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## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 10/19/2004

Fred Ray Irving, also known as Pete Irving, white male, date of birth **REDACTED**. Social Security Account Number **REDACTED**, was interviewed at the offices of Ice Miller, One American Square, Indianapolis, Indiana. Irving's attorney, J. Richard Kiefer of Kiefer & McGoff, 8900 Keystone Crossing, Suite 400, Indianapolis, Indiana 46240, telephone number 317/848-2300, was present for the interview along with Ice Miller Attorneys Jack Tharr and Susan Barnhizer Rivas, and Kyle A. Lansberry of Lewis Wagner Law Firm, 501 Indiana Avenue, Suite 200, Indianapolis, Indiana 46202, telephone number 317/237-0500. Present for the government were Department of Justice, Antitrust Division, Trial Attorneys Frank Vondrak and Michael Boomgarden. The interview was pursuant to a proffer letter issued by the DOJ Antitrust Division. After being apprised of the identity of the investigating personnel and the purpose for the interview, Irving furnished the following information:

Irving has a residence at 4249 North 300 East, Greenfield, Indiana 46140, and 1301 Spyglass Lane, Naples, Florida 34102, although he lives at the Florida residence approximately nine months of the year.

Irving Materials, Incorporated (IMI) began operating a ready-mix concrete company in the State of Indiana sometime during the 1950's. Over time, IMI expanded their ready-mix concrete operations throughout Indiana, Kentucky, Tennessee, Ohio, and Illinois. IMI currently operates over 50 plants in Indiana and over 40 plants in central and somewhat eastern portions of Kentucky. IMI also operates approximately 20 plants in central Tennessee and toward the southern border with Alabama. IMI has one plant located in Oxford, Ohio, and one plant located in Mt. Carmel, Illinois. IMI's aggregate business mainly operates in central and north central Indiana. They have a drudging operation in Kentucky, near the Ohio River. IMI operates an asphalt business in northern Indiana and Evansville, Indiana. IMI also has a real estate venture involving a gravel stone quarry operation.

Irving's father and his two brothers were the founders of IMI. Before getting into the ready-mix concrete business, Irving's dad and brothers bought a gravel operation in Greenfield, Indiana around 1946. The business continued to expand and sometime during

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the 1950's, IMI became involved in the ready-mix concrete industry.

Irving was born the son of a company owner and had worked summers as a kid in their ready-mix concrete operation. By the age of 20, Irving was working full-time in IMI's ready-mix concrete business. Irving married in 1961, which was around the same time IMI built their new office building. In 1961 or 1962, the company hired an accountant to help manage IMI's four concrete plants and two aggregate plants. The hiring of a company accountant was considered a big deal at the time. The accountant became the sales manager for the company, which allowed Irving to focus more on operations.

IMI's main competitors were Ready-Mix, Hestin, and Conco. They were the big three suppliers of ready-mix concrete at the time. Carmel Concrete (Carmel) began their operation on the north side of Indianapolis sometime during the 1960's. Carmel focused more on the residential market and was not considered a main competitor of IMI at the time. Ready-Mix sold their operation to IMI sometime in 1984. At the time, Ready-Mix was probably the largest supplier and main competitor of IMI.

Hestin operated in the Indianapolis area and primarily focused on big contract jobs. Their heydays were during the 1950's and 1960's. Hestin was a family-owned operation, owned by two brothers. Hestin just one day stopped working in the concrete industry and focused on their asphalt business. Hestin eventually closed and went out of business.

Conco, owned and operated by the Gratison family, primarily handled commercial and residential work. Conco was not a large supplier and mainly focused on medium size jobs. IMI eventually purchased Conco's plants sometime during the early 1980's. Irving added that during the late 1970's, the construction industry in Indianapolis was bad, although the market significantly improved in 1984 or 1985.

Carmel was founded by Norm Hughey and is now currently operated by Norm's son, Scott Hughey. Carmel is mainly a family residential concrete supplier, although they have grown over the years. Scott Hughey became the main operating official for Carmel approximately 10 years ago.

Beaver Materials (Beaver) entered the Indianapolis ready-mix concrete market sometime during the 1950's. Beaver had

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purchased a competitor's operation in Greenfield, Indiana. By the early 1960's, Beaver was operating a plant in Noblesville, Indiana. Beaver was initially a residential concrete supplier. Beaver was started by Marion Beaver, Alan Beaver, and Richard Beaver. Irving believes Alan Beaver and his two children, Chris Beaver and Rick Beaver, are currently responsible for operating the company along with Alan Beaver's brother, Gary Beaver. Marion Beaver left the company in the late 1960's or early 1970's. Richard Beaver eventually sold his interest sometime during the 1970's.

