

AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR SEARCH WARRANT  
  
TO BE FILED UNDER SEAL

*[Handwritten signature]*  
*user*  
*8/1/07*

Your affiant, Steven L. Schlobohm, being first duly sworn, does state that the following is true to the best of his knowledge and belief.

**I. AFFIANT**

1. I am and have been a Special Agent with the Federal Bureau of Investigation (FBI), United States Department of Justice, for just over 14 years. I have been assigned to the following FBI offices: Minneapolis, Minnesota, Laboratory Division; Washington, D.C.; Springfield, Illinois; and Indianapolis, Indiana (where I have been assigned since November 2001). During my employment with the FBI, I have investigated and supervised investigations of violations of federal criminal law, including complex white collar crime investigations. Since September 2003, I have been assigned to a white collar crime squad and have focused primarily on conducting investigations of allegations of public corruption and antitrust price-fixing and bid-rigging conspiracies.

2. I am the case agent responsible for the ongoing investigation of a price-fixing conspiracy among companies involved in the sale and/or distribution of ready mixed concrete in violation of the Sherman Act (15 U.S.C. § 1). The investigation is being conducted in conjunction with the Antitrust Division of the United States Department of Justice before a grand jury in the Southern District of Indiana.

**II. INTRODUCTION**

3. This investigation involves a conspiracy among companies involved in the sale and/or distribution of ready mixed concrete to fix the prices at which ready mixed concrete is

sold.

4. The subjects of this investigation sell and/or distribute ready mixed concrete to commercial and government customers in and around Marion County, Indiana. The company addresses and employees listed below are based on information provided by a cooperating witness (CW), information listed in the Indiana Ready Mixed Concrete Association 2003-2004 membership directory, and information based on my personal observations. The subjects include the following companies and individuals:

- a. CARMEL CONCRETE PRODUCTS CO. (CARMEL)  
12368 Hancock St., Carmel, IN 46032 (Headquarters)  
Scott HUGHEY, President
- b. IRVING MATERIALS, INC. (IMI)  
8032 North State Road 9, Greenfield, IN 46140 (Headquarters)  
Fred ("Pete") IRVING, President  
Price IRVING, Vice President, Plant Operations  
Dan BUTLER, Vice President – Sales
- c. BUILDER'S CONCRETE AND SUPPLY CO., INC. (BUILDER'S)  
9170 E 131st Street, Fishers, IN 46038 (Headquarters)  
Butch NUCKOLS, President
- d. SHELBY MATERIALS, INC. (SHELBY)  
157 E. Rampart Road, Shelbyville, Indiana 46176 (Headquarters)  
Phillip HAEHL, President
- e. BEAVER MATERIALS (BEAVER)  
16101 River Road, Noblesville, IN 46060 (Headquarters)  
Gary BEAVER, Vice President  
Chris BEAVER, Director of Operations

f. AMERICAN CONCRETE CO., INC. (AMERICAN)

845 West Troy Avenue, Indianapolis, IN 46225 (Headquarters)

Jason MANN, President

5. I make this Affidavit in support of an application for search warrants for the following locations (each location is more fully described in Section VI. of this Affidavit as well as in **Exhibit A** to each Search Warrant and incorporated by reference herein), each of which I have probable cause to believe contain and conceal documents (more fully described in **Exhibit B** to each Search Warrant and incorporated by reference herein) that constitute evidence of price fixing for the sale of ready mixed concrete and facsimile machines that are instrumentalities of this crime.

- a. CARMEL CONCRETE PRODUCTS CO.  
12368 Hancock St., Carmel, IN 46032
- b. IRVING MATERIALS, INC.  
8032 North State Road 9, Greenfield, IN 46140
- c. BUILDER'S CONCRETE AND SUPPLY CO., INC.  
9170 E 131st Street, Fishers, IN 46038
- d. SHELBY MATERIALS, INC.  
157 E. Rampart Road, Shelbyville, Indiana 46176
- e. BEAVER MATERIALS  
16101 River Road, Noblesville, IN 46060
- f. AMERICAN CONCRETE CO., INC.  
845 West Troy Avenue, Indianapolis, IN 46225

6. I base this affidavit upon my personal knowledge, information provided to me by other agents assigned to the investigation, and my review of written reports.

7. During the course of my investigation I obtained and reviewed documents and

interviewed a pair of witnesses who together have provided extensive information about price fixing in the ready mixed concrete industry and about those who participated in the conspiracy to fix prices for the sale of ready mixed concrete.

8. The investigation has established that probable cause exists to believe that CARMEL, IMI, BUILDER'S, SHELBY, AMERICAN, and BEAVER have secretly agreed to fix prices for the sale of ready mixed concrete in violation of Title 15, United States Code, Section 1. The investigation has also established that probable cause exists to believe that the office(s), secretarial/assistant area(s), computer(s), and document storage area(s) of the individuals named in paragraph 4. above, located at the addresses listed in paragraph 4. above, contain and conceal documents and objects, as noted in paragraph 5. above, that constitute evidence or instrumentalities of the price-fixing conspiracy.

9. This affidavit does not present all evidence developed in the course of the investigation.

### **III. BACKGROUND**

10. The subject of this investigation is a conspiracy to fix the price at which ready mixed concrete is sold in and around Marion County, Indiana. Ready mixed concrete is a product whose ingredients include cement, aggregate (sand and gravel), water, and, at times, other additives. Ready mixed concrete is made on demand and, if necessary, is shipped to worksites by concrete mixer trucks.

11. Ready mixed concrete is purchased by both commercial customers and also local, state, and federal governments for use in various construction projects, including, but not limited to, bridges, tunnels, and roads.

12. Ready mixed concrete is sold to commercial accounts by prices quoted both verbally and from a price sheet and to government accounts pursuant to sealed bids. Bids to government entities typically contain an affidavit which states that the vendor has engaged in no discussions of price with its competitors for the contract (non-collusion affidavit).

13. Ready mixed concrete prices are typically expressed in terms of price per cubic yard. There is a standard discount off of gross price that yields a net price and there is a subsequent discount off of the net price that yields the final price to the customer. It is the fixing of the latter discount – the discount off of the net price of ready mixed concrete – and the raising of the net price that are the subject of the conspiratorial agreements by and among CARMEL, IMI, BUILDER'S, SHELBY, AMERICAN, and BEAVER. Scott HUGHEY, the President of CARMEL, told CW that CARMEL, IMI, BUILDER'S, SHELBY, and BEAVER agreed to fix the discount at \$5.50 off of net price and to raise net prices. HUGHEY also told CW that those companies subsequently planned to fix the discount at \$3.50 off of net.

14. CARMEL, IMI, BUILDER'S, SHELBY, AMERICAN, and BEAVER are the leading sellers and/or distributors of ready mixed concrete in and around Marion County, Indiana.

15. Based on the information gathered to date, I believe that this price-fixing conspiracy affects sales of ready mixed concrete in and around Marion County, Indiana.

