IN THE 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-JMS
THIS DOCUMENT RELATES TO: ALL ACTIONS	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT WITH DEFENDANTS IRVING MATERIALS, INC., FRED R. (PETE) IRVING, DANIEL BUTLER, JOHN HUGGINS, AND PRICE IRVING

The Plaintiffs, Kort Builders, Inc., Dan Grote, Cherokee Development, Inc., Wininger/Stolberg Group, Inc., Marmax Construction, LLC, Boyle Construction Management, Inc., and T&R Contractor, Inc. (collectively "Plaintiffs"), by Class Counsel, have moved this Court for an Order preliminarily approving the Settlement Agreement With Defendants Irving Materials, Inc., Fred R. (Pete) Irving, Daniel Butler, John Huggins and Price Irving ("IMI Settlement"), preliminarily certifying a Plaintiff Settlement Class, and directing notice of the IMI Settlement to members of the Settlement Class. The IMI Settlement, which is attached to the Motion as Exhibit "1," resolves the claims in this action of the Plaintiffs and the proposed Settlement Class as against Defendants Irving Materials, Inc. ("IMI"), Fred R. (Pete) Irving, Daniel Butler, John Huggins and Price Irving (collectively "IMI Defendants") only, in exchange for the payment of the sum of $29 million (the "Settlement Amount").[1]

[1] The IMI Settlement is the fourth settlement agreement reached with Defendants in this case. On April 4, 2008, the Court entered orders granting final approval to settlements with the Shelby and American Defendants, which together provided settlement funds in the amount of $5.068 million. (Docket Nos.546 and 547). On August 7, 2008 the Court entered an order granting final approval to a settlement with Prairie Material Sales, Inc. n/k/a Southfield Corporation and Gary Matney, which provided settlement funds in the amount of $19 million. (Docket No. 650).

The IMI Settlement is an outstanding achievement for Class members, obtained despite years of aggressive opposition by several well-funded Defendants. When the IMI Settlement is added to the Plaintiffs' settlements with American, Shelby and Prairie, the Class will have recovered $53 million. These benefits have been obtained for Class members despite widely diverging views on damages and the scope and impact of the Defendants' conspiracy. Moreover, the IMI Settlement follows extensive, arms-length negotiations between the Plaintiffs and the IMI Defendants with the assistance of a mediator, reflects the risks to both parties of continued litigation, plainly qualifies as a fair, reasonable and adequate result, and easily satisfies the standards for preliminary approval.

Introduction

The Plaintiffs initiated several actions[2] against the named Defendants in mid-2005, seeking treble damages, costs of suit, attorneys' fees, and injunctive relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, for the injuries sustained by Plaintiffs and class members arising from violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Plaintiffs have alleged that from at least July 1, 2000 through at least May 25, 2004, the Defendants and their co-conspirators, including the IMI Defendants, entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing the price of ready-mixed concrete in the central Indiana area. Plaintiffs allege that as a result of the unlawful conduct of Defendants and their co-conspirators, Plaintiffs and the other class members paid artificially inflated prices for ready-mixed concrete.

The Plaintiffs' actions followed an announcement by the United States Department of Justice ("DOJ"), on June 29, 2005, that the IMI Defendants had agreed to plead guilty and pay a

[2] Several similar actions were filed in this Court against IMI and the other Defendants, and were consolidated by this Court under the caption set forth above.

$29.2 million criminal fine for conspiring and fixing prices for ready-mixed concrete in violation of the Sherman Act. Since the IMI Defendants' guilty pleas, a number of other individual and corporate Defendants have pleaded guilty, been convicted following a jury trial, or entered into leniency or cooperation agreements with the United States. *See* Memorandum in Support of Plaintiffs' Motion for Class Certification (Docket No. 401), p. 7 (summarizing Defendants' guilty pleas, convictions and cooperation agreements).

On November 28, 2005, at the request of the DOJ, the Court stayed most discovery in this case pending completion of the criminal proceedings. The Court lifted the discovery stay on December 19, 2006, after the jury trial conviction of the Beaver Defendants. Since the lifting of the discovery stay, the Plaintiffs have received and reviewed literally hundreds of thousands of pages of documents and immense volumes of computerized data. Discovery obtained by the Plaintiffs has included extensive transactional and financial data from the Defendants from a period before and following the Plaintiffs' proposed class period of July 1, 2000 through May 25, 2004. The Plaintiffs have also obtained and reviewed testimony and exhibits from the criminal jury trial of Defendant Ma-Ri-Al Corporation d/b/a Beaver Materials, and materials and information prepared or obtained by the Federal Bureau of Investigation ("FBI"). The Plaintiffs have also conducted over 30 depositions, some of them lasting several days, including numerous Rule 30(b)(6) depositions of Defendant representatives, and lengthy depositions of Defendants' three experts.

