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FEDERAL BUREAU OF INVESTIGATION

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Daniel C. Butler, white male, Social Security Account Number **REDACTED**, residing at 19640 Allisonville Avenue, Noblesville, Indiana, home telephone number 317/773-7252, cellular phone 317/439-7458, was interviewed at the office of the United States Department of Justice (DOJ), Antitrust Division, Midwest Field Office, 209 South LaSalle Street, Suite 600, Chicago, Illinois 60604. Butler was represented by his attorney, Richard Kammen. Also present was Paralegal Specialist Mackenzie Ash and Ice Miller attorneys Jack Thar and Susan Barnhizer-Rivas. Representing the government were DOJ Trial Attorneys Frank Vondrak, Michael Boomgarden, Jonathan A. Epstein, and Paralegal Specialist Lauren Jankowski. The interview of Butler was pursuant to a DOJ Antitrust Division Amnesty application submitted on behalf of Irving Materials Incorporated (IMI). After being advised of the purpose for the interview, Butler furnished the following information:

In 1975, Butler began working for Irving Brothers Incorporated (IBI) located in Marion, Indiana. IBI was primarily an aggregate supplier while IMI primarily sold ready-mix concrete. Butler started as a laborer and held several positions before becoming IBI's Vice President in 1990. Butler was also placed on IBI's Board of Directors. In 1980, Butler was in-charge of IBI's Noblesville operation and sometime between 1988 and 1990, Butler became responsible for IBI's operations in Muncie, Marion, and Noblesville.

In May of 1993, IBI was acquired by IMI. IMI's Board of Directors assumed oversight of IBI's operations. By 1998, Butler was in-charge of IMI's Aggregate operations. John Huggins, who was the company's Executive Vice President and in-charge of IMI's ready-mix concrete operations, announced his retirement in the Fall of 2001.

After Huggins retired, Butler took over IMI's ready-mix operations in Indiana including company sales representatives. Butler was not as familiar with the company's ready-mix division as Huggins, especially sales. Huggins, who lacked confidence in Price's abilities, did not involve him in the sale of ready-mix concrete. After Butler assumed his new position, he made Price responsible the Indianapolis area sales people.

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Continuation of FD-302 of Daniel C. Butler, On 10/18/2004, Page 2Indianapolis, Indiana Market

IMI has nine plants operating in and around Indianapolis, producing approximately 500,000 yards of ready-mix concrete each year.

Even though Price had little sales experience, he was more familiar with area customers. Butler and Price had offices adjacent to each other which prompted frequent conversations between them. Butler tried to empower Area Managers, including Price, which was in contrast to Huggins' philosophy. Butler made an effort not to circumvent Price's authority as an Area Manager.

On about February 15, 2002, IMI announced a price increase which took affect approximately 45 days later. Butler relied heavily upon input from his sales staff before deciding to raise prices in 2002. Butler was unsure whether he held specific meetings to discuss the price increase or whether they were part of the regularly scheduled meetings held every Wednesday.

IMI has separate price sheets for Indianapolis, Bloomington, and the eastern portion of the state. Bloomington has always been about \$2 less per cubic yard than Indianapolis, although currently is only about \$1 less than Indianapolis.

In 2003, IMI did not issue a ready-mix concrete price increase. Butler's sales staff told him they did not think a price increase would stick since they were not getting the current price listed. Butler believed Price would have provided input on whether IMI should increase prices.

Even though Butler reported to Pete Irving, he had the authority to make day to day decisions for the company. Butler typically sought Pete's input on political donations and future company acquisitions. Butler spoke to Pete from a couple times a week to every other month. Pete primarily stayed at his Florida residence.

In 2002, IMI's Board of Director consisted of Butler, Mike Harmon, Price Irving, Pete Irving, Earl Brinker, Gary Stebbins. Prior to 2002, there were as many as eight people on the Board of Directors. The ready-mix concrete Area Managers consisted of Drew Davis, Gary Jones, Steve Lewis, Jean Wiggams, Mike LaGrange, and Price. The Aggregate Area Managers were Doug Layman,

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Dennis Layman, Kevin Gibson, Ray Rich, Larry Rich, Joe Langwill, and Steve Crane.