16. In the course of my investigation, I have worked with CW, who has been involved in the ready mixed concrete business for approximately 25 years and is currently serving as an executive with a ready-mixed concrete business in the Indianapolis area. No considerations have been given to, or are expected by, CW in return for his cooperation with the investigation except

that CW has been informed that he will not be subject to prosecution for conduct which he undertakes at the direction of the United States. I have no reason to suspect any bias on the part of CW.

17. The investigation began when CW contacted the Antitrust Division and indicated that he had concerns about a joint venture involving suppliers of stone aggregate in the Indianapolis area. An attorney from the Antitrust Division met with CW shortly after he made his initial complaint. Though at first CW told the attorney that he was concerned about conduct involving a joint venture, CW soon after revealed that his true concern was that companies involved in the sale and/or distribution of ready mixed concrete in the Indianapolis area were conspiring to fix the price at which ready mixed concrete was being sold. CW told the attorney that Scott HUGHEY, the President of CARMEL and a member of the price-fixing conspiracy, had solicited CW to join the conspiracy. The attorney from the Antitrust Division contacted the FBI to assist with further interviews of CW and, subsequently, with consensually monitored conversations between CW and HUGHEY.

#### IV. EVIDENCE OF PRICE-FIXING CONSPIRACY

18. According to CW, in 2001 Tim KUEBLER, who was a vice president of BUILDER'S at the time, called him and asked if they could meet; KUEBLER did not indicate to CW at that time why he wanted to meet. CW agreed to meet KUEBLER at Frish's Big Boy Restaurant. Prior to his meeting with KUEBLER, Jason MANN, president of AMERICAN, had told CW that KUEBLER was "making the rounds" with the various ready mixed concrete companies trying to get a price increase. During their meeting, KUEBLER began feeling CW out about pricing, particularly with respect to one customer – Carnes. CW had a feeling about

where KUEBLER was going with the conversation and so he cut KUEBLER off. CW told KUEBLER that he knew KUEBLER had been going around to other ready mixed companies trying to get them to fix prices. CW did not agree to anything.

19. In early to mid-2003, HUGHEY contacted CW and asked to meet with him. CW agreed and he met with HUGHEY at the Cracker Barrel located at 3840 Eagleview Drive, Indianapolis, Indiana. According to CW, HUGHEY was trying to get CARMEL, IMI, and CW's company together on pricing. In order to do this, HUGHEY proposed that the three companies agree on setting the price at which they sold ready mixed concrete to F.A. Wilhelm Construction Company (WILHELM). After making the proposal, HUGHEY said, "Let's just start there," which CW understood to mean that HUGHEY was trying to put together a larger group of ready mixed concrete companies for a price increase, but that he was starting by getting those three companies on board. HUGHEY told CW that he was frustrated by an inability to get all of the ready mixed concrete companies together on pricing, so he was trying to establish a smaller group first – CARMEL, IMI, and CW's company – and then expand the pricing agreement to a broader group. CW believes HUGHEY chose WILHELM because CARMEL, IMI, and CW's company all did business with WILHELM and because WILHELM would not contract with SHELBY because it was a non-union operation. CW rejected HUGHEY's proposal. For approximately 4-6 months after the meeting, CARMEL took a more aggressive pricing approach with WILHELM and CARMEL and IMI got most of WILHELM's business; only when CW's company lowered his price to match CARMEL's and IMI's did it start getting more of WILHELM's business again.

20. HUGHEY told CW that there have been meetings among CARMEL, IMI,



BUILDER'S, SHELBY, and BEAVER at which each company agreed to fix the prices at which they sell ready mixed concrete and to approach CW's company to see if CW would agree to join the price-fixing conspiracy. In addition, HUGHEY told CW that Chris BEAVER of BEAVER agreed to talk to Jason MANN, President of AMERICAN, to present the conspiratorial plan and that "there was indication [AMERICAN] would be in on that before we got together and we got together." (See paragraph 23.b.) HUGHEY informed CW that several of the meetings among CARMEL, IMI, BUILDER'S, SHELBY, and BEAVER have taken place in a horse barn on property owned by Butch NUCKOLS, President of BUILDER'S, in Noblesville, Indiana.

HUGHEY also told CW that: NUCKOLS and HUGHEY attended those meetings on behalf of BUILDER'S and CARMEL, respectively; Richard and Phillip HAEHL attended on behalf of SHELBY; and that Gary BEAVER attended meetings on behalf of BEAVER. HUGHEY further informed CW that Dan BUTLER represented IMI at one or more of those meetings. CW was uncertain of the names of other representatives who attended these meetings, but was certain from conversations with HUGHEY that representatives of CARMEL, IMI, BUILDER'S, SHELBY, and BEAVER all took part in the price-fixing meetings.

21. According to CW, after he declined HUGHEY's proposal to fix prices for concrete sold to Wilhelm as described in paragraph 19, HUGHEY was persistent in contacting CW and trying to set up more meetings in order to try to persuade him to join the price-fixing conspiracy; CW received a number of telephone calls and messages from HUGHEY following that meeting. Ultimately, CW returned one of those calls and agreed to meet with HUGHEY on November 14, 2003. CW and HUGHEY spoke on November 14 and on several subsequent occasions; during those meetings HUGHEY detailed the price-fixing conspiracy, as detailed in



excerpted transcripts from those meetings in paragraphs 23-25 below.

22. I have monitored a number of telephonic and in-person conversations between CW, who consented to the recording, and HUGHEY. Among the conversations that were recorded were a breakfast meeting on November 14, 2003, a luncheon meeting on November 17, 2003, and a mid-afternoon meeting on February 4, 2004. As discussed in paragraphs 23-25 below, at each of these meetings HUGHEY informed CW of conspiratorial activity and attempted to recruit CW to participate in the conspiracy to fix prices of ready mixed concrete.

23. On November 14, 2003, beginning at approximately 9:00 a.m., HUGHEY and CW met at the Cracker Barrel, 3840 Eagleview Drive, Indianapolis, Indiana. The subparagraphs which follow contain some, but not all, of the discussions that were had at that meeting:

a. HUGHEY: "But, in the meantime, between your meeting and our last meeting . . . the decision was made as of like the 5<sup>th</sup> of this month, that we're all going five-fifty and hope you get a message and if somebody finds yours they'll meet it and try to get with you and let you know that's the program [unintelligible].

CW: "You guys have decided to go up five-fifty?"

HUGHEY: "No, no to bid at five-fifty off, no more than five-fifty off."

CW: "Well who's - everybody on board?"

