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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 09/08/2005

Daniel C. Butler was interviewed at the offices of the United States Attorney's Office, Southern District of Indiana, 10 West Market Street, Indianapolis, Indiana. Present for the interview were Butler's attorney, Richard Kaman and his Paralegal Specialist Sylvania Last Name Unknown (LNU), as well as Department of Justice Antitrust Division Trial Attorneys Frank Vondrak, Jonathan A. Epstein and Eric L. Schleef. Butler was advised to provide truthful responses to questions and that he had the right to consult with his attorney at any time. Butler then furnished the following information:

IMI's operations include stone, sand, gravel and their ready mix concrete division. IMI has plants in Tennessee, Kentucky, Indiana, Illinois and Ohio. IMI also has an asphalt paving division. Butler estimated that IMI has approximately between 135 and 145 ready mix plants with approximately 70 plants located within the State of Indiana. Butler estimated IMI's annual production of ready mix concrete is between 500,000 and 600,000 cubic yards.

Butler is currently employed by Irving Materials, Incorporated (IMI) as the Vice President of Ready Mix Concrete and Aggregate Operations. He has held this title since January 1, 2002. Butler began his employment with IMI in 1993 when he was hired as the Vice President of IMI's Aggregate Operations. Even though Butler is the Vice President of Ready Mix Concrete and Aggregate Operations, he no longer oversees the sales operation for those divisions.

Butler was placed on IMI's Board of Directors on June 1, 1993. He served as a board member up until about 30 to 45 days ago, when he was removed from the Board of Directors. Other board members included Pete Irving, Price Irving, Earl Brinker, Gary Stebbins, Mike Herman and at times other IMI employees such as John Huggins and Ben Wollard.

Butler was responsible for overseeing the success and profitability of the ready mix concrete and aggregate divisions. He had authority over pricing and ultimately reported to Pete Irving and the Board of Directors. As part of his duties, Butler

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supervised six ready mix concrete area managers. Each area managers is assigned specific region within the state. They also supervise a sales staff whose responsibility is to sell ready mix concrete to customers within their region. Steve Lewis was an IMI area manager for the Eastern Division which covered Muncie, Hartford City as well as other cities in that region. Gary Jones was an area manager responsible for north central Indiana which included Kokomo, Marion, Tipton and other cities.

IMI's primary competitors in Indianapolis include Builders Concrete, Carmel Concrete, Prairie Materials and Supply (PMS), American Concrete, Beaver Materials, Shelby Materials and some smaller ready mix suppliers. The executives for the aforementioned competitors include Butch Nuckols, John Blatzheim, and Tim Kuebler for Builders Concrete; Scott Hughey for Carmel Concrete; Allen Beaver, Gary Beaver, Chris Beaver and Rick Beaver for Beaver Materials; Richard and Phillip Haehl for Shelby Materials; and, Gary Matney and Allen Oremus for PMS. Butler knew the former owner of American Concrete, Dennis Mann, although has not met the current owner, Jason Mann. Butler also reported previously meeting Brad Hughey of Carmel Concrete.

John Huggins had held Butler's position prior to January 1, 2002. Butler was offered Huggins' position in late November of 2001. Huggins and Pete Irving had asked Butler if he wanted to run IMI's ready mix division. Butler accepted the offer, and for the next six weeks, Huggins introduced Butler to fellow IMI employees, suppliers and a few ready mix competitors. Huggins also brought him up to speed on issues effecting the ready mix industry as well as introducing him to Matney. Butler did not recall the purpose for the meeting and assumed it was similar to the aggregate industry in which competitors share common goals. Butler does not recall specific details about the meeting other than that there was some general small talk. Butler does not recall discussions involving ready mix prices at this meeting with Matney.

In November or December of 2001, Butler met with Butch Nuckols for drinks late one afternoon. Butler had already known Nuckols from when Butler worked in the aggregate industry. Butler could not recall the specific details from this meeting and noted that it was pretty much the same thing as the meeting with Matney. Butler does not recall discussing ready mix prices with Nuckols at this particular meeting. Butler could not recall whether Huggins introduced him to other ready mix competitors.

