

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

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

**IMI DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED  
CONSOLIDATED CLASS ACTION COMPLAINT AND JURY REQUEST**

For their Answer to Plaintiffs' Second Amended Consolidated Class Action Compliant ("Second Amended Complaint"), defendants Irving Materials, Inc. ("IMI"), Fred R. Irving, John A. Huggins, Daniel C. Butler and Price C. Irving (collectively, the "IMI defendants"<sup>1</sup>), state:

**IMI Defendants' Definitions**

The following terms in the IMI Defendants' Answer or in the Second Amended Complaint shall have the following meaning:

"Ready-Mixed Concrete" shall mean a colloquial term to describe a large and diverse array of discrete products and applications, together with a variety of associated services offered by IMI and others in the industry, and is not a single "product" as plaintiffs misstate.

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<sup>1</sup> Ready-Mixed Concrete Company is not a separate corporate entity or another type of entity, but to the extent necessary is included herein as an IMI defendant.

**- First Defense -**

**"Summary of Claims" - ¶'s 1-3**

1. The IMI defendants, with respect to the first sentence of paragraph 1 of plaintiffs' Second Amended Complaint, admit that plaintiffs are attempting to bring this lawsuit as a putative class action but deny that class certification is appropriate or that plaintiffs are otherwise entitled to relief and with respect to the second and third sentences of paragraph 1, admit that plaintiffs make such allegations, but deny the allegations.

2. The IMI defendants deny paragraphs 2 and 3 of the Second Amended Complaint.

**"Jurisdiction and Venue" - ¶'s 4-6**

3. With respect to paragraph 4 of plaintiffs' Second Amended Complaint, the IMI defendants admit that plaintiffs "bring" this action under the referenced provisions of the Clayton Act but deny that plaintiffs or putative class members have standing or have sustained any injury.

4. The IMI defendants admit the jurisdictional allegations of paragraph 5 of the Second Amended Complaint.

5. With respect to paragraph 6 of the Second Amended Complaint, the IMI defendants admit that venue is proper in this District. With respect to the second sentence of paragraph 6, assuming that such refers to a conspiracy "by the defendants and their co-conspirators" as referenced in paragraphs 2 and 3 of the Second Amended Complaint, such is denied. With respect to the third sentence of paragraph 6, the IMI defendants admit that IMI is found and transacts business within this judicial district but deny the terms "carried out."

**"Definitions"**

6. The IMI defendants deny the allegations of paragraphs 7(a), (b), (c) and (e) and deny that certification of any class is appropriate in this case. With respect to paragraph 7(c), the IMI defendants restate the definition of "Ready-Mixed Concrete" as set forth above. With that

qualification, the IMI defendants admit that certain ready-mixed products can be made on demand and shipped to work sites in mixer trucks. With respect to paragraph 7(d), the IMI defendants admit that plaintiffs' definition of "person" is reasonable as an abstract point of legal meaning but deny that such definition in any way entitles plaintiffs to class certification or to other relief.

**"Parties" – ¶ 8-35**

7. The IMI defendants are without knowledge or information sufficient to form a belief as to the truth of allegations presented in paragraphs 8 through 14, inclusive, of the Second Amended Complaint. Such allegations are accordingly deemed denied pursuant to Federal Rule of Civil Procedure (FRCP) 8(b).

8. The IMI defendants admit the allegations of the first sentence of paragraph 15 of plaintiffs' Second Amended Complaint. With respect to the second sentence of paragraph 15, the IMI defendants deny the defined terms for reasons stated in response to paragraph 7 of the Second Amended Complaint. The IMI defendants admit that IMI produced and sold a wide variety of different products colloquially known as "Ready-Mixed Concrete" to purchasers in the Indianapolis metropolitan area and elsewhere, but deny the terms "in the United States."

9. The IMI defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations presented in paragraphs 16 through 19, inclusive, of the Second Amended Complaint. Accordingly, such allegations are deemed denied pursuant to FRCP 8(b).

10. With respect to the first sentence of paragraph 20 of the Second Amended Complaint, the IMI defendants deny that Ready-Mixed Concrete Company is an incorporated or any other type of entity. With respect to the second sentence of paragraph 20, the IMI

defendants deny the defined terms to the extent and for the reasons stated in response to paragraph 7 of the Second Amended Complaint.

11. The IMI defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations presented in paragraphs 21 through 24, inclusive, of the Second Amended Complaint. Such allegations are accordingly deemed denied pursuant to FRCP 8(b).

