

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
DISTRICT COURT
INDIANAPOLIS DIVISION
05 JUN 29 AM 8:31
CLERK
LAURA A. BRIGGS

UNITED STATES OF AMERICA,

v.

IRVING MATERIALS, INC.,
DANIEL C. BUTLER,
JOHN HUGGINS,
FRED R. "PETE" IRVING, and
PRICE IRVING,

Defendants.

IP 05- 94 -CR-01/M/F

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Violation: 15 U.S.C. § 1

INFORMATION

The United States of America, acting through its attorneys, charges:

I.

DESCRIPTION OF THE OFFENSE

1. IRVING MATERIALS, INC.; DANIEL C. BUTLER; JOHN HUGGINS; FRED R. "PETE" IRVING and PRICE IRVING ("defendants") are hereby made defendants on the charge stated below.

2. Beginning in or about July 2000 and continuing until May 25, 2004, the exact dates being unknown to the United States, the defendants and their co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing the prices at which ready mixed concrete was sold in the Indianapolis, Indiana metropolitan area. The combination and conspiracy engaged in by the defendants and their co-conspirators was in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and their co-conspirators, the substantial terms of which were to suppress and eliminate competition by maintaining and increasing the prices at which ready mixed concrete was sold in the Indianapolis, Indiana metropolitan area.

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and their and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) engaging in discussions regarding the prices at which each would sell ready mixed concrete;
- (b) agreeing during those discussions to specific price increases for ready mixed concrete and to the timing of those price increases;
- (c) issuing price announcements and/or price quotations in accordance with the agreements reached;
- (d) selling ready mixed concrete pursuant to those agreements at collusive and noncompetitive prices;
- (e) accepting payment for ready mixed concrete sold at the agreed-upon collusive and noncompetitive prices; and
- (f) authorizing or consenting to the participation of subordinate employees in the conspiracy.

II.

DEFENDANTS AND CO-CONSPIRATORS

5. During the time period covered by this Information, defendant IRVING MATERIALS, INC. was a corporation organized and existing under the laws of Indiana with its principal place of business in Greenfield, Indiana. During the time period covered by this Information, defendant IRVING MATERIALS, INC. was engaged in the business of producing and selling ready mixed concrete in the Indianapolis, Indiana metropolitan area and elsewhere. During certain periods covered by this Information, defendant DANIEL C. BUTLER was the Vice President (Sales) of defendant IRVING MATERIALS, INC. During certain periods covered by this Information, defendant JOHN HUGGINS was the Executive Vice President of defendant IRVING MATERIALS, INC. During the time period covered by this Information, defendant FRED R. "PETE" IRVING was the President and Chief Executive Officer of defendant IRVING MATERIALS, INC. During certain periods covered by this Information, defendant PRICE IRVING was the Vice President (Operations) of defendant IRVING MATERIALS, INC.

6. Various co-conspirators, not made defendants in this Information, participated in the offense charged herein and performed acts and made statements in furtherance thereof.

7. Whenever in this Information reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

III.

TRADE AND COMMERCE

8. 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 work sites by concrete mixer trucks. Ready mixed concrete is purchased by do-it-yourself customers, commercial customers, as well as local, state, and federal governments for use in various construction projects, including, but not limited to, sidewalks, driveways, bridges, tunnels, and roads.

9. During the time period covered by this Information, the corporate conspirators purchased substantial quantities of equipment and supplies necessary to the production and distribution of ready mixed concrete, which equipment and supplies were shipped into Indiana from outside Indiana.

10. During the time period covered by this Information, the business activities of the corporate conspirators that are the subject of this Information were within the flow of, and substantially affected, interstate trade and commerce.

IV.

JURISDICTION AND VENUE

11. The combination and conspiracy charged in this Information was carried out, in part, in the Southern District of Indiana within the five years preceding the filing of this Information.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

Dated:

_____/s/
R. HEWITT PATE
Assistant Attorney General
Antitrust Division

_____/s/
MARVIN N. PRICE, JR.
Chief, Midwest Field Office
Antitrust Division

_____/s/
SCOTT D. HAMMOND
Deputy Assistant Attorney General
Antitrust Division

_____/s/
FRANK J. VONDRAK

_____/s/
SIEGEL
Director of Criminal Enforcement
Antitrust Division

_____/s/ MARC
JONATHAN A. EPSTEIN

_____/s/
MICHAEL W. BOOMGARDEN

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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS:

Frank J. Vondrak, being first duly sworn, upon his oath deposes and says that he is an attorney for the Antitrust Division, U.S. Department of Justice, that he makes this affidavit for and on behalf of the United States of America and that the allegations in the foregoing Information are true as he is informed and verily believes.

_____/s/_____
Frank J. Vondrak
Attorney, Antitrust Division
U.S. Department of Justice

Subscribed and sworn to before me, a notary public, on this 23rd day of June, 2005.

_____/s/_____
Evelyn S. Berrien
Notary Public

My Commission Expires:

February 14, 2008

My County of Residence:

Cook County, IL.