

**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 other similarly situated,	)	
	)	
Plaintiff,	)	<b>PRETRIAL ORDER NO. 1</b>
	)	
vs.	)	
	)	
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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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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*(Additional caption below)*

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

WHEREAS, plaintiffs have filed complaints (the “Complaints”) in the above-captioned actions (the “Actions”) for alleged violations of the antitrust laws involving ready-mixed concrete;

WHEREAS, no other cases have been filed in any other district, to plaintiffs' knowledge, against these defendants relating to the conspiracy alleged in the Complaints or the product at issue; and

WHEREAS, these complex cases are ready to be organized to promote their expeditious resolution;

NOW, THEREFORE, THE COURT ORDERS as follows:

**I. COORDINATION OF RELATED ACTIONS UNDER A MASTER FILE AND CONSOLIDATION**

1. This Pretrial Order No. 1 (the “Order”) shall apply as specified to the Actions and to each case that relates to the Actions (collectively, “the Consolidated Action”) that is subsequently filed in or transferred to this Court. In light of the substantial similarity in the factual and legal issues alleged in the Complaints, the Actions are hereby consolidated for pre-trial purposes under Federal Rule of Civil Procedure 42(a).

2. A Master File Docket number is hereby established for this proceeding. The Master File Docket number shall be Civil Action No. \_\_\_\_\_. One docket will be maintained for these actions with all entries to be docketed in the Master File Docket number.

3. An original of this Order shall be filed by the Clerk in the Master File and in the files for each of the Actions and every action subsequently coordinated herein.

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

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

IN RE READY-MIXED CONCRETE	)	MASTER FILE _____
ANTITRUST LITIGATION,	)	
	)	
	)	
	)	
	)	
THIS DOCUMENT RELATES TO:	)	
	)	

5. The Clerk shall serve a copy of this Order on all counsel of record in any related action in the Consolidated Action.

6. When a pleading is intended to be applicable to all actions to which this Order is applicable, the words "All Actions" shall appear immediately after or below the words "This Document Relates To:" in the caption set out above. When a pleading is intended to be applicable only to some, but not all, of such actions, the separate caption and docket number for each action to which the pleading is intended to be applicable shall appear immediately after or below the words "This Document Relates To:" in the caption described above.

7. When a pleading is filed and the caption, pursuant to the foregoing, 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 or docket entries made.

8. When a pleading is filed and the caption, pursuant to the foregoing, shows that it is applicable to fewer than all of the actions in the Consolidated Action, the Clerk need file such pleadings only in the Master File but nonetheless shall note such filing in both the Master Docket and the docket of each action to which it applies.

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

10. Any party that seeks to commence any discussions of settlement of any claim brought in this action or any settlement that would affect any claim brought in this action, shall immediately advise the Court, Plaintiffs' Lead Counsel and defendant's counsel of the party's intention to commence such discussion. Any proposed settlement that resolves any claim brought in this action, or any settlement that would affect the claims brought in this action, shall first be subject to review and approval by the Court in this action.

## **II. NEWLY FILED OR TRANSFERRED ACTIONS**

11. When a case that arises out of the same subject matter as the Consolidated Action is hereafter filed in this Court or transferred from another court, the Clerk of this Court shall:

- a. file a copy of this Order in the separate file for such action;
- b. serve a copy of this Order on 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 for the Consolidated Action.

12. Each case that arises out of or relates to the same subject matter as the Consolidated Action that was previously or is subsequently filed in this Court or transferred to this Court, shall be consolidated for pre-trial proceedings with the Consolidated Action and this Order shall apply thereto, unless a party objects to consolidation, as provided herein, or any provisions of this Order, within ten (10) days after the date upon which a copy of this Order is served on counsel for such party, by filing an application for relief and this Court deems it appropriate to grant such application after providing notice for other affected parties to respond to such application. The provisions of this Order shall apply to such action pending the Court's ruling on the application.

13. Unless a plaintiff in a subsequently filed or transferred case is permitted by the Court to use a separate complaint, the defendant shall not be required to respond to that complaint in any such case. If a plaintiff in any such case is permitted to use a separate complaint, the defendant shall have 45 days from the date the Court grants such permission within which to respond to any such complaint.

### **III. PRETRIAL SCHEDULING CONFERENCE**

14. Pursuant to Federal Rules of Civil Procedure Rule 16, the Court will convene a pretrial conference as soon as practicable in order to establish a schedule to expedite the orderly disposition of this action. At this conference, the Court will address a class certification schedule, discovery schedule, expert schedule and deadlines for filing dispositive and non-dispositive motions.

