appropriate entry in the Master Docket.

9. This Court requests the assistance of counsel in calling to the attention of the Clerk of this Court the filing or transfer of any case that might properly be consolidated as part of this litigation.

**VI. APPLICATION OF THIS ORDER TO SUBSEQUENT CASES**

10. This Order shall apply to each class action assigned to the undersigned alleging claims similar to those set forth in these actions. This Order shall apply to each such case which is subsequently filed in or transferred to this Court, and which is assigned to the undersigned, unless a party objecting to the consolidation of that case or to any other provision of this Order serves an application for relief from this Order or from any of its provisions within ten (10) days after the date on which the Clerk mails or emails a copy of this Order to counsel that party. The provisions of this Order shall apply to such action pending the Court's ruling on the application.

Unless a plaintiff in a subsequently filed or transferred case is permitted by the Court to use a separate complaint, defendants shall not be required to answer, plead or otherwise move with respect to that complaint. If a plaintiff in any such case is permitted to use a separate complaint, defendants shall have thirty days from the date the Court grants such permission within which to answer, plead or otherwise move with respect to that complaint.

**VII. ORGANIZATION OF COUNSEL**

11. Pursuant to Rule 23(g)(2)(A) of the Federal Rules of Civil Procedure, the Court designates the following to act as interim Lead Counsel for Plaintiffs in the Consolidated Action, with the responsibilities hereinafter described:

Stephen D. Susman  
**Susman Godfrey L.L.P.**  
901 Main Street, Suite 4100  
Dallas, TX 75202  
Telephone: (214) 754-1900  
Facsimile: (713) 754-1933

12. Lead Counsel in the Consolidated Action shall have authority over the following matters on behalf of all plaintiffs in those respective actions: (a) convening meetings of counsel; (b) initiating, responding to, scheduling, briefing, and arguing of all

motions; (c) determining the scope, order, and conduct of all discovery proceedings; (d) assigning such work assignments to other counsel as they may deem appropriate; (e) retaining plaintiffs' experts; (f) designating which attorneys may appear at hearings and conferences with the Court; (g) conducting settlement negotiations with defendants; and (h) other matters concerning the prosecution of or resolution of their respective cases.

13. No motion shall be initiated or filed on behalf of any plaintiff in the Consolidated Action except through the Lead Counsel.

14. Lead Counsel will solely determine all work assignments in the Consolidated Action and attorneys responsible therefore

15. Lead Counsel shall have authority to communicate with defendants' counsel and the Court on behalf of all Plaintiffs. Defendants' counsel may rely on all agreements made with Lead Counsel, and such agreements shall be binding.

16. The Court also designates the following to act as interim Liaison Counsel for Plaintiffs in the Consolidated Action, with the responsibilities hereinafter described:

Irwin B. Levin  
**Cohen & Malad L.L.P.**  
One Indiana Square, Suite 1400  
Telephone: (317) 636-6481  
Facsimile: (317) 636-2593

17. Liaison Counsel shall have the responsibility for receiving and distributing notices, orders, motions and briefs in the Consolidated Action and on behalf of all plaintiffs in those respective actions.

18. Liaison Counsel shall also have the responsibility for advising parties of developments and otherwise assisting in the coordination of activities and positions.

## **VII. COORDINATION**

19. Lead Counsel shall coordinate activities to avoid duplication and inefficiency in the filing, serving and/or implementation of pleadings, other court papers, discovery papers, and discovery practice.

20. Discovery shall be consolidated in the Consolidated Action.

### **VIII. COMPENSATION OF CLASS COUNSEL**

21. The Court finds that compensating class counsel on a percentage basis plus reimbursement of reasonable nontaxable costs is appropriate for this case because it best reflects “the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 599 (7<sup>th</sup> Cir. 2005) (quoting *In re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (7<sup>th</sup> Cir. 2001)).

22. The Court further finds that contingent fee arrangements with individual plaintiffs in cases like this normally range from one-third to one-half of the gross recovery – depending on a variety of factors, including the individual plaintiff’s purchases, the duration of the price-fixing, the extent to which the price-fixing raised prices above the competitive level, the solvency of the defendants, and the likelihood of a prompt and firm trial date. In a class case, lawyers must consider the same factors but may adjust aggregate class damages to account for potential opt outs and consider costs attending procedures for class certification, class notice, claims administration, and the like.

23. In light of these considerations, the Court finds that it will award attorney fees out of any recovery in this case, and it finds that 25% plus reasonable nontaxable costs is an appropriate award. By setting such a percentage in advance, the Court can eliminate any incentive by plaintiffs’ counsel to overwork the case or to defer settlement to run up their lodestar. Also, this arrangement will compensate counsel for results, not efforts.

### **IX. COMMUNICATION AMONG COUNSEL**

24. The Court recognizes that cooperation by and among counsel is essential for the orderly and expeditious resolution of this litigation. Accordingly, the communication of information among and between plaintiffs’ counsel shall not be deemed a waiver of the

attorney-client privilege, the attorney work product privilege or other applicable privileges. Similarly, the communication of information among and between counsel for Defendants shall not be deemed a waiver of the attorney-client privilege, or other applicable privileges.

**XII. SCOPE OF ORDER**

25. The terms of this Order shall not have the effect of making any person, firm or entity a party to any action in which he, she or it has not been named, served or added as such in accordance with the Federal Rules of Civil Procedure. The terms of this Order and the consolidation ordered herein shall not constitute a waiver by any party of any claims in or defenses to any action.

**XIII. PRELIMINARY SCHEDULE OF PROCEEDINGS**

26. Unless otherwise agreed to by the parties, Plaintiffs shall file a consolidated complaint within 30 days of the entry of this order. The consolidated complaint, subject to further amendment following discovery, shall be the operative complaint and shall supersede all complaints filed in any of the actions consolidated herein. Pending filing and service of the consolidated complaint, defendants shall have no obligation to move, answer, or otherwise respond to any of the complaints in the actions consolidated herein or any actions subsequently consolidated with them;

27. Defendants shall answer the consolidated complaint or otherwise respond 60 days thereafter;

28. Plaintiffs shall respond to any motion within 45 days; and

29. Defendants shall have 30 days to file any reply.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Sarah Evans Barker  
Judge, United States District Court  
Southern District of Indiana  
Indianapolis Division

Distribution to: All Counsel of Record.