



# Department of Justice

United States Attorney David L. Huber  
Western District of Kentucky

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CONTACT: SANDY FOCKEN  
PHONE: (502) 582-5911  
FAX: (502) 582-5097

## INDIANA CONTRACTOR AGREES TO PAY \$8.2 MILLION TO SETTLE FEDERAL AND STATE FRAUD CLAIMS

- *Pay approximately \$6.7 million to the United States*
- *Pay back the \$5.3 million early completion bonus on Interstate 64*
- *Pay \$1.16 million to Commonwealth of Kentucky*
  - *Pay \$362,165 to Indiana*

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LOUISVILLE, KY - David L. Huber, United States Attorney for the Western District of Kentucky, along with Kentucky Attorney General Greg Stumbo and Indiana Attorney General Steve Carter, announces today that Gohmann Asphalt and Construction, Inc. ("Contractor" or "Gohmann"), an Indiana corporation, has agreed to pay \$8,221,396.29 to settle federal and state claims that Gohmann fraudulently swapped samples of asphalt between 1997 and 2006 to inflate the amount of monies paid on road projects by the Federal Highway Administration, the Commonwealth of Kentucky, and State of Indiana. Most significantly, Gohmann, one of the region's largest highway paving companies, has also agreed to provide warranties to correct future deficiencies in work on highways in Kentucky and Indiana.

"This is a very significant settlement," said David L. Huber, United States Attorney for the Western District of Kentucky. Most importantly, we have protected the taxpayers in five ways:

1. **penalizing the Contractor for fraudulent work in the total amount of over**

**\$8.2 million, including the following, on 132 federally funded road projects in Kentucky and Indiana;**

- 2. recovering the \$5.3 million “bonus” for early completion of the Interstate 64 reconstruction;**
- 3. requiring a future procedure where state officials and an independent contractor take the test core samples;**
- 4. requiring the Contractor to extend warranties on 66 road projects for three additional years;**
- 5. requiring the Contractor to agree to a corporate governance plan and appoint an Independent Compliance Officer.**

U.S. Attorney Huber said, "It also demonstrates the high degree of cooperation between the federal and state governments in fighting fraud. It is a significant recovery of monies, and it is designed to assure that if any defects arise in the future, they are addressed and promptly corrected."

Further, it is also “an affirmation of the Federal Whistleblower’s Act.” A former employee of the contractor is being rewarded under the Act in the amount of \$1,153,835 “for bringing this to our attention.” “This amount comes from the \$6.7 million, and \$362,165 paid to the United States and the State of Indiana, respectively,” Huber said.

\$7,059,154.26 of the settlement is being paid to settle claims arising out of two separate whistleblower suits filed by Paul Roederer, a former employee of Gohmann. The first suit, filed on June 23, 2003, in the United States District Court for the Western District of Kentucky, alleged that Gohmann swapped cores on federally funded highway projects. The second suit, filed August 15, 2007, in Clark County Circuit Court, Indiana, made similar allegations for highway projects funded, in part, by Indiana.

According to the settlement agreement with the United States and Indiana, and the separate agreement with Kentucky, between 1997 through 2006 in Kentucky, and between 1998 through 2006 in Indiana, Gohmann submitted or caused others to submit false claims with respect to certain federally funded road projects in Kentucky and Indiana where asphalt density was a component of pay. The United States and Indiana contend that Gohmann submitted or caused to be submitted false claims for payment to the states of Indiana and Kentucky, who supervise highway construction projects in their respective states, on road projects, where the density of asphalt pavement mixture (hereinafter “asphalt”) was a component of pay, that were funded in whole or in part by the Federal Highway Administration (“FHWA”) pursuant to 23 C.F.R. §§ 635.101 *et seq.* On such projects, Gohmann was paid for its work based on a formula which took into account, among other things, the density of asphalt applied to the road – which accounted for 40% of payment to Gohmann for Kentucky projects, and 35% of payment for Indiana projects. Asphalt density that fell below a certain minimum threshold could result in a reduced payment to Gohmann.