Butler attended some of Price's sales meeting, although may be not every one. Even though the sales people reported directly to Area Managers, there were occasions when Area Managers talked directly with Butler, mainly about difference of opinion between salesmen and Area Managers.

Typically, Area Managers had the authority to act independently unless they were aggressively pricing a particular job. There have been occasions when Butler raised a salesman's bid price. Generally, state contracts are bid through a general contractor. All state related bids are processed at IMI's headquarter's office located in Greenfield, Indiana.

In the Fall of 2001, Huggins took Butler around to meet the different ready-mix competitors. The meetings were to familiarize Butler with his competitors in case there was a conflict later. Butler, Huggins, Nuckols, and possibly Kuebler, all met for drinks. Huggins introduced Butler to Gary Matney. Butler acknowledged he and Huggins probably had general discussions about company personnel and operations, even though they had different outlooks for the company. Butler was certain they talked about the different ready-mix competitors, but could not specifically recall whether they talked about the price agreements among competitors. Butler was not aware of IMI's price discussions with competitors prior to assuming Huggins position.

Signature Inn Meeting

Sometime in early 2002, Butler attended a meeting at the Signature Inn. Butler believed Butch Nuckols setup the meeting because Nuckols was the most concerned about Shelby Materials aggressive pricing in the market. The following individuals attended the meeting: Butler, Price, Nuckols, Scott Hughey, Rick Beaver, possibly the Haehls, and perhaps others. Butler had Price attend the meeting since he was the Indianapolis Area Manager. Butler did not recall Matney attending the meeting and thought Nuckols pretty much oversaw the meeting.

Butler did not know why the meeting was held at the Signature Inn, although he knew it was wrong and illegal for competitors to meet and agree on prices. Butler was uncertain whether the meeting was originally scheduled to discuss prices

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although you would be naive to think pricing would not be discussed at the meeting. Butler knew the meeting was not a trade association meeting. Butler assumed he was told the purpose for the meeting although could not recall for sure.

Butler does not recall exactly what was discussed at the meeting, although felt they reached common ground on discussing issues involving ready-mix customers. Butler only assumed they talked about prices. If someone said they discussed prices and reached an agreement, then Butler could not deny or refute the fact. Butler said he just does not remember exactly what was discussed at the meeting.

Butler does recall sending a note to IMI's Area Managers instructing them that they did not have the authority to price ready-mix concrete below a specific dollar amount, exact amount not recalled. Butler thought he sent the note subsequent to the meeting, although was not positive it occurred after the meeting. Butler had Shannon type and send out the note to the appropriate people.

After the Signature Inn meeting, Butler recalled meeting individually with Nuckols and Hughey on four or five separate occasions. The meetings typically took place over breakfast or during lunch. Butler does not recall specifically discussing a price increase with Hughey and Nuckols at these meeting but added there were concerns where competitors were pricing jobs. At the time, Nuckols was also opposed to the head of the Indiana Ready-Mix Concrete Association.

Horse Barn Meeting

In late 2003, a meeting was held at Nuckols's horse barn among Indianapolis ready-mix concrete suppliers. Butler along with Nuckols, Hughey, Price, Chris Beaver, Phillip Haehl, possibly Richard Haehl and John Blatzheim attended the meeting. Butler was unsure whether other people attended the meeting.

Butler believed Nuckols called and asked about prices. Butler told Nuckols that IMI was going to issue a price increase. Nuckols, who wanted to limit discounts, recommended they get everyone together to talk about it. Butler believes he told Nuckols he did not want to meet at a hotel so Nuckols suggested the meeting be held at his barn.

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Prior to the horse barn meeting, Butler met with his sales staff and discussed a \$2.00 and \$3.00 price increase on performance and bag mixes, respectively. The increase would take effect April 1, 2004.