On August 1, 2007, the Plaintiffs filed their Motion for Class Certification, along with a supporting Memorandum and an extensive appendix of supporting exhibits. In addition to testimony from the Beaver trial, statements obtained by the FBI, and an affidavit from an FBI investigator, the Plaintiffs submitted the Declaration of John Beyer, Ph.D. *See*, Declaration of

Irwin B. Levin, Exhibit 37 (Docket No. 398-55 (filed under seal)) ("Beyer Declaration"). The Beyer Declaration applied established economic analysis to show that if the Defendants conspired in the manner alleged by the Plaintiffs their conspiracy impacted all members of the proposed Class, which includes over 5,000 direct purchasers of ready-mixed concrete.

Following the submission of briefs and materials in opposition to class certification, and the submission by Plaintiffs of additional materials in support, the Court granted the Plaintiffs' motion for class certification on September 9, 2009, and certified a Plaintiff Class composed "all Persons who purchased Ready-Mixed Concrete directly from any of the Defendants or any of their co-conspirators, which was delivered from a facility within the Counties of Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Monroe, Morgan, or Shelby, in the State of Indiana, at any time during the period from and including July 1, 2000 through and including May 25, 2004, but excluding Defendants, their co-conspirators, their respective parents, subsidiaries, and affiliates, and federal, state, and local government entities and political subdivisions." (Doc. No. 738). On September 23, 2009, Builders, Beaver and IMI Defendants filed a Rule 23(f) Petition with the Seventh Circuit seeking permission to take an interlocutory appeal of the class certification order. The Seventh Circuit rejected that request, however, allowing the claims to proceed to trial as a class action.

The IMI Settlement

The IMI Settlement is the result of negotiations between Class Counsel and counsel for IMI spanning at least two years. The negotiations leading to settlement took the form of a mediation session carefully planned with the assistance of Magistrate Jane Magnus-Stinson and conducted by mediator Eric D. Green. The preparation for mediation included several meetings with Defendants' counsel, the review of data and discovery produced by all Defendants during

the course of litigation, the production by Defendants of additional transactional data, and the preparation and in-person presentation of damages analyses by both Plaintiffs' and Defendants' experts. The IMI settlement was reached following two days of arms' length mediation with the assistance of Mr. Green. The written IMI Settlement Agreement presented to the Court for approval resulted from additional extensive negotiation between counsel for Plaintiffs and IMI and further assistance from Mr. Green.

The terms of the IMI Settlement are straightforward, and consistent with those found in similar settlements for claims brought under Section 1 of the Sherman Act for price fixing, including the American, Shelby and Prairie Settlements. The key elements of the IMI Settlement are as follows:

- The certification as to the IMI Defendants, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), of a Settlement Class, the appointment of the Plaintiffs to represent the Settlement Class, and the appointment of Interim Co-Lead Counsel as Settlement Class Counsel;
- The issuance of notice of the Settlement, by mail and publication, advising members of the Settlement Class of the terms of the Settlement and their right to exclude themselves from or object to the Settlement;
- The scheduling of a final fairness hearing to consider whether the Settlement should be finally approved;
- The payment by IMI of $29,000,000 into a Settlement Fund for the benefit of the Settlement Class;[3]

[3] The Settlement also provides that should the Class Period purchases by "opt outs" total at least $34,000,000 and not more than $136,000,000, IMI may receive certain sums back from the Settlement Fund, not to exceed $2,295,000. In the event that Class Period purchases by opt outs total more than $136,000,000, either party may rescind the Settlement.

- Certain continuing cooperation and assistance of IMI and its officers in the Plaintiffs' prosecution of this action against the remaining Defendants, including as necessary affidavits and declarations under oath, trial testimony, and depositions if IMI's cooperation cannot be secured voluntarily;
- An agreement by the IMI Defendants not to oppose Settlement Class Counsel's request for Court approval of the payment of attorneys' fees in an amount not to exceed 33 1/3 % of the Settlement Amount, and reimbursement of reasonable expenses, to be paid from the Settlement Fund; and
- The release of claims that were or could have been asserted in this action against the IMI Defendants and related persons by the Plaintiffs and Settlement Class members, and a final judgment dismissing the Plaintiffs' and Settlement Class members' claims against the IMI Defendants.