Builders Concrete (Builders) entered the ready-mix market sometime around 1971, after a protracted ready-mix strike. The contract for the big three ready-mix suppliers in the area expired in November, which prompted the strike. The strike was not resolved until the Spring of the following year. During the strike, Gus Nuckols, who was primarily a home builder, started a ready-mix business called Builders Concrete. Nuckols ran the company until approximately 10 years ago, when his son, Butch, took over the operation. Irving is not positive, but believes Gus Nuckols may still have some involvement in the company.

Irving knew of Gus Nuckols, although did not associate much with him. Approximately 20 years ago, Irving went on a fishing trip which Gus Nuckols also attended. During the fishing trip, Irving and Gus Nuckols drank and socialized together. They had a chance to get acquainted with each other. Irving has known Butch Nuckols for the past 15 years. He went on a fishing trip with Butch and Gus Nuckols approximately 10 years ago. Over the years, Irving has become more acquainted with Butch Nuckols, primarily because their children attend the same school.

Builders supplies ready-mix concrete throughout Marion County, Hancock County, Hamilton County, Boone County, and Hendricks County. Builders was mainly an Indianapolis north side company, although has put a plant in Lebanon, Indiana.

American Concrete (American) began operating in the Indianapolis area sometime during the 1970's. The company had been owned and operated by Dick Denny, who had previously been a manager at Conco. American was located off Kentucky Avenue and was underfinanced, causing the business to struggle. Denny eventually died. His widow and boys tried to run the company, although they continued to accumulate a lot of debt and the company was eventually purchased by Dennis Mann. Mann was from the east coast and significantly improved American's operations. Mann died in an

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airplane crash approximately three or four years ago, and his son, Jason, took over the operation after his father's death.

Prairie Materials Supply (Prairie) entered the Indianapolis market approximately 12 to 14 years ago. In 1985 or 1986, they hired their current manager, Gary Matney, to run the Indianapolis operation. Matney worked for IMI for approximately two or three years, until being hired by Prairie. Prairie was owned by Jack Oremus and based in Chicago, Illinois. Irving has only had limited contact with Matney since he left IMI.

Irving described the Indianapolis ready-mix market as reactive in nature. The market does not permit them to plan ahead; they must simply react to market demands. IMI's corporate structure includes a quality control department, sales, operations, and management personnel. Huggins was hired on August 1, 1983 to replace Jack Holdrup after his death. Huggins took over the sales operations in Indianapolis which allowed Irving to focus more on other areas of the company. Irving had a heart attack on September 11, 1999 and as a result, became less active in the company. Even before his heart attack, Irving was becoming less active in the company and allowing Huggins to run the day to day operations. By 1983, IMI operated approximately 75 trucks and eventually grew to its current level of approximately 900 trucks.

IMI hired Butler in 1993 or 1994 to run IMI's aggregate operations in Indiana. Huggins retired shortly before January of 2002 after approximately 19 years of service. From 1999 until Huggins' retirement, Irving was not happy with the company's direction, although he was unwilling to put forth the effort to change the direction of the company. At one point, Irving even considered selling the company.

Approximately 19 years ago, Irving's son, Price, became more actively involved in the company which was around the same time Price finished college and Irving divorced his first wife. Price started working in IMI's stone quarry operations located in Pendleton, Indiana. Approximately 10 years ago, at the request of Irving's first wife, Price became more involved in the management of the company. Price did not work well with Huggins and actually had more skill on the plant maintenance side, as opposed to sales. After Butler was hired, Butler encouraged Price to become more active in the company, at which time Price assumed responsibility for central dispatch operations. Butler took Price under his wing and brought him to meetings as more of a hood ornament and to

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imply that Irving supported Butler's decisions. Butler would likely tell investigators that Price had no real role with the direction of the salespeople working for IMI. Currently, Dan Butler and Irving's son, Price, are more focused on the management side of the company.

