

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

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BOYLE CONSTRUCTION	)	CASE NO. 1:05-cv-0979-SEB-VSS
MANAGEMENT, INC., on behalf of itself	)	
and all others similarly situated,	)	
	)	
	)	<b>MOTION FOR ENTRY OF ORDER:</b>
	)	<b>(1) CONSOLIDATING RELATED</b>
Plaintiff,	)	<b>ACTIONS; (2) SETTING CERTAIN</b>
	)	<b>PRETRIAL PROCEDURES; AND (3)</b>
v.	)	<b>APPOINTING IRWIN B. LEVIN AS</b>
	)	<b>PLAINTIFFS' LEAD COUNSEL</b>
IRVING MATERIALS, INC., and	)	
UNNAMED CONSPIRATORS,	)	
	)	
Defendant.	)	

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KORT BUILDERS, INC., on behalf of itself	)	CASE NO. 1:05-cv-1002-SEB-VSS
and all others similarly situated,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
IRVING MATERIALS, INC.,	)	
	)	
Defendant.	)	

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*(Additional captions below)*

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DENNIS LEON MYERS d/b/a MYERS	)	CASE NO. 1:05-CV-1081-SEB-VSS
CONCRETE FINISHING, on its behalf and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
IRVING MATERIALS, INC.,	)	
	)	
Defendant.	)	

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ENGELHARDT CONTRACTING, on behalf	)	CASE NO. 1:05-cv-1130-SEB-VSS
of itself and all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
IRVING MATERIALS, INC.,	)	
	)	
Defendant.	)	

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**MOTION FOR ENTRY OF ORDER: (1) CONSOLIDATING RELATED ACTIONS; (2) SETTING CERTAIN PRETRIAL PROCEDURES; AND (3) APPOINTING IRWIN B. LEVIN AS PLAINTIFFS' LEAD COUNSEL**

Plaintiffs in the actions identified below, by and through their undersigned counsel, respectfully move this Court to enter their proposed Pretrial Order No. 1, consolidating these cases with related cases pending before this Court, and appointing Irwin B. Levin, the local lawyer who filed the first of these related cases, as the single lead counsel responsible for the prosecution of this litigation. In support thereof, plaintiffs represent as follows:

1. The above-captioned actions and related actions that are pending in this Court have been filed against Irving Materials, Inc., and other co-conspirators for violations of the

federal antitrust laws in the manufacture and sale of ready-mixed concrete.<sup>1</sup> The Complaints all allege violations of §1 of the Sherman Act, 15 U.S.C. §§15, 16, and contain substantially similar allegations that the defendant conspired to fix, raise, maintain, or stabilize prices for ready-mixed concrete sold in the United States and conspired with others to allocate markets for ready-mixed concrete sold in the United States.

2. All of the parties agree that these Actions should be consolidated for pre-trial purposes pursuant to Fed.R.Civ.P. 42(a) because they all involve substantially similar issues of law and fact. On August 17, 2005, Plaintiffs in certain actions filed a Motion to Consolidate and For Entry of Case Management Order No. 1, seeking, among other things, the consolidation of

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<sup>1</sup> The related actions (the “Actions”) 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; *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; *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; *Scott Pentecost d/b/a A&K Concrete, individually and on behalf of a class of all those similarly situated v. Irving Materials, Inc. and Unnamed Co-Conspirators*, Cause No. 1:05-cv-1133-SEB-VSS; *Craw-Con, Inc., individually and on behalf of a class of 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-JDT-TAB; *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-1216-DFH-VSS; and *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.* Cause No.: 1:05-cv-JDT-TAB.

these Actions, the appointment of a lead counsel from the State of Louisiana, and designation of an executive committee composed of lawyers drawn from firms in the State of Washington, the State of Maine, and the State of Pennsylvania. On August 18, 2005, a plaintiff in another action filed a motion seeking consolidation and the appointment of a sole lead counsel from the State of Pennsylvania. In addition, on August 18, 2005, Defendant Irving Materials, Inc. also filed a motion seeking the appointment of lead counsel to manage this litigation in a single action, as provided by Fed.R.Civ.P. 23 and the *Manual for Complex Litigation*. See Section 20.22 of the MANUAL FOR COMPLEX LITIGATION (Third) (Court should appoint lead counsel for plaintiffs in order to facilitate the efficient coordination and management of the case).

3. The undersigned Plaintiffs and their counsel respectfully move the Court to enter their proposed Pretrial Order No. 1 which provides for: (i) the consolidation of the Actions; (ii) the appointment of Irwin B. Levin of the law firm Cohen & Malad, LLP as Plaintiffs' Lead Counsel to be responsible for the prosecution of this consolidated litigation; and (iii) the establishment of certain other pretrial procedures that will promote the efficient and orderly administration of this litigation.

4. In further support of this Motion, the undersigned Plaintiffs submit their accompanying Memorandum in Support of Motion for Order Consolidating Related Actions, Setting Certain Pretrial Procedures, and Appointing Irwin B. Levin as Plaintiffs' Lead Counsel, filed contemporaneously herewith.

**WHEREFORE,** Plaintiffs respectfully urge the Court to enter their proposed Pretrial

Order No. 1.

Respectfully submitted,

Dated: August 30, 2005

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of August, 2005, a copy of the foregoing Motion For Entry of Order: (1) Consolidating Related Actions; (2) Setting Certain Pretrial Procedures; and (3) Appointing Irwin B. Levin As Plaintiffs' Lead Counsel 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

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Additionally, I certify that on this 30th day of August, 2005, a copy of the foregoing Motion For Entry of Order: (1) Consolidating Related Actions; (2) Setting Certain Pretrial Procedures; and (3) Appointing Irwin B. Levin As Plaintiffs' Lead Counsel was served upon the following Counsel in each of the Actions identified in this motion by United States First Class Mail:

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