The IMI Settlement does not result in a release or dismissal of the claims of the Plaintiffs and Settlement Class Members against any other Defendants. Indeed, the IMI Settlement is consistent with and recognizes the right of the Plaintiffs and Settlement Class members, under the Sherman and Clayton Acts, to continue to seek, from all other Defendants, treble the damages resulting from all Defendants' – including the IMI Defendants' – participation in the conspiracy.

IMI's settlement payment will be deposited into an escrow account established by Settlement Class Counsel at a commercial bank and maintained as the Settlement Fund. Settlement Class Counsel will seek permission from the Court to make distributions from the Settlement Fund to Class members. It is proposed that distribution of amounts from the Settlement Fund be in direct proportion to the amount of a Class member's purchases of ready-

mixed concrete from the Defendants at any time from July 1, 2000 through May 25, 2004, a distribution method previously approved by this Court for prior settlements. Class Counsel will seek Court approval of a claims protocol and a claim form with information about the proposed distribution and instructions for submitting a claim to be provided to Class members.

Standard for Preliminary Approval

It is well-established that a district court's approval of a class action settlement should proceed in two steps. The first step is to determine whether to conditionally certify a settlement class and to notify class members of the pending settlement and their right to participate in a final fairness hearing. The second step is the fairness hearing itself, which can occur only after class members have been notified of their right to participate in the hearing or to opt out of the class altogether. *See*, Federal Judicial Center's Manual for Complex Litigation, Fourth §§ 21.622-23 (2006).

If the district court finds a settlement proposal "within the range of possible approval," preliminary approval is granted and class members are notified of the proposed settlement and the fairness hearing at which they and all interested parties have an opportunity to be heard. *Gautreaux v. Pierce,* 690 F.2d 616, 621 n.3 (7th Cir. 1982) (citations omitted). The Seventh Circuit has adopted a "probable cause" approach to the preliminary approval stage of considering a proposed class action settlement:

> The first step involves a preliminary determination as to whether notice of the proposed settlement should be given to members of the class and a hearing scheduled at which evidence in support of and in opposition to the proposed settlement will be received. Unless the judge is preliminarily satisfied that the proposed settlement is within the range of possible approval, there is no point in proceeding with notice and a hearing. **"Such a preliminary hearing is not, of course, a definative (sic) proceeding on the fairness of the proposed settlement ... . * * * (I)t is simply a determination that there is, in effect, 'probable cause' to submit the proposal to members of the class** and to hold a

> full scale hearing on its fairness at which all interested parties will have an opportunity to be heard after which a formal finding of fairness will be made."

In re General Motors Engine Interchange Litig., 594 F.2d 1106, 1133 (7th Cir. 1979) (emphasis added), *quoting* Manual for Complex Litigation § 1.46 (1977).

Generally, the court "bases its preliminary approval of a proposed settlement upon its familiarity with the issues and evidence of the case as well as the arms-length nature of the negotiations prior to the settlement." *In re Telectronics Pacing Systems, Inc.,* 137 F.Supp.2d 985, 1026 (S.D. Ohio 2001), *citing In re Dun & Bradstreet Credit Servs. Litig.,* 130 F.R.D. 366, 370 (S.D. Ohio 1990). "A preliminary fairness assessment is not to be turned into a trial or rehearsal for trial on the merits, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *In re Inter-Op Hip Prosthesis Liability Litig.,* 204 F.R.D. 330, 350 (N.D. Ohio 2001).

The management of a class action rests largely within the district court's discretion. *Mars Steel Corp. v. Continental Ill. Nat'l Bank & Trust Co. of Chicago,* 834 F.2d 677, 684 (7th Cir. 1987). It is therefore within this Court's discretion whether, and to what extent, it should conduct a hearing prior to preliminary approval. *Id.* at 684. As the court in *Mars Steel* held, an evidentiary hearing plainly is not required. *See also, Patterson v. Stovall,* 528 F.2d 108 (7th Cir. 1976) (no error in district court's failure to hold evidentiary hearing either before preliminary approval or final approval); *In re General Motors,* 594 F.2d at 1133 (same). Given the substantial payment IMI has agreed to make in order to settle the claims of the Plaintiffs and Settlement Class members, the Court's familiarity with this case following years of litigation, and the inherent risks of further litigation against the IMI Defendants, Class Counsel believe that it would be appropriate to proceed with preliminary approval without a hearing.