Irving admitted having several price discussions with ready-mix competitors in the Indianapolis area. The first discussion took place a long time ago, during the early or mid-1960's. Irving admitted having price discussions with the following competitors during 1960's: Hestin, Conco, and Ready-Mix. Irving was the principal involved in these discussions and indicated his father was not present during these pricing discussions. A lot of times, the price discussions took place at Indianapolis Metropolitan Ready-Mix Concrete Association meetings, which were held throughout the year. The organization was created to help improve and market the ready-mix industry. The main way of improving the market was to stabilize prices, which resulted in competitors meeting to discuss and reach price agreements at which they sold ready-mix concrete. Irving was not sure whether Holdrip was present during the above price discussions. Irving was positive that he attended several price fixing meetings in the 1960's, although did not recall when or why the meetings to discuss prices stopped. It may have been associated with a price fixing investigation being conducted by an unknown government agency.

Irving recalled producing numerous documents as a result of the investigation, although nothing further came from the investigation. Irving noted that the price fixing agreements did not always work as planned, which always prompted additional meetings to resolve discrepancies. Irving stated it was safe to say that he and other competitors in the 1960's had met and reached agreements, although those agreements would eventually break down. IMI wanted to stabilize prices so that they could better compete on service and quality of their product. IMI was not the leader in the industry during the 1960's and was mainly just a supporter and a follower in the price fixing agreements.

With respect to the Indianapolis Ready-Mix Concrete Association, Irving stated that one of its main reasons for existing was to discuss the price of ready-mix concrete. During the 1960's, Ready-Mix was the largest supplier of ready-mix concrete. They were considered the leader and driving force in establishing the price at which ready-mix concrete was sold in the area. E.B. Rayburn was the manager, with Clyde Cook acting as the

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sales manager. Irving was not sure when Rayburn left the company, but indicated Cook was involved with the company up until about 1984.

At some point, Haldrup would have, in all likelihood, taken over and attended the price fixing meetings for Irving. Irving believed this was true because Haldrup became more involved with the day to day sales operations of the company.

Roy Babcock, Sales Manager for Hestin, and D. Thompson, Manager for Conco, attended the price fixing meetings during 1960's. Irving does not recall anyone else from IMI being involved in the price fixing discussions. Irving does not recall whether he discussed the price fixing meetings with other employees at IMI.

Irving again reiterated that at some point, the price fixing meetings stopped, although could not provide an exact time frame. The competitors may have stopped meeting because of the Federal investigation. Irving attended meetings at Ice Miller along with his father. The meetings pertained to the production of records in response to the federal investigation. Irving did not recall whether he discussed the investigation with competitors.

Irving was positive that he had price discussions with Carmel and possibly Beaver. IMI did not really compete against Beaver, but Irving believed he may have had one price discussion meeting with Beaver. Irving's price discussions with Carmel and Ready-Mix occurred during the 1970's through 1980's. Irving did not recall having price discussions with American.

Irving's discussion with Beaver would have involved Alan Beaver and would have occurred during the 1980's. Irving believed that he called Alan Beaver to setup the meeting which took place in Alan Beaver's office. The purpose of the meeting was to discuss pricing for an aircraft hanger project. Irving did not recall the specific details, but stated the meeting was to address the amount Beaver bid on the job.

Irving admitted having price discussions with Norm and Scott Hughey although could not recall the exact date when the meetings started. Irving got to know Norm Hughey through union contract discussions. During these discussions, there was considerable down time which allowed Irving and Norm Hughey to discuss various things, including pricing. Irving did not believe they actually reached agreements, although was certain that they

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discussed prices and the establishment of quoting jobs at list price. Irving could have discussed price increases with Norm Hughey, but felt price increase discussions were separate from discussions involving the limiting of discount. Irving could not recall the number or frequency of meetings which he had with Norm or Scott Hughey. Irving also could not recall whether Huggins and/or Haldrup attended the meetings with Norm or Scott Hughey. Irving believed he would have had one on one price discussions with Scott, as opposed to meeting in a large group. Huggins would have likely attended some of the meetings before he retired. After retiring, Huggins signed a consulting agreement with IMI which expires when Huggins reaches the age of 65.

Irving admitted having discussions with Scott Hughey over pricing and competition for jobs. Typically, a customer would tell Scott Hughey that IMI beat their price, which prompted Scott Hughey to call Irving. Initially, Scott Hughey discussed these pricing disputes with Irving, although Haldrup and/or Huggins eventually became the point of contact for Scott Hughey. IMI also had discussions with Scott Hughey regarding the limiting of discounts and quoting jobs at list price. Irving believed Scott Hughey did not want to lose jobs based on price, and would rather compete on service and product quality. Irving did not believe there were any other competitors present when he had price discussions with Norm or Scott Hughey.