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Butler admitted that he had attended a meeting along with several other Indianapolis area ready mix suppliers. The meeting was held during the Spring of 2002, in either late April or early May at the Signature Inn located off of Allisonville Road and Interstate 465. The following individuals attended the meeting: Hughey, Nuckols, Rick Beaver, Price Irving, and Butler. Butler stated that other ready mix competitors could have also attended the meeting, although he could not recall their names at this time. Butler added that he was not fully aware of all the competitors in the ready mix industry at the time this meeting took place.

When Butler became the Vice President of IMI's ready mix division, he began implementing changes which included putting more responsibility on his area managers, and as a result, Price Irving became more involved in the Indianapolis market. This was the reason why Butler invited Price Irving to the meeting. Price Irving, the son of Pete Irving, was responsible for the Indianapolis market and served on the company's Board of Directors. Price Irving, like Butler, had worked in the aggregate business before moving to the ready mix division.

Butler could not recall who contacted him about the meeting at the Signature Inn, although Butler was certain that he had invited Price Irving to the meeting. Butler assumed Hughey or Nuckols contacted him about the Signature Inn meeting. Butler was of the understanding that the meeting was called to discuss issues affecting the market, specifically Shelby's new plant as well as credit matters. Butler was unclear about whether he knew that competitors were going to discuss ready mix prices at this meeting. Butler believed Hughey or Nuckols lead the meeting. Butler stated that he could not recall every detail discussed at the meeting, but he does recall discussions involving market dynamics, Shelby Materials, credit matters as well as the price of ready mix concrete. At the time, Butler denied knowing about the fact area competitors had been discussing the price at which they sold ready mix concrete. Butler recalled having some concern about whether it was appropriate for competitors to collectively meet at the Signature Inn.

Butler was provided a memo dated May 20, 2002, and asked whether he recognized the document. Butler stated that he was familiar with the document. He also admitted distributing the document to his area managers. Butler again stated that at the time, he wanted to increase area managers responsibility although he did not exactly know where ready mix prices should be at.

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Procedures outlined in the memo were ways for him to have some checks and balances on how salesmen were pricing ready mix concrete. Butler added that he would not be surprised if this pricing issue had not been previously discussed at a meeting with other ready mix competitors. Butler admitted that there were subsequent meetings about the subject. Butler was also concerned about salesmen not being monitored on prices quoted to customers. Butler said it was possible that he had several conversations about implementing these procedures which lead to the issuance of the memo.

OCTOBER, 2003 HORSE BARN MEETING

Butler admitted attending a meeting along with other Indianapolis ready mix competitors which was held at the horse barn of Butch Nuckols. Butler was provided his day planner which was marked as Exhibit Number 4 and asked to refer to the date October 22, 2003. After reviewing the entry, Butler confirmed that the date, October 22, 2003, was date competitors met at Nuckols' horse barn in order to discuss the price at which they sold ready mix concrete. Butler added that this was not in an Indiana Ready Mix Concrete Association (IRMCA) event and any notation to that fact would be inaccurate. IRMCA meetings are statewide and not held at a competitor's homes. The barn reference in the day planner would indicate Butch Nuckols horse barn where the meeting was held. The following individuals attended the meeting at Nuckols horse barn:

Chris Beaver, Butch Nuckols, John Blatzheim, Phillip or Richard Haehl, Price Irving, Scott Hughey and Dan Butler.

At the meeting, there was discussion about the price of ready mix concrete. Butler recalled there not being a ready mix price increase even though cement prices had increased. Butler told the group that IMI was raising their ready mix prices. Nuckols stated that he wanted to limit discounts, so the group discussed whether to limit discounts or increase the base price. Butler felt competitors could not limit discounts for certain customers to the point that they were paying the base list price. Competitors needed some type of discount for these valued customers in order for them to feel they were getting a better deal than the average customer. Butler stated that he could have had other conversations with Nuckols about the need to increase prices as opposed to limiting discounts. Butler referred to an October 15,

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2003 day planner entry as a date he could have talked with Nuckols about whether to limit discounts or raise prices.