The United States, Indiana, and Kentucky further allege that Gohmann inflated the payments it received through a fraudulent practice called “core-swapping.” Density was measured by extracting “cores” of asphalt following its application to the road. The samples were tested for density in a laboratory. The laboratory results were then used by Indiana and Kentucky in determining Gohmann’s compensation. Gohmann’s employees fraudulently swapped “good” cores – cores with density believed to be in the required range – for “bad” cores – cores with failing density – thereby attempting to ensure that Gohmann received full compensation for the density factor per ton of asphalt applied, whereas otherwise, the pay factor for density would have been subjected to a deduction.

The United States, Indiana, and Kentucky further allege that Gohmann employees

accomplished this core swapping by using density gauges manufactured by Troxler Electronic Laboratories (commonly referred to as “Troxler devices”) to take density readings of the asphalt prior to the extraction of cores. Using the Troxler devices, Gohmann employees knew which sections of road contained failing asphalt (that is, asphalt, when tested in the laboratory, would fail to meet density requirements), and which sections of road contained passing asphalt (that is, asphalt, when tested in the laboratory, would meet or exceed density requirements). Gohmann employees would then take additional samples from sections of road containing passing asphalt, and switch those with cores taken from sections of road containing failing asphalt.

The United States, Indiana, and Kentucky allege that Gohmann engaged in swapping between 10% and 40% of the times when core sampling was used to determine compensation.

One of the projects Gohmann was also involved in was a major road resurfacing project on Interstate 64 during the Fall of 2001 in Louisville, KY (“I-64 Project”). The I-64 Project was time sensitive and imposed rigid restrictions on when the contractor could perform the work. As a result of completing the I-64 Project ahead of schedule, Gohmann received a \$5,316,750 bonus.

Once alerted about the investigation, Gohmann cooperated with the investigating authorities in reaching this settlement.

Gohmann has agreed to pay to the United States \$6,696,988.96 and \$362,165.30 to the State of Indiana. In a separate settlement, Gohmann has agreed to pay \$1,162,242.03 to the Commonwealth of Kentucky. As a result of these settlements, the entire amount of the bonus received by Gohmann on the I-64 project has been repaid back to the government. Gohmann has further agreed to enter into a corporate governance program with the government designed to prevent further fraud and abuse. Gohmann has also agreed to extend warranties on many of its highway projects for a period of three (3) additional years.

As a result of his efforts in filing the whistleblower actions, and assisting the government in its investigation, Mr. Roederer will receive \$1,153,835.99 (\$1,096,794.96 from the United States and \$57,041.03 from Indiana).

“We are pleased to recover these funds on behalf of Indiana citizens,” Indiana Attorney General Steve Carter said. “The additional terms of this agreement will ensure future protections for our communities.”

“It is important to ensure that taxpayers get what they pay for so that the quality of products used in transportation projects is not compromised,” said Michelle McVicker, Special Agent-in-Charge, U.S. Department of Transportation’s Office of Inspector General. “We will continue working with the Secretary of Transportation, the Administrator of Federal Highways, and our colleagues at the U.S. Department of Justice to promote the detection and prosecution of fraud schemes which erode public confidence in the integrity of our Nation’s transportation system.”

The claims in this matter were investigated by the U.S. Attorney’s Office, with assistance from the Department of Justice’s Commercial Litigation Branch, Civil Fraud Section, the Office of the Inspector General for the Department of Transportation, the Kentucky Office of Attorney General and the Indiana Attorney General’s Office, and the Indiana and Kentucky Departments of Transportation. This case was prosecuted by Assistant United States Attorney Benjamin S. Schechter, with the assistance of Auditor Phil Bezehertny, and Investigator David Perkins.

Mr. Roederer was represented by C. Dean Furman, John Webb, and William P. Emerick. Gohmann was represented by Marc Murphy with the law firm of Stites and Harbison.

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