At the meeting, Butler recalled telling the group IMI was raising prices \$2.00 on performance mixes, \$3.00 on bag mixes, and implementing a winter service charge. There was some discussion about the winter charge, exact details not recalled. Even though there was no vote, Butler did not recall any objections to the proposed price increase. Butler was of the opinion everyone agreed to raise prices as stated above. Butler also recalled Nuckols wanting to limit discounts. The group discussed limiting discounts to \$5.50 off net. Butler agreed to limit discounts but wanted everyone to know IMI had pre-existing pricing agreements with select customers and did not want them to become upset if discovered later.

Butler left the meeting with the understanding that everyone was going to raise prices and limit discounts to \$5.50, unless there was a pre-existing agreement with a customer. The group also agreed they could match another competitor's bids on a project. Butler believed two or three competitors would implement the winter surcharge. Years ago, suppliers had a hot water charge although the surcharge was discontinued a number of years ago. IMI sent out their price increase and winter service charge announcement on or about October 22 or 23, 2003. The winter service charge took effect December 1, 2003 through March of 2004.

Butler understood the purpose for the meeting was to come to a consensus on pricing. He felt the group reached an agreement at the conclusion of the meeting. There was some discussion about PMS pricing lower than other competitors and what action to take, details not recalled other than to let someone know. Butler recalled Phillip Haehl being confused about computing QAQC pricing, so Butler explained IMI's method for computing the price. Phillip admitted he had screwed up pricing a QAQC project.

There was a general understanding among competitors to keep prices up because the contract price was driven by the list price.

After the horse barn meeting may be sometime during the Spring of 2004, Blatzheim called Butler about IMI's pricing outside the agreement. Blatzheim said something to the effect "thought we had an agreement," referring to the horse barn meeting. Butler had

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Price research the quote. Butler called Blatzheim back and told him IMI would not go lower than the price provided to Blatzheim. Butler felt Blatzheim called because IMI's bid was contrary to the horse barn agreement.

There were several price discussions among competitors after the horse barn meeting, although Butler could not recall the details. Butler denied taking notes during the meetings and could not recall whether other people took notes. Butler does not recall discussions about contacting competitors not in attendance, but added Hughey probably would have contacted Matney.

In Butler's day planner there was an entry on October 22, 2003, reference IRMCA. Butler said he used the Metro Association as a code for the horse barn meeting.

Butler attended other meetings with competitors which mainly focused on credit matters. Butler does not recall discussing prices at those meetings, although he could have talked about prices with Nuckols after the meeting. Butler was unsure whether there were other price discussion meetings involving several ready-mix competitors.

Butler asked Pete Irving whether attending the large group meetings was a good idea. Pete said probably not but its better than the alternative. Butler understood this to mean that it was better to do something illegal than guess at competitors pricing of concrete.

Butler was certain he and Price talked about the Signature Inn and Horse Barn meetings afterward, although could not recall the specifics of those conversations. They probably would have assessed the results of the meetings and have Price send out new price sheets.

Richard Haehl called Butler about an IMI bid on a project near IMI's 96th Street plant. Butler looked into the matter and determined an IMI salesman had given a low quote because the job was so close to the plant. Butler told the salesman not to cut the price any further.

Butler met with Hughey on several occasions. He was with Hughey when the FBI called him which was the same day search warrants were executed. Hughey said the FBI was at his house and said that he better go. Two weeks to a month earlier, Butler heard

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the FBI was investigating them. Evidently, a Chicago contractor received information about the investigation. Butler was unsure whether Nuckols, Hughey, or Blatzheim told him about the investigation. Butler did not take any action after hearing about the investigation.

Butler does not recall Hughey ever saying he was no longer going along with the agreement. It may have been possible although Butler thought he would remember such a statement.

IMI sells concrete to Beaver Materials in Lafayette, Indiana. Sometime in 2003, Allyn Beaver questioned IMI's lock on the market in Hancock County. He asked if there would be a problem if Beaver put a plant in Hancock County. Butler told Allyn that they would be upset and would go after Beaver's customers, specifically CP Morgan, if they built the plant.