HUGHEY: "Well, that's supposed to be us [CARMEL], SHELBY, IMI, BEAVER and the message is supposed to get to AMERICAN. Now, its been 2 jobs. In fact now [CW], if you guys don't get on, that isn't going to last. And we all know it and pretty much, you know, my meeting today is to say hey are you with us or not, because everybody's, you know, [unintelligible]. And if everybody's at five-fifty and you're not there, it just, it ain't

gonna work, you know. We aren't going to sit there and lie and let it happen and you can understand that, I'm sure."

b. HUGHEY: "The less players you have in a game the less likelihood you have of having a problem. But, on the other hand, like I told you, the problem is just trust and integrity and that sort of thing. If it's five-fifty one morning and then someone calls us up and says "Hey, I got, you know, CARMEL beat your price or IMI or [unintelligible] beat your price," just say, "Hey that's my number." If you know it's there, you know it's there. [Customers have] lied to us, you know they've lied to us. . . . And if you're where you're supposed to be, then there is no negotiating and that's it. And if you got a problem, call the guy and say what happened, and if they're doing what they said, there's no reason to be [unintelligible]. And I can't sit here and look you in the eye, I'm going to tell you [unintelligible] and not tell you something. But I can't look you in the eye and say I can guarantee all these guys are going to do what they say they're going to do – but I think we've all had it up to maybe here and I would hope we will. But everybody's willing to give that a try."

CW: "So you're saying that SHELBY, BUILDER'S, IMI, BEAVER–"

HUGHEY: "AMERICAN and us [CARMEL]."

CW: "And but you guys haven't talked to AMERICAN?"

HUGHEY: "I haven't but, Chris [BEAVER] was supposed to –"

CW: "Uh"

HUGHEY: "and there was indication they would be in on that before we got together and we got together. I don't remember when, but everybody was there but AMERICAN and Chris [BEAVER] was supposed to get with Jason [MANN]. I didn't hear

anything that he did not. But either, either everybody's got to get in it or I mean if you're not willing to, and if you're not, I understand that [CW] and I would hope you would. But if you don't, then here's my concern is that, if we don't, this thing is going to continue to do this and somebody at some point's going to say – I mean, I don't think anybody's dumb enough to wait until the bank comes and gets it all. . . .”

c. CW: “So you’re saying, the agreement is five-fifty–”

HUGHEY: “Max[imum]”

CW: “is the max discount off of list price?”

HUGHEY: “Uh no, off of net price.”

CW: “Off of”

HUGHEY: “So you don’t have [unintelligible]”

CW: “net price, net price.”

HUGHEY: “And we’ve been doing that for a long, long time. You know, we bid somebody we don’t think we have a chance with we’re not out at a low number. And then that way, yeah, I’m not concerned about that. You know if somebody says, ‘Hey you guys are all the same,’ just say, ‘Look, we’re bidding the numbers and that’s where we’re at.’ . . .”

d. HUGHEY: “Let me say this – in that meeting, that you weren’t there it just came up, we need to do something. Uh, I had told them I tried to get with you and I couldn’t get it done, and it was like well we got two really bad decisions to make: one is let it go how it is; and the other bad decision is let’s get the price and say we’re going do something and go for awhile and hope they get the message – maybe you get to talk with [CW] and then we’ll all go in front - in the back of our mind well this isn’t going to do it very long. They’re not going to let [CW]

[unintelligible]. But I know everybody's thinking it and I said it to a couple of them after the meeting."

CW: "But what do you mean? Like uh, because I see like on this water treatment bid the other day, IMI and BUILDER'S are eleven dollars off. I heard that from two sources, two pretty reliable sources. And so, I'm thinking, what are these guys trying to do? Teach me a lesson where the bottom is? I mean is that the direction these guys are trying to go?"

HUGHEY: "That's disheartening if that's true, because we talked about that. Here we are, since the fifth we've been doing the number thing and we're all [unintelligible] here's fifteen thousand yards, what are we gonna do, what are we gonna do? And we decided what we were going to do is, we were gonna hold the number "

CW: "So you guys are already bidding five-fifty?"

HUGHEY: "Yeah, unless we find your number and then we'll meet it and we're not taking it down. Now, I'm just telling you how it went on our end of it. . . ."

e. CW: "If I don't agree to go along with it, I mean what's the, what do I have to look forward to here? You know, a big gang-bang at my expense? I mean - "

HUGHEY: "If you don't go along with it?"

CW: "Yeah, if I don't go along with it. I mean you know, I mean I can see, you know—some guys going after my customers, and some things like that to try to - "

HUGHEY: "There's no plan like that or any - here's the way I see it. If you don't go along with it, it's like we all been talking, it's as stupid, and dumb, and going down hill as it has been."

CW: "Right."

HUGHEY: "And I think everybody's had enough of it but we all got to be there if that's gonna work and we gotta do what we say we're gonna do and we got to, we got to put some integrity back in. . . ."

f. HUGHEY: "The other thing – two other things I want to say is that one, IMI is coming out with an increase April first, two bucks, and there's a differential in bag content, versus – it's April, we got time. I'm just telling you that's what they're doing. And the differential between bag and performance is probably going up a little because that's got out of whack over time and probably something on lightweight – don't know what that is yet. And then, the other plan was December fifteenth we go to three-fifty off.

CW: "So you're five-fifty off now, and you want to go to three-fifty, December fifteenth?"

HUGHEY: "Yeah, we started this on the fifth of November. But can I get with you, Monday?"

CW: "Yeah."

24. On November 17, 2003, beginning at approximately 2:00 p.m., HUGHEY and CW met at the Cracker Barrel, 3840 Eagleview Drive, Indianapolis, Indiana. The subparagraphs which follow contain some, but not all, of the discussions that were had at that meeting:

a. HUGHEY: "So, it's real simple. It can work if everybody wants it to work, if it doesn't, it's just a gain for a period of time and then we'll get real stupid."

b. CW: "But I also understand that, you know, I mean, if it's me against everybody else, it can kinda go against me."

HUGHEY: "Well I would hope you wouldn't interpret what's been going on

as, you against everybody else.”

CW: “Well, I’m just saying, if, if I’m the only one not agreeing to do something like this and um, everybody else is on board to do it, I mean, I would, well, exactly why I think the contact was made with [my boss]. I mean, I mean he admitted that, right? I mean – ”

HUGHEY: “Yeah.”

CW: “So that’s what I’m saying.”

HUGHEY: “But, but what you’ve said about everybody’s on board but you at this point, that is a fact. It’s a point of fact, I can’t help that. But if, that’s why I want to, and I understand—you know—this has worked before you saying what you just said, and I understand why you feel that way.”

c. HUGHEY: “You know the schedule, and I’d, I’d like everybody to keep on it. And if you’re gonna look and see what’s out there and kinda try to follow what’s there, then I understand. But if you’re telling me, ‘uhhhhh, I’ll be close, but,’ don’t . . .”

d. CW: “Well, I gotta run Scott. Um, I’ll um, you know, I’ll just keep an eye on what’s going on and um, you know um, you know, see what happens.”

HUGHEY: “One last thing is, um, Butch [NUCKOLS], he just said, you know, he would forget the whole deal if you want to move him over here now. But he’d just like to talk to you [unintelligible] for Jon [Miller].”