Butler told competitors that IMI wanted to raise prices on performance concrete by \$2.00 and bag mixes by \$3.00. There were other price increases for additives such as calcium chlorides although Butler could not recall the amount at this time. Butler also announced that IMI was implementing a winter surcharge. Butler does not recall the group's reaction to the winter surcharge, although everyone agreed they needed to raise prices.

There was some discussion about the winter surcharge and whether it would be successful. Someone mentioned that suppliers had previously tried to implement a hot water charge although it did not work. Butler told the group that IMI was implementing the winter surcharge with the realization that it might not stick for all their customers, although they (IMI) would continue applying the charge each year until it became successful. Butler believed that everyone thought the winter surcharge was a reasonable idea. He was of the impression that some competitors would try to implement the winter surcharge.

Butler had prepared for the above meeting with competitors by discussing the price increase with his staff. Butler also recalled telling the group that IMI had already prepared a price increase announcement and would be sending them to their customers. Butler believed everyone agreed to raise the list price as an industry.

During the meeting, competitors also discussed limiting discounts to \$5.50. There were some exceptions to the discount because competitors had already granted larger discounts to some customers. The group agreed to apply the discount limit to new projects with multiple bidders. The agreement was for ready mix suppliers to start bids at no more than \$5.50 off the list price. If a competitor received information to the contrary, then they would discuss the matter later as a group, although during the bidding process, competitors needed to do what was necessary. There was also discussion that if the above discount was successful, then competitors would further reduce discounts, exact amount not recalled at this time.

PMS was not at the above meeting. Hughey believed he had established a relationship with Matney and could get him onboard.

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Hughey had said he talked with Matney and that he (Matney) was willing to give it a try.

Butler stated that the agreement at this meeting was to raise the list price \$2.00 for performance concrete, \$3.00 for bag mixes, increase price for additives, and limit discounts to \$5.50 off most bid work. Butler added that everyone had agreed to the above terms. With respect to the winter surcharge, Butler stated that IMI was definitely implementing the winter surcharge and at least one other company agreed to do the same.

After the meeting, Butler stated that IMI adhered to the above agreement. Butler believed IMI sent out their winter surcharge notice the very next day. He was unsure when the new price list was mailed to customers but added that the price increases were effective April 1 of that year. IMI implemented the new discount with some minor modification. There were occasions when IMI limited discounts to \$3.50 although Butler does not recall IMI offering discounts more than \$5.50 off. Butler added that the agreements were not always 100 percent effective, although he believed competitors made an effort to abide by them.

Butler recalled having several breakfast, dinner and lunch meetings with John Blatzheim in order to discuss pricing conflicts. Blatzheim typically said a salesman had discovered that IMI cut the price on a particular job. Butler recalled one specific incident where the quoted price was lower than what was profitable for the company. Butler told Blatzheim that he could not change the quote at this time, but Butler would reign in his employee. In their discussions, Blatzheim could have said that IMI was not pricing in accordance with the agreement or that IMI was not doing their part.

Butler recalled meeting with Richard Haehl about a project Shelby had adjacent to an IMI plant. Richard Haehl had contacted Butler and told him that an IMI salesman had undercut Shelby's price to the customer. Butler told Richard Haehl that he did not personally approve the salesman's quoted price, although he would talk with the salesman about the matter. Butler also told Richard Haehl that IMI would not lower its quoted price and he (Richard Haehl) could do what he wanted with the project. Butler added that he could not blame his salesman for cutting the price since it was directly across from an IMI plant.

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Butler recalled having a conversation with Chris Beaver although could not recall the exact details at this time. Butler could not recall discussing a gravel dig operation in which there would have been reference to the October, 2003, horse barn meeting.

Butler recalled Hughey telling him that an IMI employee, Gary Faust, was undercutting Carmel Concrete's price. Butler had repeated conversations with Faust and told Hughey the reasons for the price cuts. Butler was sure he discussed the \$5.50 discount limit with Hughey although could not recall the specifics details of the conversation at this time.