Irving does not recall specific price discussions with Builders other than with Butch Nuckols. Irving recalled meeting with Butch sometime during the early 1990's. The meeting took place over drinks at a bar in Noblesville, Indiana. Huggins also attended the meeting with Butch. During the meeting, they discussed the price of concrete and Butch frequently voiced his concern over the pricing of ready-mix concrete in the market.

Approximately 10 or 13 years ago, Irving had a series of meetings with Oremus when IMI was looking to purchase Prairie's Indianapolis operation. Irving had thought the two companies had reached an agreement, and as the accountants were working out the details, Irving received a phone call on a Friday from Oremus stating the word was out and the deal was off. Oremus later died, and Alan Oremus took over Prairie's operations. Irving met Alan Oremus at the Adam's Mark Hotel in Indianapolis. They had general discussions about merging their two companies, although nothing ever materialized from their discussion.

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Approximately two or three years ago, Irving recalled Butch Nuckols complaining about prices issued by Matney. Nuckols asked Irving to arrange a meeting with Alan Oremus. A meeting was later held at the Adam's Mark Hotel in Indianapolis in which Nuckols, Irving and Alan Oremus attended. During the meeting, a wide variety of items were discussed before Nuckols described how Matney was negatively affecting the price of ready-mix concrete sold in the Indianapolis area. Alan Oremus agreed to look into the matter, although nothing really changed after the meeting. Irving does not recall Alan Oremus having any objections about meeting with competitors and discussing ready-mix concrete prices.

Shelby came into the Indianapolis market approximately six or seven years ago. Shelby opened a plant in Beech Grove, Indiana, and approximately two or three years ago, opened a plant near Raceway Park, on the west side of Indianapolis, which was around the same time Shelby became a factor in the Indianapolis marketplace. Irving talked with representatives of Shelby in order to encourage them to stay out of Greenfield, Indiana. Shelby had a tendency to price ready-mix concrete lower than IMI. Richard Haehl always asked when IMI was raising prices, so he could raise Shelby's prices to just below IMI.

Irving had a couple of meetings with Shelby representatives. Shelby was, at one point, operated by three brothers, although one of the brothers, name not provided, later left the family business, exact date not recalled. It was around the time the third brother left the family business when Shelby began to significantly lower ready-mix prices in Indianapolis. Shelby's lowering of prices became an issue and prompted the meetings among area competitors. Irving believed that this was the first time when he heard about meetings with competitors taking place at Nuckols' horse barn. Irving knew Huggins was having price discussions with competitors prior to his heart attack in 1999. Irving could not recall at this time whether he heard about Huggins' meetings with competitors or whether Irving actually attended meetings with Huggins. Irving does recall Huggins stating that he had reached pricing agreements with IMI's competitors.

Irving and Huggins shared an office from about 1984 until perhaps 1990, when the company moved their sales department. From 1984 to 1990, Irving sat directly across from Huggins, which allowed them to have frequent conversations and allow Irving to overhear Huggins' telephone conversations. Irving became aware of Huggins' meetings and subsequent price agreements with competitors

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either through discussions with Huggins or from overhearing Huggins' telephone calls. After 1990, Irving found out about the price discussions with competitors either from Huggins directly or by actually attending the meeting with Huggins.

Typically, price discussions were held individually with Hughey or Nuckols, as opposed to everyone being together. Irving does not recall Huggins telling him about meetings where all the area competitors attended. Irving does not recall exactly how he heard about the horse barn meeting taking place, but it could have been from Butler, his son, Price, or perhaps both. Irving stated that his day planner may help refresh his memory on the date which the horse barn meeting took place. At the time, Irving did not consider the horse barn meeting to be that significant.

The purpose of the horse barn meeting was for competitors to come together and emphasize to Shelby, particularly the Haehl brothers, that they needed to increase their prices in order to stabilize the market. Irving does not recall receiving details after the horse barn meeting taking place. Irving typically talked to his son once a month and Huggins perhaps every other week. Irving lives in Florida nine months of the year and does not regularly contact the office in Indiana. Irving was unsure whether he knew about Price attending the horse barn meetings. If Price went to the horse barn meetings, then Irving believed Butler would have encouraged Price to attend. Butler encouraged Price to become more involved in the company, which also led to Price becoming the President of the Indiana Ready-Mix Concrete Association (IRMCA). Irving does not believe the IRMCA was used to facilitate any price agreements, although the competitors who agreed on setting ready-mix prices are also members of the IRMCA.