25. On February 4, 2004, beginning at approximately 2:30 p.m., HUGHEY and CW met at Mountain Jack’s Restaurant, located at 6901 W. 38<sup>th</sup> Street, Indianapolis, Indiana. The subparagraphs which follow contain some, but not all, of the discussions that were had at that meeting:

a. HUGHEY: "I just kinda got down to, it's too soon, we're gonna come out with a price increase, let's wait until January. So now, that's all priced there. Strategic planning meeting or or something the other day where I see [unintelligible] the parking lot. I said, 'Hey, when are we gonna do this?'" and just kinda chuckled. He said, 'Well, I think -- let's get this out first, and you know just, just -- "

CW: "Get what out first?"

HUGHEY: "The price increase. Which they supposed to been out the end of last week. Ours is gonna go out the end of, ours is gonna go out next Friday, and it's two dollars on performance, two-fifty a bag, and two dollars for chloride. High range water reducer is, uh, I mean the light-weight stuff I think they're twenty-one dollars, and I don't remember what it is with a high range water reducer. But ours was like nineteen-fifty, and we're gonna raise ours up that -- "

CW: "Uh, well I'm sure I'll see something, uh -- "

HUGHEY: "Bill sent me, uh, Richard [HAEHL] sent a thing about we're increasing two dollars here, two fifty here, that kind of increase, not a price sheet. And BUILDER'S is coming out sometime soon -- April first."

CW: "Well, what'd everybody else think about HAEHLs?"

HUGHEY: "Uh, I don't know. I didn't talk to anybody. You know, that's what the cement people do; that's what they all wanted to do, and I said, we need to get some of this other stuff up and, uh, really, most people, a lot of people, don't pay much attention to that. They'll put [unintelligible] stuff at the bottom--"

CW: "Right."



HUGHEY: "chlorides – a buck and a half, two bucks – and that was Richard [HAEHL]'s point. High early this and that, and I said probably not Richard but if you get out and we're all trying to be on a level playing field, and yours is different then somebody uses that and that gets twisted into something else, and then that guy isn't doing what he was supposed to do, screw it. I'm not doing it, and we're all kind of sensitive to that, you know. He said yeah, he says well, he says, you know, we'll send that letter, we can, you know, we'll bid and stuff, we can do what we want on it when we bid it. I said yeah, you know where it is."

CW: "So what, they're just waiting to get the price increase letters out and--"

HUGHEY: "then go with something else, yeah. Then, then I don't know--"

CW: "Then work off that, I'm--"

HUGHEY: "Well, oh well, well its April first, right now it's just five-fifty off at the max. I got a call, I don't know, before, what is it, Westfield School or something from, uh, IMI that [unintelligible] was at something less than that and **we're gonna go there, that's kinda our agreement** – if something comes up, we're gonna do it, so we did too--"

b. HUGHEY: "Yeah, I think it was another sixty-three, eighty-five, is a dollar. I don't know what the numbers were, [CW] but, uh, I don't know, we just, we just, all need to get there, this is crazy."

CW: "Well, I was just kind of, you know, I, I hadn't heard from you for a while, I was just curious. It sounded like, you know, **I didn't know if there was a meeting at the horse barn again and everybody got--**"

HUGHEY: "No. Hey, and when we do, I, I know you may be a little sensitive about you're not there and you get talked about all--"

CW: "I don't care."

HUGHEY: "that's--"

CW: "I don't care."

HUGHEY: "that's, it isn't happening other than I mean if someone's pointing a finger point it whoever they're pointing it at, but no there hasn't--"

CW: "I'd rather be on the outside."

HUGHEY: "I understand. I'm not real comfortable with that either, and uh, people, you just don't want to get too easy, too bold, too lackadaisical about that stuff, and, uh, and that that was like last Friday, or a week ago Thursday, think it was last Thursday was the strategic planning thing, and that's when [unintelligible] said, hey, I said I got some paperwork, no I said something on my way out. I said, 'Hey, when we gonna re-visit this three-fifty thing?' I said, 'Well cuz I just wanted to give you this, and I think we ought to get this out first and see how it goes.' So maybe they're thinking, uh, I don't know, March first or something, I mean we're already into February."

CW: "So who all has a price increase out?"

HUGHEY: "Uh, I think, I think that SHELBY is the only one and IMI's is out. I haven't seen it he gave me the --"

CW: "So, when he said we are gonna try this, did he mean SHELBY and IMI or just we as in IMI?"

HUGHEY: "IMI handed -- everybody's gonna go up two dollars or almost two-fifty on bags and some of those miscellaneous things -- calcium's going to two bucks -- everything else pretty much the same. Uh, lightweights twenty-one, I don't remember what it is

with the high range water reducer but that's where we're gonna be. And I told them, I said, 'I want to know where that is cause I want to be with it when it comes out.' He handed me a copy last Thursday, I think it was, and that's when he said, 'Well, I think we want to see how this goes first' and thinking, why you want to see how it goes, I mean it goes? If you put it out there and everybody's there, it should go, but, I mean I didn't say that but – and he said 'Let's get this increase out first and then we'll see how it goes from there.' So, I haven't brought it up again with anybody. I've been chasing other things frankly for a couple of weeks and, uh, and I think they said that they, theirs would have been out by last Friday, and I don't know if that's in someone's hands or in the mail. And ours is going to be in the mail by next Friday – Thursday or Friday. I assume you're gonna follow suit. I don't know that you've ever said that, but – ”

CW: “Um, yeah, I don't know why not. I mean, I guess, you know, I'm gonna take a look at what all it involves and, um, sounds like it's a little more than just two and two-fifty if you're going up on a lot of the miscellaneous items.”

HUGHEY: “Well, it just, it's, uh, I think we were at a buck-fifty on calcium, they were at a buck, seventy-five. They went to two dollars. And I think that's the only change.”

c. CW: “We'll see what happens. But, well, I guess you know, I'll wait and see what I get in the mail, and take a look at it. And so April first is what you guys are all shooting for?”

HUGHEY: “Yeah. April first – two dollars and two-fifty on bags, and two dollars on calcium. And I don't know where you were on light-weight, but we were like nineteen, nineteen-fifty, they're at twenty-one dollars; you, you probably get a copy of it. I can send you one if you want me to.”

CW: "Yeah, I don't, I don't, I think we're about nineteen-fifty on light-weight, right now."

26. HUGHEY contacted CW by telephone on March 12, 2004 and asked CW if he was going to go along with the scheduled price increase. Pursuant to instructions from the FBI, CW told HUGHEY that CW's company was going to go along with the price increase. CW subsequently distributed a letter dated March 30, 2004 and a price list with an effective date of April 15, 2004, in which CW was indicating that CW's company was increasing its prices for ready mixed concrete in conformity with the price-fixing agreement.

