

**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	)	
	)	

**PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT WITH  
HUGHEY, INC. D/B/A CARMEL CONCRETE PRODUCTS AND SCOTT D. HUGHEY**

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 Interim Co-Lead Counsel, respectfully move this Court for an Order preliminarily approving the Settlement Agreement With Hughey, Inc. d/b/a Carmel Concrete Products and Scott D. Hughey ("Hughey Settlement"), preliminarily certifying a Plaintiff Settlement Class, and directing notice of the Hughey Settlement to members of the Settlement Class. In support of this Motion, Plaintiffs state as follows:

1. On March 19, 2007, Defendant Hughey, Inc. filed a voluntary petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code, initiating the case entitled *In re: Hughey, Inc.*, United States Bankruptcy Court, Southern District of Indiana (hereafter the "Bankruptcy Court"), Case No. 07-02160-FJO-7 (hereafter the "Bankruptcy Case"). The filing of the Bankruptcy Case automatically stayed further proceedings against Hughey, Inc. in the instant case.

2. On July 20, 2007, the Plaintiffs filed in the Bankruptcy Case: (i) a Proof of Claim on behalf of the Class proposed in this Action (and therein designated as “Class Claimants”), asserting the claims set forth in the Complaint; and (ii) a Motion for Order Directing Bankruptcy Rule 7023 Applicable to the “Claim Filing Stage” of This Case. On September 10, 2007, the Bankruptcy Court entered an Order Directing Bankruptcy Rule 7023 Applicable to the “Claim Filing Stage” of This Case, wherein the court found that “the Class Claimants have preserved their rights to seek withdrawal of the reference or abstention, as the case may be, pursuant to 28 U.S.C. §§ 157 and 1334 and/or relief from the stay so as to resolve all class certification and claims issues in the class action presently pending in the District Court.”

3. After extensive negotiations, Plaintiffs reached a settlement with Deborah J. Caruso, the duly-appointed Trustee for Hughey, Inc. (the “Bankruptcy Trustee”), and individual Defendant Scott D. Hughey, resolving the claims asserted in this action and the Bankruptcy Case by the Plaintiffs and proposed Plaintiff Class against Hughey, Inc. and Scott D. Hughey (the “Hughey Defendants”) in exchange for payment of the sum of \$375,000 as well as cooperation and assistance in the further prosecution of this action. A copy of the Hughey Settlement is submitted herewith and marked Exhibit “1.”

4. On November 9, 2009, the Bankruptcy Trustee filed, in the Bankruptcy Case, a Motion to Approve Settlement Agreement With Class Action Plaintiffs, seeking approval of, and authorization to execute, the Hughey Settlement. On January 4, 2010, the Bankruptcy Court entered its Order on Trustee’s Motion to Approve Settlement Agreement with Class Action Plaintiffs, a copy of which is submitted herewith and marked Exhibit “2.”

5. The Hughey Settlement was achieved following extensive arms-length negotiations between the counsel for Plaintiffs and the Bankruptcy Trustee, represents a highly

favorable result in light of administrative and priority claims and competing unsecured non-priority claims in the Bankruptcy Case, confers substantial benefits on the Settlement Class, and is within the range of reasonableness.

6. Pursuant to the Hughey Settlement, Plaintiffs, with the stipulation of the Hughey Defendants as set forth in the Hughey Settlement, respectfully move the Court for the entry of an Order, in the form of the proposed Preliminary Approval Order attached to the Hughey Settlement as Exhibit "C," which:

- a. Certifies as to the Hughey Defendants, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and the terms of the Hughey Settlement, the Settlement Class to which the Plaintiffs and the Hughey Defendants have stipulated in the Hughey Settlement;
- b. Preliminarily approves the Hughey Settlement as fair, reasonable and adequate to the Plaintiffs and members of the Settlement Class;
- c. Approves and directs, as the best notice practicable under the circumstances: (i) mailed notice to Settlement Class members in the form attached to the Hughey Settlement as Exhibit "A" and (ii) published notice to Settlement Class members in the form attached to the Hughey Settlement as Exhibit "B"; and
- d. Schedules a hearing on final approval of this Agreement at the convenience of the Court.

7. Plaintiffs have submitted herewith their Memorandum in Support of Motion for Preliminary Approval of Settlement Agreement Hughey, Inc. d/b/a Carmel Concrete Products and Scott D. Hughey.

WHEREFORE, the Plaintiffs respectfully request the preliminary approval of the Settlement Agreement With Hughey, Inc. d/b/a Carmel Concrete Products and Scott D. Hughey, preliminary certification of the Settlement Class, approval of the form and method of notice of the Hughey Settlement to members of the Settlement Class, and approval and entry of the Preliminary Approval Order submitted herewith.

Dated: February 1, 2010

Respectfully submitted,

/s/ Irwin B. Levin

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 1, 2010 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.

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