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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 11/04/2004

Price C. Irving, white male, was interviewed at the Department of Justice (DOJ), Antitrust Division, Midwest Field Office, 209 South LaSalle Street, Suite 600, Chicago, Illinois. Irving was represented by his attorney, Robert H. Hammerle. Also present during the interview were Ice Miller Attorneys Jack Thar and Susan Barnhizer Rivas. Present for the Government were DOJ Trial Attorneys Frank Vondrak, Michael Boomgarden, and Jonathan A. Epstein, as well as Paralegal Specialist Lauren Jankowski. The interview was pursuant to a proffer agreement issued by the DOJ, Antitrust Division. After being advised of the identity of the investigating personnel and the purpose for the interview, Irving furnished the following information:

Irving graduated from Greenfield High School. In 1984, Irving received a Bachelors of Arts in business from Indiana Central College, currently known as the University of Indianapolis. After graduating from college, Irving spent four years traveling the country, showing and raising cattle. Irving described it as a semi-business opportunity he had with a neighbor and friends.

In 1988, Irving began working for IMI at their Pendleton, Indiana stone quarry plant. Irving was initially hired as a Crusher/Operator, although only held the position for a few months. Over the next couple years, Irving held several other jobs until becoming the Maintenance Man for IMI's McCordsville plant in 1991. He held that position for approximately one year before becoming the McCordsville Plant Manager. As Plant Manager, Irving was responsible for production, safety, maintenance and blasting operations. He did not have oversight of the aggregate salesman at the plant. The only input Irving had regarding sales was requesting new equipment for his operation. At the time, Irving did not provide input on IMI's pricing policies.

Ultimately, John Huggins was responsible for determining the company's pricing policy. Huggins oversaw IMI's entire sales staff and had final authority over any price lists. The only input Irving had with respect to pricing was informing Huggins of the amount material IMI had on-hand. Irving reiterated that he did not have input on establishing the price at which IMI sold ready-mix concrete and/or aggregate.

Investigation on 10/19/2004 at Chicago, Illinois

File # 60-IP-93296

Date dictated 10/21/2004

by SA Steven L. Schlobohm -llc (S:\SQ5\309LLC01.302)

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Irving held the McCordsville Plant Manager position for approximately one year before becoming Steve Stevenson's assistant. Stevenson oversaw IMI's aggregate operations which consisted of seven or eight plants. Stevenson also oversaw the aggregate salesmen and reported directly to Huggins.

Stevenson tasked Irving to redesign and modernize IMI's aggregate plants to insure IMI had an adequate material for the upcoming Interstate 70 project. Irving coordinated the modernization of the plants with input from various vendors and suppliers. He held the assistant position for approximately six to 12 months before becoming IMI's Aggregate Manager. His duties remained pretty much the same, although he was now responsible for all of IMI's aggregate operations. Irving believed he became the Aggregate Manager in 1993, which was around the same time IMI was looking to acquire Irving Brothers, Incorporated (IBI), which E&B Paving was a subsidiary.

Sometime during the middle of 1993, IMI purchased IBI and its subsidiary, E&B Paving. The acquisition almost doubled IMI's aggregate operation. Irving was also placed on IMI's Board of Directors, a position he still holds today. IMI's Board of Directors, consisting of approximately eight people, typically meet every other month. The meetings are pretty much the same with discussions surrounding the company's operations and acquisitions.

As part of the acquisition, Dan Butler became an IMI employee. Butler held the same position as Irving while at IBI. Irving remained IMI's Aggregate Manager after the acquisition. As the Aggregate Manager, Irving frequently provided his father, Pete Irving, and Huggins with information about the company's aggregate production capabilities. This information could have had an impact on IMI's pricing policies.

Between 1996 and 1997, Irving became Vice President of Operations for IMI's Concrete Division and Butler was placed in charge of IMI's aggregate operations, although Irving still occasionally responded to questions involving aggregate operations. As the Vice President of Operations, Irving reported directly to Huggins and his father, mostly because they shared an office at the time.

Irving surmised that he was placed over IMI's Concrete Division in order to modernize the plants. At the time, most of the plants were falling apart and were in need of updating.