12. With respect to paragraphs 25 through 28, inclusive, of the Second Amended Complaint, the IMI defendants deny the term "Class Period" for reasons stated in response to paragraph 7 but admit the remaining allegations of paragraphs 25-28, inclusive.

13. With respect to paragraphs 29 through 34, inclusive, of the Second Amended Complaint, the IMI defendants are without knowledge or information sufficient to form a belief as to the citizenship or capacities of the named, individual defendants. Such allegations are accordingly deemed denied pursuant to FRCP 8(b). The IMI defendants deny the term "Class Period" for reasons stated in response to paragraph 7 of the Second Amended Complaint.

14. The IMI defendants deny the allegations of paragraph 35 of the Second Amended Complaint.

**"Trade and Commerce" - ¶ 36**

15. The IMI defendants deny the allegations of paragraph 36 of the Second Amended Complaint.

**"Class Action Allegations" - ¶'s 37-44**

16. The IMI defendants deny each and every allegation of paragraphs 37 through 44, inclusive, of the Second Amended Complaint.

**"Violations Alleged" - ¶'s 45-53**

17. The IMI defendants deny the allegations of paragraphs 45 through 47, inclusive, of the Second Amended Complaint.

18. With respect to paragraph 48 of the Second Amended Complaint, the IMI defendants state the referenced matters speak for themselves. To the extent that paragraph 48 seeks to have the individual IMI defendants (Fred R. Irving, Price C. Irving, Daniel C. Butler and John Huggins) affirm, verify or authenticate matters occurring in the criminal proceedings, the individual IMI defendants respectfully decline to answer based on the Fifth Amendment's privilege against self-incrimination. U.S. Const., Amend. V.

19. The IMI defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations presented in paragraphs 49 through 53, inclusive, of the Second Amended Complaint. Such allegations are accordingly deemed denied pursuant to FRCP 8(b).

**"Effects" - ¶'s 54-55**

20. The IMI defendants deny the allegations of paragraphs 54 and 55 of the Second Amended Complaint.

**"Fraudulent Concealment" - ¶'s 56-60**

21. The IMI defendants deny the allegations of paragraphs 56 and 57 of the Second Amended Complaint.

22. The IMI defendants deny that plaintiffs have alleged fraudulent concealment with the particularity required by FRCP 9(b), but otherwise state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations presented in paragraph 58 of the Second Amended Complaint. Such allegations are accordingly deemed denied pursuant to FRCP 8(b).

23. The IMI defendants deny that plaintiffs have alleged fraudulent concealment with the particularity required by FRCP 9(b), but otherwise state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations presented in paragraph 59 of the Second Amended Complaint. Such allegations are accordingly deemed denied pursuant to FRCP 8(b).

24. With respect to paragraph 60 of the Second Amended Complaint, the IMI defendants deny "that prices for ready-mixed concrete had been artificially raised and maintained," but otherwise state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations presented in paragraph 60 of the Second Amended Complaint. Such allegations are accordingly deemed denied pursuant to FRCP 8(b).

**"Damages" - ¶ 61**

25. The IMI defendants deny the allegations of paragraph 61 of plaintiffs' Second Amended Complaint.

26. Paragraph 62 of plaintiffs' Second Amended Complaint presents a jury demand to which no response is required by the IMI defendants.

27. The IMI defendants deny that plaintiffs are entitled to any of the relief requested in paragraph 63 of the Second Amended Complaint.

**- Additional Defenses -**

28. Plaintiffs' claims are barred in part by the statute of limitations, 15 U.S.C. § 15b.

29. The Second Amended Complaint in paragraphs 56 through 60, inclusive, entitled "Fraudulent Concealment", fails to state a claim for relief.

30. Pursuant to Fed.R.Civ.P. 10(c), the IMI defendants conditionally adopt the remaining "additional", "affirmative" or "separate" defenses presented by the other defendants to date in their respective answers to the Second Amended Complaint. The IMI defendants'

adoption of such defenses is conditional in the sense that the IMI defendants believe some or all of the matters denominated as "defenses" by the other defendants are not defenses but rather elements of plaintiffs' claims, as to which plaintiffs bear the burden of proof. However, solely to the extent that the Court should determine otherwise, the IMI defendants hereby adopt by reference such defenses.

**- Jury Demand -**

31. The IMI defendants demand trial by jury, pursuant to FRCP 38(b), of all issues so triable.

**WHEREFORE**, judgment should be entered in favor of the IMI Defendants and plaintiffs should take nothing by their Second Amended Complaint.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 12, 2007, a copy of the foregoing was served electronically on the following counsel pursuant to Section X.A. of the case management order:

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