

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE READY-MIXED CONCRETE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

MASTER FILE NO.
(Consolidated Action)

[PROPOSED] PRETRIAL ORDER NO. 1

Having considered the parties' motions for entry of an initial pretrial order, the Court now
new orders as follows:

I. Consolidation Of Related Actions

1. These cases shall be referred to collectively as *In re Ready-Mixed Concrete
Antitrust Litigation*, Master File No. _____ (Consolidated Action).¹

¹ The cases 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; *Kort Builders, Inc., on behalf of itself and all others similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1002-SEB-VSS; *Boyle Construction Management, Inc. v. Irving Materials, Inc. and Unnamed Co-Conspirators*, Cause No. 1:05-cv-0979-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; *Dennis Leon Myers, on its behalf and on behalf of all others similarly situated doing business as Myers Concrete Finishing v. Irving Materials, Inc.*, Cause No. 1:05-cv-01081-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; *Engelhardt Contracting, on behalf of itself and all others similarly situated v. Irving Materials, Inc.*, Cause No. 1:05-cv-1130-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.*, Cause No. 1:05-cv-1133-SEB-VSS and *Craw-Con, Inc., individually and on behalf of a class of all 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-SEB-VSS; *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-01216-SEB-VSS, *Wininger/Stolberg Group, Inc., d/b/a Wininger/Stolberg Group-Claybridge, Inc., Wininger/Stolberg Homes/Jackson*

II. Caption Of Cases

2. Every pleading filed herein shall bear the following caption:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

3. When a pleading or other paper filed in the Consolidated Action is intended to apply to all actions therein, the words "All Actions" shall appear immediately after the words "THIS DOCUMENT RELATES TO:" in the caption set out above. When a pleading or other paper is intended to be applicable to less than all such actions, the party filing the document shall indicate, immediately after the words "THIS DOCUMENT RELATES TO:" the action(s) to which the document is intended to be applicable by last name of the plaintiff(s) and the docket number(s).

III. Master Docket

4. A Master Docket is hereby established for the Consolidated Action, including actions subsequently consolidated herein pursuant to this Order. Entries in said Master Docket

Mill, Inc., Winger/Stolberg Land Holdings, Inc., Winger/Stolberg Homes/Brighton Point Villas, Inc., Winger/Stolberg Homes/The Villa Glen, Inc. and American Custom Homes, Inc. v. Irving Materials, Inc., Daniel C. Butler, John Huggins, Fred R. "Pete" Irving, Price Irving and Unnamed Co-Conspirators, Cause No. 1:05-CV-1265-SEB-VSS and Marmax Construction, LLC, and Cal Paysinger d/b/a Genesis Concrete on behalf of themselves and all others similarly situated v. Irving Materials, Inc., Builder's Concrete & Supply Co., Inc., Hughey, Inc., d/b/a Carmel Concrete Products, and Doe's 1-25 (co-conspirators), Cause No. 1:05-CV-1280-SEB-VSS. Two individual-capacity lawsuits not seeking class status have also been filed, Tippmann Construction, Inc., Elbrecht Investments, LLC and CWE Concrete Construction, Inc. v. Irving Materials, Inc., Cause No. 1:05-cv-1278-SEB-VSS; Wardwell Brothers, Inc. v. Builder's Concrete & Supply Co., Inc. and Irving Materials, Inc., Cause No. 1:05-cv-1296-SEB-VSS. Tippmann and Wardwell are also ordered consolidated herein.

shall be applicable to the Consolidated Action, and entries shall be made therein in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order.

5. When a pleading is filed and the caption, pursuant to this Order, 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 nor other docket entries made.

6. When a paper is filed and the caption shows that it is applicable to fewer than All Actions, the Clerk shall file the original of the paper in the Master File and a copy in the file of each separate action to which it applies and shall note such filing in the Master Docket and in the docket of each separate action. The party filing such paper shall supply the Clerk with sufficient copies of any such paper to permit compliance with this paragraph.

IV. Master File And Separate Action Files

7. A Master File is hereby established for the consolidated proceedings in the Consolidated Action. The Master File shall be Civil Action No. _____. The original of this Order shall be filed by the Clerk in the Master File herein established. The Clerk shall maintain a separate file for each of the Consolidated Actions and filings shall be made in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order. The Clerk shall file a copy of this Order in each such separate file. The Clerk shall transmit a copy of this Order to counsel of record in each of the Consolidated Actions.

V. Newly Filed Or Transferred Actions

8. When a case that arises out of the same operative facts as the above-referenced actions is hereafter filed in or transferred to this Court, it shall be consolidated with this action as provided in Section I above and the Clerk of Court shall:

- (a) File a copy of this Order in the separate file for such action;

- (b) Transmit a copy of this Order to 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.

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

VI. Application Of This Order To Subsequent Cases

10. This Order shall apply to each action assigned to this Court alleging claims similar to those set forth in these actions. This Order shall apply to each such case which is subsequently filed in or transferred to this Court, and which is assigned to this Court unless a party objecting to the consolidation of that case or to any other provision of this Order serves an application for relief from this Order or from any of its provisions within ten (10) days after the date on which the Clerk transmits a copy of this Order to counsel for that party. The provisions of this Order shall apply to such action pending the Court's ruling on any such application.

Unless a plaintiff in a subsequently filed or transferred case is permitted by the Court to use a separate complaint, defendants shall not be required to answer, plead or otherwise move with respect to that complaint. If a plaintiff in any such case is permitted to use a separate complaint, defendants shall have thirty days from the date the Court grants such permission within which to answer, plead or otherwise move with respect to that complaint.

VII. Appointment Of Interim Counsel

11. Pursuant to Fed.R.Civ.P. 23(g)(2), _____ is appointed as interim counsel for the putative class.

VIII. Communication Among Counsel

12. The Court recognizes that cooperation by and among counsel is essential for the orderly and expeditious resolution of this litigation. Accordingly, the communication of information among and between plaintiffs' counsel shall not be deemed a waiver of the attorney-client privilege, attorney work-product immunity or any other applicable privileges. Similarly, the communication of information among and between counsel for defendants shall not be deemed a waiver of the attorney-client privilege, attorney work-product immunity or any other applicable privileges.

IX. Scope Of Order

13. The terms of this Order shall not have the effect of making any person, firm or entity 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 consolidation ordered herein shall not constitute a waiver by any party of any claims in or defenses to any action nor shall such terms affect in any way the substance or merits of a motion for class certification or response thereto.

X. Preliminary Schedule Of Proceedings

14. 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, defendants 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;

15. All defendants shall answer the consolidated complaint, or otherwise respond, within 60 days after service thereof;

16. Plaintiffs shall respond to any motion by defendants respecting the consolidated complaint within 45 days after service thereof;

17. All defendants shall have 30 days after service of plaintiffs' response to any such motion in which to file any reply in further support of that motion; and

18. Unless otherwise agreed by the parties, the conference required by Fed.R.Civ.P. 26(f) is set for _____.

DATED: _____

Hon. Sarah Evans Barker
United States District Court
Southern District of Indiana
Indianapolis Division

Distribution to: All Counsel