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Huggins told Irving that the concrete plants needed to be improved in order to maintain production levels during the wintertime months.

In 2000, Irving became the Area Manager for Indianapolis. As Area Manager, Irving had responsibility over IMI's Quality Control Department, truck drivers, plant operation personnel, scheduling, and central dispatch, which consisted of approximately eight people. He did not have any authority over the sales staff. Irving was responsible for reporting any union problems, quality control issues, major plant problems, or personnel issues to Huggins. Every Monday, Huggins met with IMI's central Indiana sales staff, which consisted of 10 to 12 people, and every Wednesday, he met with Area Managers.

About once a month, Irving attended the Area Manager and sales staff meetings, in order to check on the needs of each department. Huggins conducted the meetings which typically lasted one hour. The purpose of the meetings were to discuss company pricing matters, as well as pricing involving competitors. At the meetings, Huggins would seek pricing feedback from the Area Managers, although Irving did not recall Huggins discussing a price fixing agreement between IMI and its competitors. Irving also did not recall his father telling him about the existence of a pricing agreement between IMI and its competitors. Irving further denied receiving any information from Area Managers about an ongoing price fixing scheme with competitors. Huggins never gave any indications that IMI had an ongoing price fixing agreement with competitors. The following Area Managers attended the meetings: Irving, Gary Jones, Steve Lewis, Gene Wiggam, Drew Davis, and Mike Lagrange. The following individuals also periodically attended meetings: Norm Thoering of Quality Control; Irving's assistants, Mike Shoemaker; First Name Unknown (FNU) Dodd; the company's credit Manager, Leon Last Name Unknown (LNU); as well as members of the computer staff.

During the late Summer or early Fall of 2001, Huggins announced his retirement. Butler was appointed to take over some of Huggins' duties which included most of IMI's operations in the State of Indiana, with the exception of Evansville, Indiana, which remained under Mike Harmon. For a couple months, Butler rode around with Huggins visiting IMI's different plant locations. Irving did not go along on the trips, not even to areas involving his territory. Butler met IMI employees and customers, although Irving was unsure whether Butler was introduced to competitors.

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Butler never mentioned that he met with IMI's competitors. A couple of weeks after Butler assumed his new position, the Indianapolis sales staff was placed under Irving. It took Irving some time before becoming comfortable with the company's sales operation.

Up until Huggins retired, which was around January 1, 2002, Irving denied any knowledge of IMI being involved in price fixing discussions with its competitors. Irving stated that he may have suspected it, although he had no specific information to indicate it was true.

Even through the early part of 2002, Irving claimed to have no knowledge of Huggins' and/or Butler's pricing conversations with competitors. He later became aware of IMI's involvement with competitors when Butler called him to attend a meeting with Gary Matney. Butler had called Irving approximately 45 minutes prior to the meeting with Matney and asked if he could attend. Irving believed he was asked to attend the meeting because he was the Area Manager for Indianapolis.

The meeting took place inside the Flying J Truck Stop sometime before April 1, 2002. The purpose for the meeting was to determine if Matney was going to increase prices in Bloomington and discuss invoices IMI had received regarding bids Prairie Materials Supply (PMS) had submitted in the area. Irving estimated the meeting took place prior April 1, 2002, because that would have been around the time IMI issued their price increase.

At the meeting, Butler confronted Matney about prices and the PMS invoices. Irving could not recall whether Butler gave Matney a copy of the invoices or said he would send them to him later. Butler also told Matney that IMI was going to raise ready-mix concrete prices \$2 per yard in the Bloomington area. Irving does not recall Matney saying much during the meeting other than that he would get back to Butler. Matney agreed to check on the invoices brought up by Butler.

Irving was of the impression Matney already knew about IMI's proposed price increase. Irving reported having a brother-in-law and sister-in-law working for PMS although had no information that they knew about the upcoming price increase by IMI. Irving guessed the meeting lasted between 25 and 30 minutes. Irving left the meeting with the impression that Matney would get back with Butler at a later date.