The Court Should Preliminarily Approve the IMI Settlement

As this Court has recognized, the "bar is low" when considering a settlement for preliminary approval. *In re Bromine Antitrust Litig.,* 203 F.R.D. 403, 416 (S.D. Ind. 2001). Under the standard discussed above, and circumstances leading to this agreement, there should be little question that the terms of the IMI Settlement are well within the range of possible approval, and that probable cause exists to certify the Settlement Class and issue notice of a final fairness hearing. The fairness of the IMI Settlement is strongly supported by the facts and circumstances of this case.

First, IMI has agreed to pay $29 million into the Settlement Fund for the benefit of Class members. This sum represents more than 10% of the Plaintiffs' calculation of the total sales of ready-mixed concrete by IMI to Class members during the Class Period of July 1, 2000 through May 25, 2004. The settlement amount to be paid by IMI fairly accounts for the IMI Defendants' potential exposure for joint and several liability for trebled damages, weighed against the risks inherent in further litigation.

Second, the settlement amount is supported by the difficulties of obtaining a substantial judgment against IMI at trial. Although the IMI Defendants have been charged by the United States with criminal violations of the Sherman Act, and have pleaded guilty to those charges, IMI and the remaining Defendants have presented an energetic and extremely vigorous defense as to the extent of the conspiracy and to the Plaintiffs' claims of class-wide impact and damages. In order to obtain a significant judgment against IMI at trial, Plaintiffs and the Class would be required to overcome the efforts of IMI and other Defendants to show that the conspiracy was extremely limited in scope, was ineffective and caused little damage to purchasers. Plaintiffs and the Class would also face the prospect of an appeal from any significant judgment, in which

damages and the Court's certification of a litigation class would be challenged. Given the inherent risks of further litigation, Settlement Class Counsel believe that IMI's agreement to pay $29 million for the benefit of members of the Settlement Class is a highly favorable result.

Third, the settlement amount to be paid by IMI compares favorably with the amount paid by Defendants Shelby, American and Prairie under previous settlements that have been granted final approval by this Court. The facts and circumstances related to the claims against Shelby and American are unique to those Defendants, and the settlements with Shelby and American reflected risks of collection and limits of liability that do not apply to the IMI Defendants. For example, the American Settlement followed that company's ceasing of operations. Further, while Settlement Class Counsel estimated that the Shelby Settlement payment of $4.7 million represented approximately 5.6% of Shelby's total Class Period sales to Class members, Shelby would be protected from treble damages and joint and several liability as an applicant to the DOJ Antitrust Leniency Program. Although the settlement with Prairie was estimated to represent nearly 22% of Prairie's total Class Period sales to Class members, that settlement reflected the unique ability of Prairie to pay the settlement as a result of the sale of its assets. Given the facts and circumstances related to the claims against the IMI Defendants, and the unavoidable risks of trial and appeal, the IMI Settlement is a similarly favorable result that warrants approval.

The IMI Settlement nonetheless preserves the rights of the Plaintiffs and Settlement Class to pursue the full value of their claims – less any setoff for the settlement payment – against the remaining Defendants. Neither the release nor the dismissal contemplated by the IMI Settlement will affect claims against the remaining Defendants, and the IMI Defendants are required to provide useful cooperation to Settlement Class Counsel in pursuing these claims. The other

Defendants will remain jointly and severally liable for damages caused by IMI's participation, with them, in a conspiracy to fix the price of ready-mixed concrete.

The IMI Settlement Class

Pursuant to the Settlement Agreement and Federal Rules of Civil Procedure 23(a) and 23(b)(3), the Court should certify the following Settlement Class:

> All Persons who purchased Ready-Mixed Concrete directly from any of the Defendants or any of their co-conspirators, which was delivered from a facility within the Counties of Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Monroe, Morgan, or Shelby, in the State of Indiana, at any time during the period from and including July 1, 2000 through and including May 25, 2004, but excluding Defendants, their co-conspirators, their respective parents, subsidiaries, and affiliates, and federal, state, and local government entities and political subdivisions.