Butler does not recall asking Pete Irving's permission prior to attending the above horse barn meeting. He was sure he told Pete Irving about his discussions with competitors. Pete Irving was aware that IMI was having regular conversations with competitors in which they discussed ready mix prices. Pete Irving had said that it was not perfect but was better than the alternative, referring to a price war among competitors. Pete Irving believed that it was better to communicate with competitors than engage in a price war with them.

Butler could not recall meeting Scott Hughey at the Perkins Restaurant when Blatzheim called about limiting discounts to \$3.50.

BLOOMINGTON, INDIANA, MARKET

IMI entered the Bloomington market sometime in 1993. IMI had bought the Rogers Corporation upon entering the Bloomington market. PMS is IMI's primary competitor at this time in Bloomington. PMS has been in the Bloomington market for approximately six or seven years. Butler believes IMI has a slightly larger share of the marketplace, although the companies produce about same amount of ready mix concrete.

IMI's area manager for Bloomington is Mike LaGrange. LaGrange reports directly to Butler. LaGrange had three salesmen, Dan Todd, Don Livingston and Ed Hosteller, working for him in Bloomington, although Hosteller retired earlier this year.

Butler met with all of his area managers when establishing ready mix prices for a particular market. Butler added that the different markets may have slightly different price

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lists for an area. Price increases are typically triggered by an increase announced by the cement industry.

Matney is in charge of PMS' Bloomington operation. Butler met Matney for the first time at a meeting set up by Huggins. The meeting took place at a steakhouse located on Shadeland Avenue just south of Interstate 70. Butler could not recall the exact purpose of the meeting. At the time, Butler believed IMI and PMS were getting a reasonable price for concrete in the area.

When PMS entered the Bloomington market, ready mix prices in the area dropped, although they eventually leveled out. LaGrange had told Butler that prices had dropped again and believed they were getting back to previous price war with PMS. Butler estimated that prices dropped to about \$4.00 to \$5.00 below what IMI should be selling ready mix in order to be profitable. This price reduction occurred prior to Butler taking over Huggins' position. LaGrange had provided Butler with a brief history of the Bloomington marketplace. Butler met with customers and IMI employees so that he was knowledgeable of what his employees were doing in the area. Todd has talked with Butler about PMS cutting ready mix prices.

Butler recalled at some point the price wars ending in Bloomington. Ready mix prices appeared to have leveled off. Butler believed LaGrange had told him that Huggins and Matney had met in order to resolve the issue. Huggins had also talked about an issue they had with PMS in early 2002.

Butler recalled LaGrange calling about an IMI price increase in Bloomington, which was effective April 1st. After the price increase became effective, LaGrange said he had not received any word that PMS was also raising prices although they were expected to follow IMI's lead. LaGrange recommended that they (IMI) consider withdrawing the price increase if PMS did not follow suit. Butler talked with Huggins about the matter while attending a golf outing. Butler wanted Huggins' input on the matter. Butler even asked Huggins whether he should contact Matney at which time Huggins stated that it could not hurt.

After the golf outing, Butler called Matney about the price increase. Matney asked Butler to fax him an IMI price list. Butler estimated that PMS raised their prices approximately three to four weeks after he faxed the price list to Matney.

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Butler recalled meeting Matney at a Flying J Truckstop. Butler does not recall meeting any other competitors at a Flying J Truckstop. Butler also believed a May 20, 2002 day planner entry was date he and Price Irving met Matney at the Flying J Truckstop. The purpose for the meeting was to discuss Bloomington ready mix prices with Matney. At the time, Butler did not believe he had a handle on the Indianapolis market. Butler was also concerned that LaGrange might have a grudge against Matney and wanted to obtain Matney's view on the marketplace in Bloomington. Butler had noticed project bids decreasing with contractors saying PMS was beating IMI on price. Butler believed he had wanted to confirm the contractor pricing information with Matney. Butler recalled Matney having similar concerns about IMI cutting the price in order to obtain jobs. Butler said he was also concerned that LaGrange was not running a tight ship as another reason for meeting with Matney. Butler believes Matney said he would look into the matter, although Butler does not recall Matney getting back to him.