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Irving had heard from IMI's sales staff that Matney really did not know what was going on in the Bloomington market and that PMS had a couple of loose cannons there. Irving was unsure whether IMI and PMS actually had an agreement after the meeting. IMI's Bloomington price increase went into effect and Irving assumed PMS did the same. Butler never commented further about their conversations with Matney. Irving got the sense this was the first time Matney actually met Butler.

Signature Inn Meeting

Irving did not recall the exact date of the Signature Inn meeting, but indicated the weather was nice, meaning it may have been during the Spring, April or May, of 2002. Irving recalled Butler asking him to attend a meeting at the Signature Inn along with other ready-mix concrete competitors. Butler asked Irving to attend the meeting while at the office. Butler asked Irving to attend the meeting on either the day of the meeting or the day prior. Butler told Irving the purpose of the meeting was to discuss the Indianapolis market with competitors. Irving was of the impression competitors would talk about prices and credit matters.

Irving remembers feeling uncomfortable about the meeting and asking his father whether he should attend. His father said it would be okay for him to attend and that Hughey and Nuckols were probably just going to complain about prices and other competitors.

Irving did not drive with Butler to the meeting, although they entered the lobby together. Upon entering the lobby, they were greeted by either Nuckols or Hughey. They were informed that a conference room had been reserved upstairs. Irving was already familiar with Hughey through various Ready-mix Association events and had attended dinner receptions which Nuckols also attended. Irving recalled the other competitors already being at the meeting when they arrived. In addition to himself, the following individuals attended the meeting: Butler, Nuckols, Hughey, John Blatzheim of Builder's Concrete, possibly both Haehl's of Shelby Material and Rick Beaver of Beaver Materials. There may have been one or two more people in attendance, although Irving could not recall their names at this time. Irving does not recall any representatives from American Concrete or PMS attending the meeting.

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After everyone sat down, there was some small talk before Hughey stated something to the effect, "I guess I called this meeting to discuss the downward spiral of ready-mix concrete prices." The group talked about issues affecting the marketplace and that they wanted to get prices back to where they were. Nuckols talked about the price gap between companies and the need to limit discounts. Nuckols also wanted to raise the base price of ready-mix concrete. During the meeting, the group agreed not to price ready-mix concrete below a specific dollar amount, although Irving could not recall what that amount was at this time. There was also discussion about limiting the discount offered to customers, although Irving could not recall whether a specific dollar amount was actually set or not. Nuckols and Hughey made the statement, "We have done this thing before," referring to the limiting of discounts. Hughey agreed to speak with Matney and Nuckols to Jason Mann of American Concrete about limiting discounts.

Both, Butler and Nuckols made the point about calling each other if they heard a quote from a customer not being within the agreement. The competitors agreed to share pricing information if confronted with the fact they were not pricing in accordance with the agreement. Irving was certain there was other discussion among the group, although could not recall details at this time. Irving estimated the meeting lasted between 40 and 45 minutes, of which approximately a quarter of it was spent discussing prices.

Irving recalled being a little disturbed by the discussions at the meeting. He was unsure whether other competitors had similar feelings, although no one at the meeting posed any concerns or objections to the agreement. After the meeting, Irving left and did not discuss the matter with other competitors. The next day or so, Irving told Butler that he did not like attending the meeting and felt they were helping the competition. Butler said they would give it a try, meaning they would try to abide by the agreement. Irving does not recall exactly what he told his father about the meeting, although did say competitors complained about PMS and Shelby.

After the Signature Inn meeting, Irving received a few calls from Nuckols and Hughey about IMI not pricing in accordance with the agreement. Irving would track down the bid information and call Nuckols or Hughey back in order to give them the pricing information they requested. Irving does not recall receiving similar telephone calls from Beaver Materials, although does

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believe he provided Shelby with similar pricing information. Irving has called a couple of competitors to verify their price submitted on a project. Irving believed he spoke with Tim Kuebler once and someone from Shelby.