For the reasons set forth in the Plaintiffs' Memorandum in Support of Motion for Class Certification (Docket No. 401), and the Court's order certifying a Plaintiff Class for litigation, which are incorporated herein by reference, the proposed Settlement Class easily meets the requirements of Rules 23(a) and (b). As discussed therein, the Settlement Class numbers in the thousands (numerosity); the Plaintiffs assert claims identical to, and not in conflict with, the claims of Settlement Class members (typicality); the claims of the Plaintiffs and Settlement Class members share nearly identical issues of liability and damages (commonality); the Plaintiffs have displayed their commitment to this action throughout the litigation, through answering extensive discovery and participating in depositions, and have no interest antagonistic to the Class (adequacy of Plaintiffs); and proposed Settlement Class Counsel are well experienced in complex and class action litigation, including antitrust matters (adequacy of counsel).

As Plaintiffs have illustrated in support of the certification of a litigation class, and as the Court has now found, the requirements of Rule 23(b), "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members,

and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy," are easily met in this case. The Supreme Court has noted that Rule 23(b)(3)'s predominance requirement is "readily met" in antitrust cases like this one. *Amchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997). More recently, Judge Frost in the *Foundry Resins* case explained that "[a]s a general rule in antitrust price-fixing cases . . . courts have consistently found that common issues regarding the existence and scope of the conspiracy predominate over questions affecting only individual members." *In re Foundry Resins Antitrust Litig.*, 242 F.R.D. 393, 408 (S.D. Ohio 2007).

Indeed, in the context of settlement, the requirements of Rule 23(b) are even more easily met. In *Amchem Products,* the United States Supreme Court recognized that "[s]ettlement is relevant to class certification." *Amchem Products,* 521 U.S. at 619. Specifically, the Court explained: "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Id.* at 620 (citing Fed. R. Civ. P. 23(b)(3)(D)). Of course, the Plaintiffs do not believe that manageability should be a concern for the Court when considering certification of a litigation class in this matter. Nonetheless, the decidedly lower standard applied to this aspect of Rule 23(b) in the settlement context makes preliminary certification of the Settlement Class particularly appropriate.

In addition to the certification of a Settlement Class, the IMI Settlement sets forth a comprehensive method of providing notice of the Settlement to Class members that is consistent with the settlement notice programs previously approved by the Court. Due process requires direct notice to all class members who can be identified through reasonable effort. *See, Eisen v. Carlisle & Jacqueline,* 417 U.S. 156, 173-77 (1974); *Phillips Petroleum Co. v. Shutts,* 472 U.S.

797 (1985). The IMI Settlement calls for direct mail notice to all persons falling within the Settlement Class definition, based upon information that has been provided by Defendants. IMI and all other Defendants have previously provided information used for this purpose in connection with the Shelby, American and Prairie Settlements. The mailed notice, in the question-and-answer format proposed by the Federal Judicial Center for class action settlement notices, provides a thorough explanation of the Settlement and Class members' rights. The form of the proposed mailed notice is attached to the IMI Settlement as Exhibit "A."

The IMI Settlement also calls for published notice to appear twice in the *Indianapolis Star*. Though a summary notice, the proposed published notice also provides a thorough explanation of the Settlement and Class members' rights, as well as a means to obtain additional information from Settlement Class Counsel, from the Court-approved Settlement Claims Administrator, and from a Settlement website that provides additional information and access to documents from the litigation and the IMI Settlement. With regard to potential class members who cannot be identified through reasonable effort, or who have changed addresses, notice by publication is recognized as a suitable method for providing notice of the litigation and certification order. WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D, § 1786. *See also,* ALBA CONTE & HERBERT NEWBERG, NEWBERG ON CLASS ACTIONS (4th ED.), § 8:2. The form of the proposed published notice is attached to the IMI Settlement as Exhibit "B."

The combined form of mailed and published notice proposed under the IMI Settlement provides "the best notice practicable under the circumstances." Fed. R. Civ. P. 23(c)(2). The proposed forms of notice will adequately inform Class members of the terms of the Settlement, the Court's preliminary approval and certification of a Settlement Class, the rights of Class members to exclude themselves from or object to the Settlement, and the setting of a final

hearing to consider the fairness of the Settlement. The Court should therefore approve the proposed methods and form of notice and direct its consummation according to the terms of the IMI Settlement.

Finally, preliminary approval of the IMI Settlement is supported by the Court's final approval of the Shelby, American and Prairie Settlements, and the materials submitted by Class Counsel in support thereof. The methods of notice approved by the Court for those Settlements have been successfully employed in practice, and the data employed to identify Class members has been further refined as Settlement Class Counsel and the Claims Administrator communicate with Class members. The substantially identical procedures of the IMI Settlement also satisfy Rule 23, meet the expectations of Class members, and warrant preliminary approval.