Butler knew that he should not have these types of conversations with Matney. Butler did not include LaGrange in the meeting because he did not feel lower level employees should be involved in these types of discussions with competitors.

Butler recalled speaking with Matney at the World of Concrete Expo held in early 2003. While in line, Matney asked Butler how things were going in Bloomington. Butler mentioned that prices were becoming too cheap in Bloomington and recommended they talk upon returning to Indianapolis.

Butler recalled meeting Matney at a Bob Evans restaurant in Indianapolis after returning from the World of Concrete Expo. Butler referred to his day planner and confirmed that he met Matney at the Bob Evans on February 17, 2003. Butler stated that no one else attended this meeting with Matney. During the meeting, Butler said the salesmen were blaming each other for the low prices in Bloomington. Butler said he would provide IMI quotes to Matney and asked Matney to do the same. During the meeting, Matney told Butler that he would be at or above a certain price, exact amount not recalled. Butler remembers the amount being something IMI could live with. Butler would have liked the price to be \$66 per cubic yard, although he thinks the agreement was around \$63 per cubic yard. Butler walked away from the meeting wanting to see if Matney could get the information verifying prices being bid by IMI salesmen. Butler believed that he would be happy with the price discussed and felt that IMI was already at that number. Butler

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does not recall any significant changes after the Bob Evans meeting with Matney, although it seemed that IMI was getting more work. Butler believed prices increased after the meeting.

Butler does not recall ready mix prices changing in 2003 for the Indianapolis area, although price could have increased \$1 in some other areas of the state. In 2004, IMI's price increase was the same for both Indianapolis and Bloomington. Butler does not recall additional meetings with Matney in which they discussed Bloomington ready mix prices. Butler was aware of the fact Wiggam knew Matney. Wiggam, on one occasion, told Butler that Matney had said LaGrange was going crazy in Bloomington.

Butler recalls talking with Matney after the February 17, 2003 meeting. Matney had asked Butler about an upcoming bid that afternoon. Matney made reference to a specific price, although Butler could not recall the amount at this time. Matney asked Butler if this was the price IMI was going bid. Butler said he would check into the matter. Butler called Matney back and said that he was unable to speak with the salesman. Matney suggested the sale price for the project. Butler could not recall whether they talked about selling above the referenced price. Butler added that Matney could have called and asked if IMI was going to bid the number they had previously discussed.

Butler stated that a March 20, 2003 day planner entry did not involve a ready mix price discussion with competitors, a April 16, 2003 entry involved a local union meeting, and a September 8, 2003 entry involved a new product release.

Butler reviewed documents for the period ending May 2002 through June 2002, stating that he did not recall anything specific about those dates.

MUNCIE, INDIANA, MARKET

IMI's area manager for Muncie is Steve Lewis. Butler believed the market is priced approximately \$1.00 less than the Indianapolis market. IMI had been the only ready mix supplier in the area until about 1999 or 2000 when McIntire Concrete opened their operation. The owner, Dick McIntire, had been a trucker for IMI before opening his company.

Dick McIntire also has a son, Brad McIntire, working for him. Butler recalled IMI increasing their price \$2.00 in 2002 and

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believes IMI increased their price \$1.00 in 2003. Before IMI increased the price each year, Lewis told Butler that McIntire was aware of IMI's price increase and was going to do the same. Butler even recalled Lewis telling him about McIntire's complaint that there was no price increase for a given year, date not recalled. Butler stated that IMI's price increase would have remained in affect even if McIntire Concrete did not follow along with the price increase. Butler only assumes McIntire Concrete increased their prices after IMI and explained that he would have likely heard about it if they did not. Butler did recall Lewis telling him that Dick McIntire was upset about discounts IMI provided on particular projects. McIntire had requested a meeting with Butler.