Irving only recalled speaking with Virgil Mabry of Carmel Concrete on one occasion. He had tried to reach Hughey, who was unavailable, and ended up speaking with Mabry. During the conversation, Irving gave Mabry IMI's price on a particular project and later learned Carmel Concrete had undercut IMI on the job. This was the last time Irving shared pricing information with Mabry. Irving recalled calling Shelby Materials on a couple of projects. The first was in regards to a Walmart project in Shelbyville, Indiana which Irving described as a courtesy call to tell Shelby that IMI would not be bidding on the project and the second call was in regards to Shelby being a couple dollars off the agreed upon price. After a while, it seemed like Hughey called a couple times a week and Nuckols at least three or four times a week to check on prices.

Horse Barn Meeting

Sometime in late 2002 or a couple of months after the Signature Inn meeting, Butler asked Irving to attend a meeting at Nuckols' horse. The purpose of the meeting was to discuss the 2003 price increase with other ready-mix concrete suppliers. Butler told Irving that other ready-mix competitors would be attending the meeting. Irving was unsure whether Butler asked him to attend the meeting the day of or the day before the meeting. This was the first time Irving attended a meeting at Nucklos' horse barn and had to ask Butler for directions.

The following individuals attended the meeting: Irving, Butler, Nuckols, Tim Kuebler, Rick Beaver, Hughey, and possibly Richard Haehl. Irving believed Kuebler left Builders Concrete sometime in March 2003.

Nuckols called the meeting to order and stated that he wanted to get something done with respect to ready-mix prices in the market. Irving recalled the group wanting to limit the discount to \$5.00 or \$5.50 below list price. Hughey also reported that he spoke with Matney, who was supportive of limiting the discount, although was not committed and would wait to see where the other competitors were at.

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At the conclusion of the meeting, the group agreed to limit discounts to \$5.00 or \$5.50 below list price. The group also decided to eliminate the 10 percent paving discount offered to customers. Ready-mix suppliers had always offered a 10 percent discount if customers used ready-mix concrete. Irving does not recall any objections by anyone at the meeting. Butler also reported to the group that IMI was not going to have a general price increase next year. Irving had been supportive of raising prices while Nuckols wanted to narrow the gap between the list price and the actual price offered to customers. There was a consensus among the group not to raise ready-mix concrete prices in 2003.

Irving estimated the meeting lasted approximately 45 minutes. He was unsure whether other topics were discussed, although recalled meeting with Rick Beaver after the meeting and asking him for his telephone number. Beaver and Irving exchanged business cards. Irving does not recall discussing the meeting with Butler or other IMI employees. There was no need to inform IMI's sales staff of any changes because IMI had already limited the discount employees were authorized to offer customers to \$3 off the list price. Butler had previously directed Irving to send a memo establishing the above discount policy.

After the second meeting, Irving received several calls from Hughey. Irving also had several conversations with Kuebler and recalled calling Shelby on two separate occasions, exact dates not recalled. Irving was certain he had further discussions with Butler about the agreement not working because prices kept falling. Over time, Irving received fewer and fewer telephone calls from competitors.

In August or September of 2003, Bob Haldrip was placed in charge of IMI's marketing and sales operations. Irving denied having any discussions with Haldrip about the meetings he and Butler had with area competitors.

During a sales meeting with area managers, exact date not recalled, it was announced IMI would issue a \$2 price increase and institute a \$3 winter service charge. The winter service charge would be effective from December to March of the following year. There was concern among the group that the price increase would not stick.

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Irving recalled attending a second meeting at Nuckols' horse barn. Butler again asked Irving to attend the meeting. Butler had contacted Irving approximately ninety minutes before the meeting and asked him to attend. Irving recalled being in his car when he received the call from Butler.

When asked whether he had used any nicknames in referring to Nuckols or Hughey, Irving stated that he called Nuckols, "Fat Man," and Hughey, "Little Boy." Irving was shown a 2003 Day Planner with his business card inside the planner. After identifying the Day Planner as his, Irving was shown a notation made on October 22, 2003 which identified a meeting with Fat Man and Little Boy. He stated that he may have wrote down the information after receiving the call from Butler. Irving frequently drives with his Day Planner out and may have pulled over to write down the information after receiving the call from Butler.

The following individuals attended the second horse barn meeting: Irving, Butler, Nuckols, Philip Haehl, Blatzheim, Hughey, Chris Beaver (Irving distinguishes between Chris and Rick Beaver by the fact that Rick Beaver has black hair, while Chris Beaver has blond hair).