Butler met with Chris Beaver reference a gravel dig operation in Noblesville. Chris had called about the job. Butler told him that IMI's salesman would price the job in accordance with the agreement.

Butler has met with Nuckols on several occasions. They talked about a lot of things, although mostly about job pricing. After receiving a phone call from Tim Kuebler, Butler met with Kuebler and Nuckols at Nuckols' house. Nuckols wanted to send a message to Martin Marietta (MM) and asked if they could unite with IMI selling them material. Butler did not agree with the proposal.

Around the Summer of 2003, Nuckols was upset about Spirlo, a Cincinnati company, setting up a portable ready-mix plant in the area. Nuckols asked Butler if he would raise "hell" with the Aggregate suppliers, mainly Martin Marietta (MM). Butler called MM and spoke with either Ed Gere or his boss, John Tiberi, about the Spirlo. Butler believed Hanson sold the aggregate to Spirlo.

Bloomington, Indiana Market

PMS started their Bloomington operation about three to four years prior to Butler being named IMI's Executive Vice President. Around 1993, IMI bought The Rogers Group as their way into the Bloomington market. Early on IMI had about 60% of the market with PMS having the remaining 40%, although Butler said they were pretty much even at this time. IMI has a different price list for Bloomington than the Indianapolis area. In 2004, IMI also

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raised Bloomington prices by \$2.00. Matney is in-charge of PMS' Indiana operations, including Bloomington. Huggins previously introduced Butler to Matney, although they did not discuss prices at the meeting.

Mike LaGrange, IMI's Area Manager, frequented called saying they got beat again by PMS. Based on the calls from LaGrange, Butler asked to meet with Matney. They met at the Flying J truck stop off Highway 37 just south of Indianapolis. Butler believed the meeting took place sometime in 2002. Butler talked about prices being low in Bloomington and PMS undercutting jobs at the last minute. Matney said he would try to verify the information and was careful not give any direct answers. Matney is the type of person who would not take any chances.

Butler ran into Matney at the 2003 World of Concrete Convention in Las Vegas. There was some small talk before Butler told Matney things had not gotten better in Bloomington. Matney was to check into the matter and call Butler upon returning to Indiana.

Butler met Matney at the Bob Evans located off Washington Street. They were talking about a specific contractor, name not provided, when Butler told Matney that no one should sell concrete that low. Matney and Butler always talk in generalities but nothing specific. PMS always had low prices with Matney blaming his salesperson in Bloomington. Butler tried to establish a price agreement with Matney to avoid a price war, although did not believe they actually reached an agreement.

Butler was uncertain, but thought LaGrange called sometime in 2002, stating IMI could not sustain a price increase. Butler believes he called Huggins for input on Bloomington and PMS. Butler called Matney about the price increase and even faxed him an IMI price sheet. Butler even told Matney that IMI's price increase would not stick if PMS did not follow suit. No agreement was reached during the phone call, but Butler later heard PMS sent out a new price sheet.

Butler does not know of any other IMI employees meeting and discussing prices with Matney. Price has a brother-in-law, Joe LNU, who works for PMS. Joe had previously worked for IMI.

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Steve Lewis is IMI's Area Manager for Muncie and the eastern portion of the state. Larry Robinson is the IMI salesman responsible for Muncie. IMI's main competitors are MacIntyre Concrete, Burne Concrete, Buster Concrete, and Stone High. IMI sells between 60,000 and 80,000 yards of concrete each year in the Muncie area. MacIntyre is IMI's main competitor although IMI has about 80% of the market. IMI has a separate price list for the eastern portion of the state. Muncie ready-mix prices are about \$2 less than the Indianapolis area. In 2002, IMI issued a \$2 price increase and possibly a \$1 increase in 2003.

Dick MacIntyre owns MacIntyre Concrete. IMI has had discussions about buying his company. Lewis had told Butler that MacIntyre was upset about IMI cutting a price. Lewis asked Butler if they could meet with MacIntyre.