Conclusion

In light of the foregoing, the Plaintiffs respectfully request the Court's preliminary approval of the the Settlement Agreement With Defendants Irving Materials, Inc., Fred R. (Pete) Irving, Daniel Butler, John Huggins and Price Irving, preliminary certification of the Settlement Class, approval of the form and method of notice of the IMI Settlement to members of the Settlement Class, and approval and entry of the Preliminary Approval Order in the form attached to the IMI Settlement as Exhibit "C" and submitted herewith.

Dated: December 15, 2009

Respectfully submitted,

/s/ Irwin B. Levin
Irwin B. Levin

Irwin B. Levin
Richard E. Shevitz
Scott D. Gilchrist
Eric S. Pavlack
Vess A. Miller
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
ilevin@cohenandmalad.com

Stephen D. Susman
Barry C. Barnett
Jonathan Bridges
Warren T. Burns
Garrick B. Pursley
SUSMAN GODFREY LLP
901 Main St., Ste. 4100
Dallas, TX 75202
Telephone: (214) 754-1903
Facsimile: (214) 754-1933

PLAINTIFFS' INTERIM CO-LEAD COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2009, a copy of the foregoing document, 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.

Anthony P. Aaron
ICE MIILER
Anthony.aaron@icemiller.com

G. Daniel Kelley, Jr.
ICE MILLER
daniel.kelley@icemiller.com

Thomas E. Mixdorf
ICE MILLER
thomas.mixdorf@icemiller.com

Edward P. Steegmann
ICE MILLER
ed.steegmann@icemiller.com

Abigail B. Cella
ICE MILLER
abby.cella@icemiller.com

Barry C. Barnett
SUSMAN GODFREY LLP
bbarnett@susmangodfrey.com

Jonathan Bridges
SUSMAN GODFREY LLP
jbridges@susmangodfrey.com

Stephen D. Susman
SUSMAN GODFREY LLP
ssusman@susmangodfrey.com

Robert J. Bonsignore
BONSIGNORE & BREWER
rbonsignore@aol.com

Jason R. Burke
HOPPER & BLACKWELL
jburke@hopperblackwell.com

David Bullington
HOPPER & BLACKWELL
dbullington@hopperblackwell.com

Kenneth J. Munson
BINGHAM McHALE LLP
kmunson@binghammchale.com

Lee B. McTurnan
BINGHAM McHALE LLP
lmcturnan@binghammchale.com

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
steve@hbsslaw.com

Anthony D. Shapiro
HAGENS BERMAN SOBOL SHAPIRO LLP
tony@hbsslaw.com

James A.L. Buddenbaum
PARR RICHEY OBREMSKEY & MORTON
jbuddenbaum@parrlaw.com

Lawrence J. Carcare, II
INDIANA STATE ATTORNEY GENERAL
lcarcare@atg.state.in.us

Vincent J. Esades
HEINS MILLS & OLSON
vesades@heinsmills.com

Troy J. Hutchinson
HEINS MILLS & OLSON
thutchinson@heinsmills.com

Thomas J. Grau
DREWRY SIMMONS VORNEHM, LLP
tgrau@drewrysimmons.com

Joseph M. Leone
DREWRY SIMMONS VORNEHM, LLP
jleone@drewrysimmons.com

George W. Hopper
HOPPER & BLACKWELL
ghopper@hopperblackwell.com
Jay S. Cohen

SPECTOR ROSEMAN & KODROFF & WILLIS, PC
jcohen@srk-law.com

Jeffrey J. Corrigan
SPECTOR ROSEMAN & KODROFF & WILLIS, PC
jcorrigan@srk-law.com

Jeffrey L. Kodroff
SPECTOR ROSEMAN & KODROFF & WILLIS, PC
jkodroff@srk-law.com

Eugene A. Spector
SPECTOR ROSEMAN & KODROFF & WILLIS, PC
espector@srk-law.com

Michael L. Coppes
