

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: READY-MIXED CONCRETE  
ANTITRUST LITIGATION

MASTER DOCKET NO.  
1:05-CV- 00979-SEB-VSS

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**IMI DEFENDANTS' MOTION FOR JUDGMENT ON THE  
PLEADINGS REGARDING CLAIMS OUTSIDE STATUTE OF LIMITATIONS**

Pursuant to Federal Rule of Civil Procedure 12(c),<sup>1</sup> defendants Irving Materials, Inc., Fred R. ("Pete") Irving, John Huggins, Daniel C. Butler and Price Irving (collectively, the "IMI defendants"), move for judgment on the pleadings with respect to plaintiffs' claims beyond the statute of limitations. In support, the IMI defendants state:

1. The Clayton Act's four year statute of limitations, 15 U.S.C. § 15b, bars plaintiffs' claims for any period prior to June 30, 2001.
2. The statute of limitations accrues at the time of plaintiffs' alleged purchase at an allegedly inflated price. Thus, plaintiffs' claims in this suit filed on June 30, 2005 are barred with respect to any purchase made prior to June 30, 2001.
3. Plaintiffs' attempt to plead fraudulent concealment to toll the statute does not satisfy the fraud pleading standards of particularity established by FRCP 9(b). Plaintiffs' fraudulent concealment allegations are conclusory and do not set forth in sufficient detail either

---

<sup>1</sup> Alternatively, to the extent appropriate, the IMI defendants present this motion under Rule 12(b)(6).

alleged acts of affirmative concealment by the IMI defendants or the substance of plaintiffs' alleged due diligence investigation.

4. Accordingly, the IMI defendants are entitled to judgment on the pleadings with respect to all claims beyond the four year period.

**WHEREFORE**, the IMI defendants should be granted judgment on the pleadings with respect to all claims beyond the four year statute of limitations.

Respectfully submitted,

/s/ Edward P. Steegmann

G. Daniel Kelley, Jr., #5126-49

Thomas E. Mixdorf, #16812-49

Edward P. Steegmann, #14349-49

Anthony P. Aaron, #23482-29

Attorneys for IMI Defendants

ICE MILLER  
One American Square  
Box 82001  
Indianapolis, Indiana 46282  
(317) 236-2100

**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2005, a copy of the foregoing was served electronically on the following counsel pursuant to Section X.A. of the case management order:

James H. Ham, III  
Kathy Lynn Osborn  
Robert K. Stanley  
BAKER & DANIELS  
300 North Meridian Street  
Suite 2700  
Indianapolis, IN 46204  
[jhham@bakerd.com](mailto:jhham@bakerd.com)  
[klosborn@bakerd.com](mailto:klosborn@bakerd.com)  
[rkstanle@bakerd.com](mailto:rkstanle@bakerd.com)

Judy L. Woods  
BOSE McKINNEY & EVANS, LLP  
135 North Pennsylvania Street  
Suite 2700  
Indianapolis, IN 46204  
[jwoods@boselaw.com](mailto:jwoods@boselaw.com)

Irwin B. Levin  
Richard E. Shevitz  
Scott D. Gilchrist  
Eric S. Pavlak  
COHEN & MALAD, LLP  
One Indiana Square, Suite 1400  
Indianapolis, IN 46204  
[ilevin@cohenandmalad.com](mailto:ilevin@cohenandmalad.com)  
[rshevitz@cohenandmalad.com](mailto:rshevitz@cohenandmalad.com)  
[sgilchrist@cohenandmalad.com](mailto:sgilchrist@cohenandmalad.com)  
[epavlack@cohenandmalad.com](mailto:epavlack@cohenandmalad.com)

Jay P. Kennedy  
KROGER GARDIS & REGAS  
111 Monument Circle  
Suite 900  
Indianapolis, IN 46204-3059  
[jpk@kgrlaw.com](mailto:jpk@kgrlaw.com)

J. Lee McNeely  
Brady J. Rife  
McNEELY STEPHENSON THOPY  
& HARROLD  
30 East Washington Street  
Suite 400  
Shelbyville, IN 46176  
[jlmcneely@msth.com](mailto:jlmcneely@msth.com)  
[bjrife@msth.com](mailto:bjrife@msth.com)

Stephen D. Susman  
Barry C. Barnett  
Jonathan Bridges  
SUSMAN GODFREY LLP  
901 Main Street  
Suite 4100  
Dallas, TX 75202  
[ssusman@susmangodfrey.com](mailto:ssusman@susmangodfrey.com)  
[bbarnett@susmangodfrey.com](mailto:bbarnett@susmangodfrey.com)  
[jbridges@susmangodfrey.com](mailto:jbridges@susmangodfrey.com)

Steven M. Badger  
Shannon D. Landreth  
McTURNAN & TURNER  
2400 Market Tower  
10 West Market Street  
Indianapolis, IN 46204  
[sbadger@mtlitig.com](mailto:sbadger@mtlitig.com)  
[slandreth@mtlitig.com](mailto:slandreth@mtlitig.com)

Michael Coppes  
EMSWILLER WILLIAMS  
NOLAND & CLARK  
Suite 500  
8500 Keystone Crossing  
Indianapolis, IN 46240-2461  
[mcoppes @ewnc-law.com](mailto:mcoppes@ewnc-law.com)

Charles R. Sheeks  
SHEEKS & NIXON, LLP  
6350 North Shadeland, Suite 1  
Indianapolis, IN 46220  
[Crslaw@sbcglobal.net](mailto:Crslaw@sbcglobal.net)

George W. Hopper  
Jason R. Burke  
HOPPER BLACKWELL  
111 Monument Circle  
Suite 452  
Indianapolis, IN 46204  
[ghopper@hopperblackwell.com](mailto:ghopper@hopperblackwell.com)  
[jburke@hopperblackwell.com](mailto:jburke@hopperblackwell.com)

Frank J. Vondrak  
Michael W. Boomgarden  
Jonathan A. Epstein  
Eric L. Schleef  
U.S. Department of Justice  
Antitrust Division  
209 South LaSalle Street  
Suite 600  
Chicago, IL 60604  
[frank.vondrak@usdoj.gov](mailto:frank.vondrak@usdoj.gov)  
[michael.boomgarden@usdoj.gov](mailto:michael.boomgarden@usdoj.gov)  
[jonathan.epstein@usdoj.gov](mailto:jonathan.epstein@usdoj.gov)  
[eric.schleef@usdoj.gov](mailto:eric.schleef@usdoj.gov)

/s/ Edward P. Steegmann

G. Daniel Kelley, Jr., #5126-49  
Thomas E. Mixdorf, #16812-49  
Edward P. Steegmann, #14349-49  
Aaron P. Anthony, #23482-29  
[daniel.kelley@icemiller.com](mailto:daniel.kelley@icemiller.com)  
[tom.mixdorf@icemiller.com](mailto:tom.mixdorf@icemiller.com)  
[ed.steegmann@icemiller.com](mailto:ed.steegmann@icemiller.com)  
[anthony.aaron@icemiller.com](mailto:anthony.aaron@icemiller.com)

Attorneys for IMI Defendants

ICE MILLER  
One American Square  
Box 82001  
Indianapolis, Indiana 46282  
(317) 236-2100