27. CW has told me that he has observed in the marketplace and that salespeople at his company have told him that SHELBY, IMI, BUILDER'S, BEAVER, AMERICAN, and CARMEL have been pricing ready mixed concrete in conformity with the agreed-upon increase in net prices and the \$5.50 discount off of net. CW recognized that there have been a few occasions in which companies involved in the price-fixing conspiracy have sold ready mixed concrete on terms different than those that had been agreed to, but that such instances are rare.

28. CW has provided me with price lists from CARMEL and IMI, as well as price increase announcements from SHELBY, evidencing those companies' ready mixed concrete pricing policies, which, according to CW, reflect the agreed-upon increase in net prices.

a. CW received a CARMEL price list directly from CARMEL; it was faxed from a facsimile machine at CARMEL's offices – as evidenced by the transmission information contained in the facsimile header – and received by a facsimile machine at the offices of CW's company. The facsimile number in the facsimile header (317-573-5414) matches the facsimile number listed in the Indiana Ready Mixed Concrete Association 2003-2004 membership directory

for CARMEL; that directory also lists CARMEL's address as 12368 Hancock Street, Carmel, IN 46032. Again according to the transmission information contained in the facsimile header, the CARMEL price list was faxed to CW's company on February 26, 2004, five weeks prior to its April 1 effective date. The fact that CARMEL engaged in direct communications with a competitor regarding prospective pricing is consistent with the price-fixing conspiracy detailed by HUGHEY and described in this affidavit and reinforces the probable cause that the conspiracy existed.

b. CARMEL also forwarded an IMI price list to CW's company; the IMI price list was faxed from a facsimile machine at CARMEL's offices – as evidenced by the transmission information contained in the facsimile header – and received by a facsimile machine at the offices of CW's company. The facsimile number in the facsimile header (317-573-5414) matches the facsimile number listed in the Indiana Ready Mixed Concrete Association 2003-2004 membership directory for CARMEL; that directory also lists CARMEL's address as 12368 Hancock Street, Carmel, IN 46032. Again according to the transmission information contained in the facsimile header, the IMI price list was faxed to CW's company on February 26, 2004, five weeks prior to its April 1 effective date. The fact that CARMEL (a) was in possession of a competitor's price list five weeks before it was effective and (b) was engaged in direct communications with CW's company, a competitor, regarding prospective pricing is consistent with the price-fixing conspiracy detailed by HUGHEY and described in this affidavit and underscores the probable cause that the conspiracy existed.

c. CW also received a SHELBY price increase letter directly from CARMEL. The SHELBY price increase letter was faxed from a facsimile machine at CARMEL's offices – as

evidenced by the transmission information contained in the facsimile header – and received by a facsimile machine at the offices of CW's company. The facsimile number in the facsimile header (317-573-5414) matches the facsimile number listed in the Indiana Ready Mixed Concrete Association 2003-2004 membership directory for CARMEL; that directory also lists CARMEL's address as 12368 Hancock Street, Carmel, IN 46032. The SHELBY price increase letter was faxed to CW's company on February 26, 2004, five weeks prior to its April 1 effective date. The fact that CARMEL was engaged in direct communications with CW's company, a competitor, regarding a competitor's prospective pricing is consistent with the price-fixing conspiracy detailed by HUGHEY and described in this affidavit and reinforces the probable cause that the conspiracy existed.

29. CW also received a letter in the United States mail dated October 31, 2003 from Jason MANN, President of AMERICAN, addressed to CW's company. In that letter MANN details a "Winter Conditions" charge that AMERICAN will be instituting beginning in December, 2003 as well a \$2.00 across-the-board price increase beginning April 1, 2004.

30. I personally interviewed Jason MANN, President of AMERICAN, on two occasions: March 21, 2004 at his residence (956 Breaside Lane, Greenwood, Indiana 46143); and on March 29, 2004 at AMERICAN's offices (845 West Troy Avenue, Indianapolis, Indiana 46225).

a. During the March 21 interview, Mann discussed AMERICAN's business generally as well as how he came to be in charge of AMERICAN's operations after the death of his father. MANN told me that ready mixed concrete companies would communicate their prices directly to competitors, faxing price sheets to each other; he noted specifically that IMI and



SHELBY had done so. MANN also told me that some ready mixed concrete companies wanted ready mixed concrete companies to reach an agreement to set prices and that Fred ("Pete") IRVING of IMI was the driving force behind the price-fixing scheme. MANN also told me that there is an Indiana Ready Mix Association, which is controlled by IMI.

b. During the March 29 interview, MANN informed me that he had received communications directly from another ready mixed concrete company regarding a bid proposal he had submitted for the Carmel School District. Specifically, the competitor faxed MANN a copy of AMERICAN's bid proposal for the Carmel School District project. That facsimile contained a header suggesting to Affiant that it had been faxed from IMI Sales. Moreover, the facsimile, which I have reviewed, contained handwritten language calling into question the price at which AMERICAN bid the project. Also during that March 29 interview, MANN told me that Price IRVING was taking over operations at IMI and that Butch NUCKOLS of BUILDER'S is the ringleader behind the Indianapolis area price-fixing scheme for ready mixed concrete.

c. I understood MANN's statements to me that Fred ("Pete") IRVING of IMI was the driving force behind the price-fixing scheme and that Butch NUCKOLS of BUILDER'S is the ringleader behind the Indianapolis area price-fixing scheme to mean that Fred ("Pete") IRVING was a leading proponent of the price-fixing scheme, and that Butch NUCKOLS was responsible for implementing the scheme.

31. The investigation has established that probable cause exists to believe that CARMEL, IMI, BUILDER'S, SHELBY, AMERICAN, and BEAVER regularly use the United States mail in the conduct of their ready-mixed concrete business, including, but not limited to, the distribution of invoices and the receipt of payments. In addition, CW has told me that SHELBY,



BEAVER, and AMERICAN have each purchased trucks used in their ready mixed concrete business from out-of-state manufacturers and that CARMEL, BUILDER'S, IMI, and BEAVER have each purchased plants used in their ready mixed concrete business from out-of-state manufacturers. Moreover, some of those companies provide ready mixed concrete for projects that directly involve interstate means of transportation, including, but not limited to: SHELBY's work on United States Interstate 74; IMI's provision of concrete for the Indianapolis International Airport and various interstate highway projects; and BUILDER's work on the construction of Allisonville Road, which connects directly to United States Interstate 465. There is also probable cause to believe that in conducting the price-fixing conspiracy, CARMEL, IMI, BUILDER'S, SHELBY, AMERICAN, and BEAVER continued to regularly use the United States mail to distribute invoices and to receive payments.

32. I believe that the ready mixed concrete price-fixing conspiracy described in this affidavit continues to be in operation, though, as noted in paragraph 27, there have been deviations from the conspiracy on occasions. In addition to the recordings described in paragraphs 23-25, I have received price lists effective April 1, 2004, which CW has told me are consistent with the conspiratorial scheme.