EMSWILLER WILLIAMS NOLAND & CLARKE PC
mcoppes@ewnc-law.com

Lisa J. Frisella
THE MOGIN LAW FIRM
lisa@moginlaw.com

Chad M. McManamy
THE MOGIN LAW FIRM
chad@moginlaw.com

Daniel J. Mogin
THE MOGIN LAW FIRM
dmogin@moginlaw.com

Michael D. Gottsch
CHIMICLES & TIKELLIS LLP
michaelgottsch@chimicles.com

Mark K. Gray
GRAY & WHITE
mkgrayatty@aol.com

David B. Vornehm
DREWRY SIMMONS PITTS & VORNEHM
dvornehm@drewrysimmons.com

Betsy K. Greene
GREENE & SCHULTZ
bkgreene@kiva.net

Frederick W. Schultz
GREENE & SCHULTZ
fschultz@kiva.net

Theresa Lee Groh
MURDOCK GOLDENBERG SCHNEIDER & GROH LPA
tgroh@mgsglaw.com

John C. Murdock
MURDOCK GOLDENBERG SCHNEIDER & GROH LPA
jmurdock@mgsglaw.com

Gregory P. Hansel
PRETI FLAHERTY BELIVEAU PACHIOS & HALEY LLP
ghansel@preti.com

Randall B. Weill
PRETI FLAHERTY BELIVEAU PACHIOS & HALEY LLP
rweill@preti.com

William E. Hoese
KOHN SWIFT & GRAF PC
whose@kohnswift.com

Joseph C. Kohn
KOHN SWIFT & GRAF PC
jkohn@kohnswift.com

Daniel R. Karon
GOLDMAN SCARLATO & KARON PC
karon@gsk-law.com

Offer Korin
KATZ & KORIN
okorin@katzkorin.com

Matthew L. White
GRAY & WHITE
mattwhiteatty@aol.com

Geoffrey Mitchell Grodner
MALLOR CLENDENING GRODNER & BOHRER
gmgrodne@mcgb.com

Patrick B. Omilian
MALLOR CLENDENING GRODNER & BOHRER LLP
pomilian@mcgb.com

James H. Ham, III
BAKER & DANIELS
jhham@bakerd.com

Kathy L. Osborn
BAKER & DANIELS
klosborn@bakerd.com

Robert K. Stanley
BAKER & DANIELS
rkstanley@bakerd.com

Matthew Lamkin
BAKER & DANIELS
matthew.lamkin@bakerd.com

Ryan M. Hurley
BAKER & DANIELS
ryan.hurley@bakerd.com

Michael B. Hyman
MUCH SHELIST
mbhyman@muchshelist.com

Robert J. Wozniak, Jr.
MUCH SHELIST
rwozniak@muchshelist.com

Deborah J. Caruso
U.S. Bankruptcy Trustee
DALE & EKE, P.C.
dcaruso@daleeke.com

Gene R. Leeuw
LEEUW OBERLIES & CAMPBELL PC
grleeuw@indylegal.net

Cathleen L. Nevin
KATZ & KORIN
cnevin@katzkorin.com

Bernard Persky
GOODKIND LABATON RUDOFF & SUCHAROW LLP
bpersky@labaton.com

Kellie C. Safar
GOODKIND LABATON RUDOFF & SUCHAROW LLP
ksafar@labaton.com

Hollis L. Salzman
GOODKIND LABATON RUDOFF & SUCHAROW LLP
hsalzman@labaton.com

John R. Price
JOHN R. PRICE & ASSOCIATES
john@johnpricelaw.com

Robert J. Schuckit
SCHUCKIT & ASSOCIATES PC
rschuckit@schuckitlaw.com

Lawrence Walner
LAWRENCE WALNER & ASSOCIATES
walner@walnerclassaction.com

Judy Woods
BOSE McKINNEY & EVANS LLP
jwoods@boselaw.com

Bryan Babb
BOSE McKINNEY & EVANS LLP
bbabb@boselaw.com

Curtis Jones
BOSE McKINNEY & EVANS LLP
cjones@boselaw.com

Melinda Shapiro
BOSE McKINNEY & EVANS LLP
mshapiro@boselaw.com

C. Joseph Russell
BOSE McKINNEY & EVANS LLP
crussell@boselaw.com

John M. Mead
LEEUW OBERLIES & CAMPBELL PC
jmead@indylegal.net

J. Lee McNeely
McNEELY STEPHENSON THOPY & HARROLD
jlmcneely@msth.com

Brady J. Rife
McNEELY STEPHENSON THOPY & HARROLD
bjrife@msth.com

Henry J. Price
PRICE WAICUKAUSKI RILEY & DEBROTA
hprice@price-law.com

Ronald J. Waicukauski
PRICE WAICUKAUSKI RILEY & DEBROTA
rwaicukauski@price-law.com