The purpose for the meeting was to revive the previous price agreement among competitors. Hughey was having difficulty meeting with Matney and was going to try one more time to meet with him. In the past, Nucklos stated that he would take care of contacting Mann, although Irving does not recall there being any discussion about contacting American Concrete.

During the second horse barn meeting, Hughey talked a lot about a two-tier pricing structure. Hughey proposed limiting discounts to about \$5 and later limiting the discount to \$3. Irving told the group that he did not believe the pricing structure would work, although Hughey still wanted the group to adhere to a two-tier pricing structure.

Butler announced IMI was issuing a price increase, and either Butler or Irving announced IMI was also implementing a winter service charge. Everyone seemed to agree with the price increase and winter service charge, although some doubted the winter service charge would actually work. Irving was of the impression that the other competitors would follow IMI's lead

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regarding the price increase although was unsure whether everyone would implement the winter service charge. Irving believed Builders Concrete was going to implement the winter charge. There was also some discussion about increasing prices on performance concrete and bag mixes. Irving believed Hughey raised the issue about increasing prices on bag mixes.

At the conclusion of the meeting, Irving believed everyone agreed to limit discounts to \$5 or \$5.50 off list price and issue a general price increase. Irving did not think there was a consensus on the winter service charge. Irving does not recall much discussion with Butler after the meeting. Blatzheim called Irving three or four times mostly about one particular job, which Irving was never able to figure out. Irving had difficulty locating IMI's quote for the project.

Irving recalled having lunch with Mann, although could not recall the exact date. The meeting took place either shortly before or after the second horse barn meeting and was around the time Mann's wife was expecting their baby. Irving had called Mann to see if he was interested in selling part or all of his company.

During the meeting, Irving told Mann that IMI was going to raise their price and issue a winter service charge. Mann, who was receptive to the price increase and service charge, even announced his price increase and winter service charge before IMI. Irving never mentioned the horse barn meetings to Mann, nor did Mann give the impression he knew about the meetings or an existing price agreement among competitors.

The last contact Irving recalled having with Hughey was in early 2004 when they discussed a Type-K bid on a particular project. Hughey constantly made inquiries about pricing to the point of becoming a pest. Irving eventually had him go through Butler. Butler told Irving that he was talking with Hughey and Blatzheim about various projects.

The first time Irving became aware of the FBI's investigation was on May 25, 2004, when Agents arrived at his residence. Irving went to the office and called Butler, who said Hughey was called by the FBI while having breakfast with him. Irving called his father to tell him about the FBI's investigation of price fixing in the Indianapolis area. Irving's father instructed him to handle the matter through the company's lawyer. Irving might have heard a rumor about an Agent looking at

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something, although thought it was equipment related as opposed to price fixing. Irving could not recall how or where he heard this information. Irving denied having any discussions with competitors about pricing after May 25, 2004. Irving has talked with his wife and other IMI staff, as well as a few baseball coaches, about the investigation. The conversations were general in nature and non-specific about the details of the investigation.

Shortly after May 25, 2004, IMI sent employees a memo advising them of the investigation. They also recently sent another memo to employees updating them on the investigation. Irving and Butler have had several discussions about the repercussions of the investigation. Irving denied disclosing any information to Haldrip about any prior meetings with competitors. Irving added that it was hard to believe Haldrip was not aware of the meetings with competitors.

Other Pricing Discussions With Competitors

Gary Jones, an IMI Area Manager for the Marion, Indiana area, has talked with Steve Turner, President of Huntington Ready-Mix, also known as Grant County Ready-Mix. Irving recommended Jones contact Turner in order to avoid a price war between their companies. Irving believed he instructed Jones to contact Turner sometime in October 2003, maybe before the second horse barn meeting, which occurred on October 22, 2003. Irving asked Jones to talk to Turner about coming to a mutual agreement on pricing. Irving had hoped they would reach an agreement and stop the ongoing price war. Irving had Jones contact Turner because Indianapolis area competitors had met and reached an agreement. Irving recalled Turner complaining about the prices in the area while attending a Ready-Mix Association meeting. Irving also told Jones that he should run the idea by Butler before contact Turner. Irving was of the impression Jones talked with Turner because of the investigation.