#### V. EVIDENCE TO BE SEIZED

33. The facts set forth above establish probable cause to believe that (a) CARMEL, IMI, BUILDER'S, SHELBY, BEAVER, and AMERICAN have been engaged, and continue to engage, in a criminal conspiracy to fix prices for ready mixed concrete and (b) evidence and instrumentalities of the conspiracy are located at these companies in the areas listed in paragraph 48 associated with Scott HUGHEY, Fred ("Pete") IRVING, Price IRVING, Dan BUTLER, Butch

NUCKOLS, Phillip HAEHL, Gary BEAVER, Chris BEAVER, and Jason MANN.

34. All the documents requested are business records of the companies named in paragraph 4. It has been my experience, and CW has confirmed, that records of price fixing are usually kept and maintained at the participant's office, so that they may be referred to over the course of the conspiracy. Such records include, but are not limited to, such items as: price announcements and other documentation of prices offered and charged; handwritten notes reflecting the agreed-upon prices; notes or memoranda of meetings at which prices were fixed; documentation of telephone conversations between or among participants in the conspiracy, including notes or memoranda of the conversations and charge records for the conversations; names, addresses, telephone numbers, and electronic mail (e-mail) addresses of co-conspirators; and notes, memoranda, correspondence, reports, and other records and documentation relating to any agreements, meetings, conversations, or other communications or contacts between or among companies that sell or distribute ready mixed concrete.

35. Where a company secures business through a competitive bidding process as the companies listed in paragraph 4. do at times, conspiratorial records may also include bid files and estimate work sheets which contain cost, overhead, and profit data used in preparing a bid. Furthermore, some of the documents to be seized must be maintained for use in preparing federal and state income taxes for use in the event of an audit; the Internal Revenue Service (IRS) informs business taxpayers to maintain records for at least three years. IRS, *Business Recordkeeping*, [www.irs.gov](http://www.irs.gov).

36. Further, it is often helpful in an antitrust investigation to obtain pricing and sales data for the period prior to known conspiratorial activity in order to obtain evidence of pricing or

sales changes caused by the conspiracy. Thus, the items to be seized include pricing and sales data for a period of time prior to the known conspiratorial activity. CW told me that the ready mixed concrete companies involved in the price-fixing conspiracy issue price lists on average once a year, though in the last five years those companies may have only issued two or three price sheets each. For that reason, in order to secure relevant documents for both the conspiracy and pre-conspiracy period, it is necessary to seize documents dating back to 1999. I am, therefore, requesting a search warrant for the documents described in **Exhibit B** to the Search Warrant.

37. As noted in paragraph 30.a. Jason MANN, President of AMERICAN, told me that ready mixed concrete companies would fax price sheets to each other and, specifically, that IMI and SHELBY had faxed price lists to competitors. MANN also told me, as noted in paragraph 30.b., that a ready mixed concrete company communicated directly with him by means of a facsimile communication regarding a bid by AMERICAN. Moreover, as detailed in paragraphs 28.a., 28.b., and 28.c., CARMEL faxed price lists from CARMEL and IMI and a price increase letter from SHELBY directly to CW's company, a competing ready mixed concrete company, to prove that other ready mixed concrete companies were pricing consistently with the price-fixing conspiracy. Therefore, facsimile machines maintained and used by CARMEL, IMI, BUILDER'S, SHELBY, AMERICAN, and BEAVER are instrumentalities of crime, used to, among other things, facilitate illegal price communications among competitors and will be seized to provide information such as the dates and times pricing information was communicated as well as identifying information unique to the facsimile machines.

38. It has been my experience, and has been confirmed by CW, that business records such as the price lists, correspondence, and other types of documents to be seized are frequently

created, stored, and maintained with computer hardware equipment and software, such as disks, magnetic tapes, programs, and computer printouts. Additionally, such information may be stored on personal laptop computers, e-mail servers, and in other electronic devices.

39. During the course of this investigation I have consulted with Special Agent E. Fox, FBI - Indianapolis, Indiana. Agent Fox has been with the FBI for approximately 7 years and has received extensive training in the area of computer forensics and has served as a field computer forensic examiner (CFE). The training he has received includes the planning, preparation, and execution of search warrants involving computers and related equipment, electronic data preservation, and the recovery, documentation and authentication of evidence. Agent Fox has assisted in the preparation and execution of over 40 search warrants involving computers, including their seizure and subsequent forensic examination for evidence.

40. Based upon Agent Fox's training and experience, he advised that, in order to completely and accurately retrieve data maintained in computer hardware or on computer software, to insure the accuracy and completeness of such data, and to prevent the loss of the data either from accidental or programmed destruction, it is often necessary that the computer equipment, peripherals, related instructions in the form of manuals and notes, as well as the software utilized to operate such a computer, be seized and subsequently processed by a qualified computer specialist in a laboratory setting. This is true because of the following:

- a. Technical requirements. Analyzing computer systems for criminal evidence is a highly technical process requiring expert skill and a properly controlled environment. The vast array of computer hardware and software available requires even computer experts to specialize in some systems and applications. Thus it is

difficult to know prior to the search which expert possesses sufficient specialized skills to best analyze the system and its data. No matter which system is used, however, data analysis protocols are exacting scientific procedures, designed to protect the integrity of the evidence and to recover even hidden, erased, compressed, password-protected, or encrypted files. Since computer evidence is extremely vulnerable to tampering or destruction (both from external sources or from destructive code imbedded in the system as a "booby trap"), removing the computer from the search site (where it is extremely difficult to maintain its security during the potentially lengthy search process) to a controlled environment is often essential to its complete and accurate analysis. Further, the determination as to the existence and types of computer security devices which could cause destruction of evidence is extremely time consuming and could substantially lengthen the duration of the search and thus increase the difficulty of securing the computer system on-site during the search.

- b. The volume of evidence. Computer storage devices (such as hard disks, diskettes, tapes, laser disks, Bernoulli drives, etc.) can store the equivalent of thousands of pages of information. Additionally, a user may seek to conceal criminal evidence by storing it in random order and/or with deceptive file names on the hard drive or other storage devices. Searching authorities are thus required to examine all the stored data to determine which particular files are evidence of criminal activity and fall within the scope of the Search Warrant. See Paragraph 47 below. This searching and sorting process can take weeks or months, depending on the volume

of data stored, and it would be impractical to attempt this kind of data analysis on-site. Furthermore, records stored in computer storage devices and responsive to the warrant may be retrievable using sophisticated reconstruction methods despite the fact that those records were purportedly erased or deleted. Should such data retrieval be necessary, it could substantially lengthen the duration of the search and thus increase the difficulty of securing the computer system on-site during the search.

41. Despite these facts, I recognize that the companies listed in paragraph 4. are functioning companies and that a seizure of their computer network(s) may have the unintended and undesired effect of limiting the companies' ability to provide legitimate services to its customers. In response to these concerns, the agents who execute the Search Warrant will take an incremental approach to minimize the inconvenience to the companies being searched and to minimize the need to seize equipment and data. This incremental approach will be explained to all of the agents on the search team before the search is executed.