#### **IV. ORGANIZATION AND ROLE OF PLAINTIFFS' COUNSEL**

15. The Court creates the organization and duties of a Plaintiffs' Lead Counsel as set forth below for the purpose of assuring the effective, efficient, expeditious and economical conduct of the litigation.

16. The Court appoints Irwin B. Levin of the law firm of Cohen & Malad, LLP, One Indiana Square, Suite 1400, Indianapolis, Indiana 46204 as Lead Counsel for the Plaintiffs in this matter. Plaintiffs' Lead Counsel is authorized to receive orders, notices, correspondence, and telephone calls from the Court and the Clerk of the Court on behalf of all plaintiffs. Plaintiffs' Lead Counsel shall promptly transmit copies of all such orders, notices, correspondence, pleadings, motions, discovery, and memoranda to all plaintiffs counsel when appropriate.

17. Lead Counsel shall in his sole discretion, consult, direct and utilize additional plaintiffs' counsel to assist in the efficient prosecution of the Consolidated Action. In so doing, Plaintiffs' Lead Counsel shall attempt to avoid duplicative or unproductive effort in the prosecution of this matter. To that end, all work performed by plaintiffs' counsel for any plaintiff in this action or in any cases that are consolidated with this action or transferred to this Court as a related case in this matter must be authorized in advance by Plaintiffs' Lead Counsel.

18. Plaintiffs' Lead Counsel shall have the following responsibilities:
- a. to act as spokespersons at pretrial conferences;
  - b. to call meetings of plaintiffs' counsel when appropriate of the counsel needed to meet for the purpose of prosecuting the litigation;
  - c. to make all work assignments;
  - d. to coordinate and communicate with defendant's counsel with respect to matters addressed in this paragraph.

- e. to brief and argue motions and file opposing briefs in proceedings initiated by other parties;
- f. to initiate and conduct discovery proceedings;
- g. to negotiate with defense counsel with respect to settlement and other matters;
- h. to conduct trial and post-trial proceedings;
- i. to consult with and employ experts;
- j. to perform such other duties and undertake such other responsibilities as deemed necessary or desirable;
- k. to receive orders, notices, correspondence, and telephone calls from the Court on behalf of all plaintiffs;
- l. to maintain an up-to-date service list of all counsel for distributing copies of orders, notices and other documents to plaintiffs' counsel who for purposes of efficiency and necessity should receive such documents; to coordinate and communicate with defendant's counsel with respect to matters addressed in this paragraph; and
- m. to allocate any attorneys' fees that may be awarded in this matter among plaintiffs' counsel.

19. No motion, request for discovery, or other pretrial proceedings shall be initiated or filed by any plaintiff except through Plaintiffs' Lead Counsel.

**V. MAINTENANCE OF CONTEMPORANEOUS ATTORNEY TIME AND EXPENSE RECORDS**

20. All plaintiffs' counsel shall submit to Plaintiffs' Lead Counsel a record of the time expended and expenses incurred in the form set forth by Plaintiffs' Lead Counsel on a

monthly basis. Counsel who fail to comply with this reporting requirement shall be ineligible to receive assignments from Lead Counsel to perform services in this matter.

**VI. SERVICE OF PLEADINGS, MOTIONS AND OTHER PAPERS**

21. Defendant shall effect service of papers on plaintiffs by serving a copy of same on Plaintiffs' Lead Counsel. As to any action in which defendant has received service of the Complaint pursuant to the Federal Rules of Civil Procedure, plaintiffs shall effect service of papers on defendant by serving a copy of same on defendant's counsel. The provisions of this paragraph shall not apply to any papers filed with the Court and subject to the Southern District of Indiana's CM-ECF policies and procedures.

22. The terms of this Order shall not have the effect of making any person, firm or corporation 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 coordination ordered herein shall not constitute a waiver by any party of any claims in or defenses to any of the Actions.

**VII. INITIAL SCHEDULE**

23. 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, defendant 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.



24. Defendant shall answer the Consolidated Complaint or otherwise respond 60 days thereafter.

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

26. Defendant shall have 30 days to file any reply.

27. Counsel for the parties shall appear before the Court at an initial Pretrial Conference pursuant to Local Rule 16(a), on \_\_\_\_\_, at \_\_\_\_\_.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2005

By: \_\_\_\_\_  
The Honorable Sarah Evans Barker  
United States District Judge

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