Irving denied telling other IMI employees about his discussions with competitors. Irving was also of the impression Butler instructed Steve Lewis to talk with competitors in the Muncie, Indiana area. Irving was not aware of this information prior to the investigation. Irving was not aware of IMI being involved in any other price fixing discusses with competitors.

Irving recalled taking notes during the above meetings, specifically making reference to the \$5 discount and elimination of

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the paving discount. Irving does not recall whether those notes were made on a business card, napkin, or torn piece of paper. Irving stated that he no longer has his notes. When asked whether other attendees took notes, Irving stated Hughey took notes at every meeting. Hughey was like a stenographer always taking notes at the meetings. Irving noted that Hughey was left-handed like the investigating Agent. Irving did not know whether Hughey recorded the names of the people attending the meetings, although Hughey did review his notes and make reference to them during the meeting.

Irving always tried to keep prices at or above the agreed upon discount. IMI was normally higher than most of its competitors and if a salesmen wanted to go below IMI's established price limit, they would have to contact him or Butler. Irving always tried to keep the prices high and on occasions discussed prices with Butler. Irving stated that there were occasions when he priced jobs in accordance with the agreement with competitors.

Irving also admitted he had provided IMI price sheets or announcements to Mann. He also believed he provided an IMI price sheet to his brother-in-law, Joe Burris, who was employed by PMS. The purpose for providing the price sheets was to show that IMI was raising prices and implementing the winter service charge. After providing the price sheets, Irving recalled Mann issuing a similar price increase announcement. The purpose for contacting Mann about the pricing announcement was so that he would follow suit.

Irving recalled hearing that an IMI employee had faxed a price sheet to American Concrete with the notation of a company having a similar going out of business sale. Irving was unsure who sent the fax, but believed it may have been Gary Faust. The purpose of the fax was to tell American that their prices were too low on a particular job. Irving also stated that he may have agreed to contact Mann about the agreement with competitors. If Irving made the statement, it would have been during the second horse barn meeting.

Subsequent to the last horse barn meeting, Irving met several times with Hughey in order to discuss prices. They met two or three times at the Cracker Barrel located off Interstate 69 and 96th Street. They also met a couple of times at the Burger King located off Interstate 69 and 96th Street. Irving recalled meeting Hughey alone, although Butler may have also been present.

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Typically, the meetings were in response to a telephone call from Hughey asking about a bid submitted by IMI. Hughey would ask to meet and Irving would bring along IMI's quote for the particular project. At the meetings, Irving would show Hughey IMI's bid, as was agreed upon at previous meetings to share pricing information with competitors. Irving also believed he met other competitors at the Cracker Barrel, although could not recall the details at this time. If Butler did not attend the meetings, then Irving would have likely told Butler about the meetings. Irving denied ever hearing Hughey or another competitor making the statement that they were no longer going to participate in the agreement.

In 2002, Butler received information that Shelby was going to build a plant in Clermont, Indiana. Butler called Shelby to arrange a meeting. Butler asked Irving to attend the meeting, which was held at the Lone Star Restaurant off Washington and Mittheoffer. Irving recalled himself, Butler, Philip Haehl, Richard Haehl, and Greg Heaby, Shelby's operations guy, meeting at the Restaurant. There was some general small talk and discussions about the horse track before Butler voiced his opposition to Shelby building a plant. Irving was unsure whether an agreement was reached, although added that Shelby eventually built the plant at that location.

In 2003, Irving, Butler, Blatzheim, and Nuckols met at the Loon Lake Lodge. Blatzheim was angry about a bid submitted by Faust. Builders had received information that a customer would show Faust Builder's bid, at which time Faust would undercut the bid by \$1. Blatzheim was angry that IMI was not following the agreement. Irving believed Butler spoke with Faust about bidding against Builders Concrete.

Irving also does not recall receiving price sheets from other competitors, although Butler may have received price sheets from them.

The interview was then terminated.