Butler, Lewis, and McIntire met at the Nickel Plate Restaurant located in Fishers, Indiana. Butler reviewed his day planner for the entry on June 20, 2003, although he did not believe this was the same date when they met with Dick McIntire. Butler did believe the meeting took place during the Fall or Summer of 2003 because of the discounts being offered to selected customers in the Muncie area. McIntire felt IMI was using the discount offered charitable organizations as a means to cut prices on other jobs. McIntire threatened that IMI should not try to run him out of business. Butler told Lewis to let McIntire know the discount amount IMI offered to these organizations. Butler made it clear to McIntire that IMI would continue with these types of discounts.

Upon reviewing Lewis' day planner, Butler stated that the November 16, 2002, at 11:30 entry was the date and time for the meeting with McIntire at the Nickel Plate. There were other handwritten comments below the entry although Butler could not recall specifically discussing them at this meeting.

Upon reviewing a January 19, 2004, entry in Lewis' day planner, Butler believed that this was around the time IMI was considering a price increase in Muncie. Butler denied sending McIntire Concrete an IMI price lists. Butler would not be shocked if Lewis or another IMI employee furnished McIntire with IMI price lists. Butler did not know for certain whether IMI provided price lists to McIntire. Butler recalls Lewis telling him about McIntire bugging him about prices.

Butler believed that he had about three meetings with McIntire. The meetings took place before and after authorities executed search warrants in Indianapolis. Butler recalled meeting McIntire at the Nickel Plate Restaurant in Fishers, Indiana and

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Ruby Tuesday's in Anderson, Indiana. Butler could not recall the third meeting location with McIntire, but he believed the only meeting prior to the search warrants would have taken place at the Nickel Plate Restaurant in Fishers, Indiana. Butler believed that a May 13, 2004 day planner entry was the date he spoke with McIntire about buying his company. Butler also recalled having a conversation with McIntire in which McIntire wanted to continue their price discussions, although Butler told McIntire that he was not comfortable doing so given the current investigation. Earl Brinker was only present during one meeting with McIntire. Butler believed the meeting took place at Ruby Tuesday's and involved the purchase of McIntire's company.

MARION, INDIANA, MARKET

IMI's area manager for Marion, Indiana, is Gary Jones. Rick Lucas is a salesman for the area. IMI establishes prices in the marketplace as they do in other regions of the state. IMI's only competitor is Grant County Ready Mix (GCRM) which is owned by the Marcuccilli family. Steve Turner is the President for the company and runs the day-to-day operation. Butler recalls meeting Turner and discussing aggregate operations. IMI's Huntington Quarry provides material to GCRM. Butler does not recall discussing ready mix prices with Turner.

Butler was aware of price increase discussions between Jones and Turner. Butler believed the price increase discussions with Turner took place sometime in 2004. Butler recalled some conversation about discounts being limited to \$3.50 or \$5.50, although he could not recall the specific bid in question. There was discussion between Jones and Turner not going to price ready mix below \$67 per cubic yard or something close to that amount. Butler recalled Jones telling him that Turner was not going to quote jobs below a specific dollar amount. Jones had been telling Butler about his meetings and discussions with Turner.

Butler believed IMI had a price increase in 2002 for the Marion market. Butler also believed IMI increased the prices in Marion every year. Butler described the market as not being very competitive and that IMI was the only game in town. Butler was sure that Jones had discussed prices with Turner. Butler believed that day planner entries for December 17, 2002 and February 21, 2003 involved meetings with Steve Turner. The meetings could have involved discussions with Turner about buying his company or issuing relating IMI's aggregate operations. Butler does not

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recall having any price discussions with Turner regarding the price of ready mix concrete.

Butler stated that he knew conversations he was having with competitors was wrong at the time, although he now understands that they were much worse than he realized. Butler also stated that the other competitors knew it was wrong for them to meet and discuss the price at which they sold ready mix concrete.

Butler added that he was having breakfast with Hughey on the day the search warrants were executed in Indianapolis. Butler recalled Hughey receiving a phone call that morning and having to abruptly leave. Butler did not recall the reason they were meeting but it was likely related to some price issue involving a customer.

The interview was then terminated.