Around mid to late 2003, Lewis, Butler and MacIntyre met at the Nickel Plate restaurant in Fishers, Indiana. MacIntyre wanted IMI to stop cutting prices on charity projects. There was a fire station project in which IMI was going to donate material. Butler does not recall talking with MacIntyre about small load charges or Saturday hours. He was unsure whether Lewis talked with MacIntyre about those issues.

Lee's Ready-Mix

Sometime in 2003, Butler, Earl Brinker, Larry Lee, and Lester Lee met to discuss IMI's interest in buying Lee's Ready-Mix. They had met at the Holiday Inn in Columbus, Indiana.

Connersville, Indiana

Lewis is responsible for the Connersville area. Butler was not familiar with competitors in the area, although noted Shelby has done work in the area. IMI typically limits its delivery radius to about 25 miles and as such does not deliver ready-mix in Rushville. Shelby comes from Rushville to deliver material into Connersville.

Marion, Indiana

Gary Jones is IMI's Area Manager for the Marion area. Rick Lucas has been the area salesman for about 15 years. IMI's

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competitors are Grant County Ready-Mix (GCRM) and on occasion MacIntyre Concrete. Steve Turner owns GCRM and buys aggregate from IMI. Turner is either the President or Vice President of the Indiana Ready-Mix Concrete Association. Butler has played golf with Turner, although did not discuss prices with him. Butler believes Jones and Turner have had price increase discussions. Butler does not know for certain whether they discussed pricing but had a pretty good feeling they did. Butler did not believe all of IMI's Area Managers have had price discussions with their competitors.

Aggregate Operations

IMI's aggregate competitors are MM, Hanson, Beaver, and E&B. IMI will buy material from MM and Hanson. PMS is also in the aggregate business. Butler was not aware of aggregate suppliers meeting to discuss prices. Butler denied making the statement implying price fixing had been going on for years in the aggregate business. Butler continues to maintain good relationships with people in the aggregate industry. They frequently get together and discuss industry issues, although does not recall discussing prices with his competitors.

Other Topics

IMI is an employee owned company with approximately 30 to 40 percent participation. E&B Paving is a subsidiary of IMI and has about 25% of paving market in Indianapolis. Butler is on the Board of Director for E&B. Gary Stebbins is in-charge of E&B's operations with John Eller and Tony Evans serving as the company's two Vice Presidents. Butler denied any knowledge of an asphalt paving discount. Butler denied any knowledge of price discussions between paving competitors.

There were no other meetings held at the Signature Inn. Butler denied staying or reserving a room at the Signature Inn. Butler's sister-in-law has stayed at the hotel. Butler was unfamiliar with an address in Terre Haute, Indiana.

Baja is a minority owned business of PMS. Butler and Nuckols shared information to confirm Baja was a minority owned company, which they determined was a legal minority business based in Illinois.

Butler was unfamiliar with Aztec Concrete Company.

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Joe Gruszczyński has been an IMI salesman in Indianapolis for about three years.

Bob Haldrup (phonetic) is IMI's Vice President of Marketing and Sales.

Will Lawrence owns Transient Mix Concrete. Butler met Lawrence at a Bob Evans in Kokomo. Lawrence buys used ready-mix trucks from IMI. They had general price discussions although no agreements were reached. Butler felt prices were low while Lawrence thought they were inline with the market. Butler had hoped Lawrence would come closer to IMI's price. Lawrence continues to beat IMI on price in the area.

Lawrence had called Butler reference an E&B project. Lawrence had heard E&B was not to use his company trucks to deliver concrete. Lawrence had interest in the project because they wanted to be part of the community. Butler gave some comment and said they would compete on price.

Matt Jettimore owns Stonehedge Concrete located in Richmond, Indiana. Butler met Jettimore in New Castle, Indiana. Butler was interested in buying his company although Jettimore was not interested.

Butler denied having price discussions with aggregate suppliers. Matney was the only person IMI sent a price sheet. IMI received a price sheet from Shelby Materials, possibly this year. Butler never asked why they received the price sheet but assumed Shelby wanted to confirm their price increase with IMI.