William N. Riley
PRICE WAICUKAUSKI RILEY & DEBROTA
wriley@price-law.com

Jamie Kendall
PRICE WAICUKAUSKI RILEY & DEBROTA
jkendall@price-law.com

Christopher A. Moeller
PRICE WAICUKAUSKI RILEY & DEBROTA
cmoeller@price-law.com

Matthew R. Laydon
PRICE WAICUKAUSKI RILEY & DEBROTA
mlaydon@price-law.com

Joseph N. Williams
PRICE WAICUKAUSKI RILEY & DEBROTA
jwilliams@price-law.com

Steven M. Badger
BOSE McKINNEY & EVANS LLP
sbadger@boselaw.com

Allyson M. Maltas
LATHAM & WATKINS LLP
allyson.maltas@lw.com

Joshua P. Dehnke
LATHAM & WATKINS LLP
joshua.dehnke@lw.com

Chris Gair
JENNER BLOCK
cgair@jenner.com

Joseph R. Whatley, Jr.
WHATLEY DRAKE LLC
jwhatley@whatleydrake.com

Edward W. Harris, III
TAFT STETTINIUS & HOLLISTER LLP
eharris@taftlaw.com

Gayle A. Reindl
TAFT STETTINIUS & HOLLISTER LLP
greindl@taftlaw.com

Jonathan G. Polak
TAFT STETTINIUS & HOLLISTER LLP
jpolak@taftlaw.com

Abram B. Gregory
TAFT STETTINIUS & HOLLISTER LLP
agregory@taftlaw.com

Patricia Polis McCrory
LOCKE REYNOLDS LLP
pmccrory@locke.com

John E. Scribner
WEIL GOTSHAL & MANGES
johnscribner@weil.com

Marie L. Mathews
WEIL GOTSHAL & MANGES
marie.mathews@weil.com

Gary P. Price
LEWIS & KAPPES
gprice@lewis-kappes.com

Mindee J. Reuben
WEINSTEIN KITCHENOFF & ASHER LLC
reuben@wka-law.com

Robert S. Schachter
ZWERLING SCHACHTER & ZWERLING LLP
rschachter@zsz.com

Justin M. Tarshis
ZWERLING SCHACHTER & ZWERLING LLP
jtarshis@zsz.com

Samuel Charnoff
ARENT FOX LLP
charnoff.samuel@arentfox.com

Wareewan Tina Charoenpong
MUNGER TOLLES & OLSON
tina.charoenpong@mto.com

Rohit Kumar Singla
MUNGER TOLLES & OLSON
rohit.singla@mto.com

I hereby certify that on December 15, 2009, a copy of the foregoing document was mailed, by first-class U.S. Mail, postage prepaid and properly addressed to the following:

Steven A. Asher
WEINSTEIN KITCHENOFF
& ASHER, LLC
1845 Walnut St., Ste. 1100
Philadelphia, PA 19103

Kathleen C. Chavez
CHAVEZ LAW FIRM
416 S. Second St.
Geneva, IL 60134

Isaac L. Diel
LAW OFFICES OF ISAAC L. DIEL
135 Oak St.
Bonner Springs, KS 66012

Samuel D. Heins
Vincent J. Esades
HEINS MILLS & OLSON PLC
310 Clifton Avenue
Minneapolis, MN 55403

L. Kendall Satterfield
Richard M. Volin
FINKELSTEIN, THOMPSON & LOUGHRAN
1050 30th St., N.W.
Washington, D.C. 20007

Mr. Scott D. Hughey
4462 Abbey Drive
Carmel, IN 4033-2456

W. Joseph Bruckner
Yvonne M. Flaherty
Richard A. Lockridge
LOCKRIDGE GRINDAL NAUEN PLLPL
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401

Krishna B. Narine
LAW OFFICE OF KRISHNA B. NARINE
7839 Montgomery Avenue
Elkins Park, PA 19027

Robert Foote
FOOTE MEYERS MIELKE & FLOWERS, LLC
416 S. Second St.
Geneva, IL 60134

James R. Malone
CHIMICLES & TIKELLIS, LLP
361 W. Lancaster Ave.
Haverford, PA 19041

Stewart M. Weltman
COHEN MILSTEIN HAUSFELD
& TOLL PLLC
39 S. LaSalle St., Ste. 1100
Chicago, IL 60603

/s/ Irwin B. Levin
Irwin B. Levin
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
Telephone: (317) 636-6481
ilevin@cohenandmalad.com