



ANTITRUST DIVISION ANNOUNCES RECORD FINES FOR 2005

By Steven John Fellman
Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C.

The Antitrust Division of the Department of Justice announced record fines for 2005. The Department of Justice reported that in the computer industry, Samsung Electronics Company, Ltd. pled guilty and agreed to pay a \$300 million fine, the second largest criminal antitrust fine in U.S. history, for its role in an international conspiracy to fix the price of dynamic random access memory (DRAM). The ongoing investigation in this industry has resulted in more than \$646 million in fines.

In the synthetic rubber industry, Dupont Dow Elastomers, LLC agreed to plead guilty and pay an \$84 million fine for fixing the price of synthetic rubber. More than \$200 million in fines and guilty pleas from 4 other companies have resulted from the Antitrust Division's ongoing investigation into the rubber-related products industry.

Of specific interest to construction companies operating in the mid-West is a report by the Midwest Field Office of the Department of Justice that Irving Materials, Inc. pleaded guilty and was sentenced to pay a \$29.2 million criminal fine for fixing the price of ready-mix concrete in the Indianapolis, Indiana metropolitan area. This fine is the largest ever in a domestic antitrust investigation. In addition, 4 executives agreed to plead guilty, pay criminal fines, and serve time in prison for their roles in the same conspiracy.

In a felony case filed in the U.S. District Court in Indianapolis, Irving Materials, Inc., Daniel Butler, John Huggins, Fred Irving and Price Irving were charged with conspiring with their competitors to fix the price of ready-mix concrete sold in the Indianapolis metropolitan area from July 2000 until May 2004. These executives pled guilty and have agreed to assist the government in its ongoing investigation.

"This conspiracy cheated virtually everyone who purchased ready-mix concrete in the Indianapolis market for nearly four years" said Scott D. Hammond, the Antitrust Division's Deputy Assistant Attorney General for Criminal Enforcement. "Regardless of whether you were a homeowner fixing your driveway, a business constructing a new facility, or a taxpayer funding a public construction project, consumers paid more than they should have because the defendants and their co-conspirators secretly met and fixed the prices of ready-mix concrete."

Under the new sentencing guidelines for antitrust offenses which became effective on November 1, 2005, the maximum jail term for individuals convicted of antitrust violations in a criminal matter has been extended to 10 years. Contractors must take care to ensure that their companies have a working antitrust compliance program and that individuals involved in pricing, bidding, and talking to competitors have a full understanding of what they can say and what they can do and what they can't say and what they can't do under the antitrust laws.