42. According to Agent Fox, if the CFE decides that printing out, making electronic copies of specific files, or imaging those parts of the subjects' computers or other electronic storage devices likely to contain documents described in Exhibit B to the Search Warrant is impractical or insufficient, then the FBI will seize the relevant components of the company's computer hardware, equipment and other peripherals, including magnetic storage devices and the central processing units (CPUs), in order to fully retrieve data from the computer system by searching these components in a laboratory or controlled environment.

43. Similarly, according to Agent Fox, in order to completely and accurately retrieve



data maintained on network servers it may be necessary to seize those servers so that they may be processed by a qualified computer specialist in a laboratory setting. This may be necessary where the search location does not maintain an adequate backup system, where employees at the search location lack requisite knowledge regarding the servers, or where knowledgeable employees are uncooperative. Servers will be seized only as a last resort.

a. The FBI will follow a three-step process before resorting to the seizure of network servers: first, they will attempt to make backup copies of files present on the servers at the search location; second, if they are unable to make backup copies of the servers, they will selectively copy files responsive to items identified in **Exhibit B** to the Search Warrant from the servers; and third, if and only if they are unable to copy those files from the servers, the FBI will seize the servers, immediately bring them to a laboratory or controlled environment, copy the servers, and promptly return the servers to the search location.

b. The FBI recognizes that seizure of servers may significantly hamper the ongoing business operations of the compan(y/ies) from whom servers are seized and, therefore, the FBI will: seize servers only where necessary; make copying seized servers a top priority; and return any seized servers to the search location as promptly as practicable. If circumstances arise in the execution of this Search Warrant such that it becomes necessary to seize servers, the CFE will take reasonable measures to protect the rights and privacy of all individuals whose data or information is contained on seized servers, but which is not responsive to the warrant. Furthermore, access to such non-responsive data and information will be denied to all individuals other than the CFE and other computer analysts designated by the FBI.

44. In addition, Agent Fox stated that the accompanying software must also be seized,



since it may not be possible without examination to determine that it is standard, commercially available software. It is necessary to have the software used to create data files and records in order to read the files and records. In addition, without examination, it may not be possible to determine that the diskette purporting to contain a standard commercially available software program has not been used to store records instead.

45. Agent Fox also informed me that any data security device (including passwords) and instruction manuals, meaning any and all written or printed material which provides documentation, instructions or examples concerning the operation of a computer system, computer software, and/or any related device are also necessary to properly operate the specific system in order to accurately obtain and copy the records that fall within the scope of the Search Warrant.

46. Thus, based on the information set forth above, if the CFE determines during the search that information contained in the computer system and related computer equipment and storage devices cannot be successfully retrieved, printed, copied, or imaged to depict the exact environment in which the data was created on-site, I seek the authority to seize the following types of devices and materials and to conduct an off-site search of the hardware and software for the evidence described above:

- a. Computer hardware, meaning any and all electronic devices which are capable of analyzing, creating, displaying, converting, or transmitting electronic or magnetic computer impulses or data. These devices include those computers, computer components, network servers, computer peripherals, cables, word processing equipment, modems, monitors, printers, plotters, encryption circuit boards, optical scanners, external hard drive, and other computer-related electronic devices

including personal digital assistants, which relate to the storage, production or processing of documents and other records identified in this Affidavit (including those listed in **Exhibit B**) or which, in the judgment of the CFE, will be necessary to rebuild the system and to have it function properly off-site;

- b. Computer software, meaning any and all instructions or programs stored in the form of electronic or magnetic media which are capable of being interpreted by a computer or related component. The items to be seized include operating systems, application software, utility programs, compilers, interpreters, and other programs or software used to communicate with computer hardware or peripherals either directly or indirectly via telephone lines, radio, or other means of transmission; and
- c. Any data security device (including passwords) and instruction manuals, meaning any and all written or printed material which provides documentation, instructions or examples concerning the operation of a computer system, computer software, and/or any related device. Further, even if imaging is successful, instruction manuals and data security devices (including passwords) may need to be seized in order to aid in the off-site forensic analysis of the evidence.

47. Agent Fox informed me that the analysis of electronically stored data, whether performed on-site or in a laboratory or other controlled environment, may entail any or all of several different techniques. Such techniques may include, but shall not be limited to: surveying various file "directories" and the individual files they contain (analogous to looking at the outside of a file cabinet for the markings it contains and opening a drawer capable of containing pertinent files, in order to locate the evidence and instrumentalities authorized for seizure by the warrant);

“opening” or reading the first few “pages” of such files in order to determine their precise contents; “scanning” storage areas to discover and possibly recover recently deleted data; scanning storage areas for deliberately hidden files; or performing electronic “key word” searches through the entire electronic storage area to determine whether occurrences of language contained in such storage areas exist that are intimately related to the subject matter of the investigation.

48. Agent Fox also stated that e-mail may be stored individually on a user’s computer or, in larger commercial entities, may reside collectively in a specialized server commonly referred to as an “e-mail server.” For instance, under some e-mail applications such as Microsoft Outlook, the e-mail for all individuals on the system is maintained in one large database-type file with a .pst extension. To obtain the e-mail messages of one individual, it is sometimes necessary to image the entire e-mail database on an e-mail server, deconstruct that file, then withdraw the required data or information. If such circumstances arise in the execution of this warrant, the CFE will take reasonable measures to protect the rights and privacy of all individuals whose e-mail does not contain data or information responsive to the warrant. Furthermore, access to the non-responsive portion of the .pst file will be denied to all individuals other than the CFE and other computer analysts designated by the FBI.

#### **VI. PREMISES TO BE SEARCHED**

49. The search will be limited to the office(s) of the individual employees named in Exhibit A to the Search Warrant; any file or storage rooms adjacent to their office(s); the areas where their secretar(y/ies)/assistant(s) sit and work; and all computer rooms and areas (including the contents of any network or e-mail servers), document storage areas, filing cabinets, filing containers, facsimile machines, and safes on the premises that are likely to be under their control or

that are likely to contain their business records, files, correspondence, calendars, or other documents. These areas are located within the offices of those employees' respective companies, as more particularly described in Exhibit A to the Search Warrant.

50. There is probable cause to believe that evidence of the price-fixing conspiracy and relevant facsimile machines are located on the premises to be searched (as described in Exhibit A), including:

a. CARMEL – the fact that CW received a price sheet directly from CARMEL with prices effective April 1, 2004 and which contained the address of the premises to be searched – 12368 Hancock Street, Carmel, Indiana 46032 – in the text of the document as well as a facsimile header indicating it was sent from a facsimile machine with the same number (317-573-5414) as the number listed for the facsimile machine at CARMEL's Hancock Street address (i.e. the premises to be searched). Moreover, the price sheet was printed on paper bearing the name "Carmel Concrete Products," CARMEL's logo, as well as the address "12368 Hancock Street, Carmel, Indiana 46032" and "Fax 573-5414." Moreover, that price sheet indicates that CARMEL was pricing its ready mixed concrete consistent with the conspiratorial agreement described above in subparagraphs 23.f., 25.a., 25.b., and 25.c. In addition, the address of the premises to be searched is consistent with the business address of CARMEL as listed with the Indiana Ready Mixed Concrete Association 2003-2004 membership directory and in the Dun & Bradstreet Business Information Reports. In addition, I have personally observed the location listed as the premises to be searched and my observations give me reason to believe that CARMEL conducts business operations from that location.

b. IMI – the fact that CW received a ready mixed concrete price sheet with an

effective date of April 1, 2004 on IMI letterhead, which lists IMI's address as "8032 North State Road 9, Greenfield, IN 46140," the same as the premises to be searched, and indicating that the company conducts ready mixed concrete business from that location. Moreover, the premises to be searched is listed in the Dun & Bradstreet Business Information Reports as being the address for IMI, the premises to be searched is consistent with the business address of IMI as listed with the Indiana Ready Mixed Concrete Association, and IMI's own website – [www.irvmat.com](http://www.irvmat.com) – lists the premises to be searched as the location of the branch office serving the company's "Central" region. In addition, I have personally observed the location listed as the premises to be searched and my observations give me reason to believe that IMI conducts business operations from that location.

c. **BUILDER'S –**

1. the fact that the premises to be searched – 9170 E 131st Street, Fishers, IN 46038 – is listed in the Dun & Bradstreet Business Information Reports as being the address for BUILDER'S and is consistent with the business address of BUILDER's as listed with the Indiana Ready Mixed Concrete Association. Moreover, BUILDER'S own website – [www.bcconcrete.com](http://www.bcconcrete.com) – lists the company's office telephone number as (317) 849-1788 and facsimile number as (317) 849-1444, both of which match the numbers listed in the Dun and Bradstreet report, which identifies the premises to be searched as the address for BUILDER'S. In addition, I have personally observed the location listed as the premises to be searched and my observations give me reason to believe that BUILDER'S conducts business operations from that location.

2. CW has additional bases for knowing that Butch NUCKOLS' maintains an office at the 9170 E 131st Street, Fishers, IN 46038 address. Within the past year,

CW learned from a contractor that NUCKOLS was upset that CW's company was involved in concrete work for a car dealer on a parcel of land directly across the street from BUILDER'S offices at the premises address. BUILDER'S was the previous owner of that land and the CW learned from the contractor that NUCKOLS told the contractor that he was not going to sit in his office and watch another concrete company (*i.e.* CW's company) pour concrete on land that BUILDER'S sold. In addition, CW visited BUILDER'S offices at 9170 E 131st Street, Fishers, IN 46038, seven to eight years ago and observed Butch NUCKOLS emerge from his office at that location.

d. **BEAVER** – the fact that the premises to be searched – 16101 River Road, Noblesville, IN 46060 – is listed in the Dun & Bradstreet Business Information Reports as being the address for BEAVER and is consistent with the business address of BEAVER as listed with the Indiana Ready Mixed Concrete Association. Moreover, the Associated Builders and Contractors of Indiana website – [www.abc-indy.org](http://www.abc-indy.org) – lists BEAVER's telephone number as (317) 773-0679 and facsimile number as (317) 773-0048, both of which match the numbers listed in the Dun and Bradstreet report, which identifies the premises to be searched as the address for BEAVER. Furthermore, CW attended a meeting regarding a county road-building project at BEAVER's offices at 16101 River Road several years ago and CW knows that location is BEAVER's headquarters. In addition, I have personally observed the location listed as the premises to be searched and my observations give me reason to believe that BEAVER conducts business operations from that location.

e. **AMERICAN** – the fact that Affiant interviewed Jason MANN, President of AMERICAN, at 845 West Troy Avenue, Indianapolis, IN 46225 on March 29 (see paragraph 30.); during that interview, Affiant personally observed the location listed as the premises to be searched



and Affiant's my observations give Affiant reason to believe that AMERICAN conducts business operations from that location.

f. **SHELBY** – the fact that the premises to be searched – 157 E. Rampart Road, Shelbyville, Indiana 46176 – is consistent with an address of SHELBY listed with the Indiana Ready Mixed Concrete Association. I have personally observed the location listed as the premises to be searched and my observations give me reason to believe that SHELBY conducts business operations from that location. In addition, I made a telephone call to (317) 398-4485, the telephone number listed in the Indiana Ready Mixed Concrete Association 2003-2004 membership directory as the telephone number for SHELBY's Shelbyville offices (as identified in **Exhibit A** to the Search Warrant), posing as a marketing representative and confirmed with the person receiving the call that the location is SHELBY's headquarters and that Phillip HAEHL is the onsite point of contact for that location.

51. In order to minimize the prospect of the removal and subsequent destruction of any of the records identified in **Exhibit B** to the Search Warrant, the search will include the briefcases, laptop computers, and other movable document containers located in the offices of, in the possession of, or readily identifiable as belonging to the individuals identified in **Exhibit A** to the Search Warrant.


## **VII. CONCLUSION**

52. In light of the foregoing, I respectfully request that a search warrant be issued authorizing law enforcement personnel to search the office(s) of the individual employees named in **Exhibit A** to the Search Warrant; any file or storage rooms adjacent to their office(s); the areas where their secretar(y/ies)/assistant(s) sit and work; and all computer rooms and areas (including the



contents of any network or e-mail servers), document storage areas, filing cabinets, filing containers, facsimile machines, and safes on the premises that are likely to be under their control or that are likely to contain their business records, files, correspondence, calendars, or other documents, all located within the offices of those employees' respective companies, as more particularly described in **Exhibit A** to the Search Warrant, and to seize the records and documents listed in **Exhibit B** to the Search Warrant applied for herein. These records and documents constitute evidence of a conspiracy to fix prices in violation of Title 15, United States Code, Section 1 and, as noted above, the facsimile machines are instrumentalities of this crime, and are subject to seizure pursuant to Rule 41 of the Federal Rules of Criminal Procedure.

53. I request that the search warrant application and this affidavit be sealed. This investigation is ongoing. Premature disclosure of the contents of this affidavit would frustrate this investigation by immediately alerting the targets of this investigation to the nature of the probe, the techniques employed, the evidence developed to date, and limit the use of the grand jury to develop further admissible evidence. This affidavit also contains information about a cooperating witness, who has been cooperating with the investigation and whose identity has not yet been revealed. The FBI and the Antitrust Division treat such information as confidential.

  
 Steven L. Schlobohm  
 Special Agent  
 Federal Bureau of Investigation

Subscribed and sworn to before me this 21<sup>st</sup> day of May, 2004, at Indianapolis, Indiana.

  
 UNITED STATES MAGISTRATE JUDGE