

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

RANDY WATERMAN, FRANK AUDINO  
CONSTRUCTION, INC., SIOUX CITY  
ENGINEERING CO., CITY OF LE MARS,  
IOWA, and SIOUX CONTRACTORS, INC., on  
behalf of themselves and all others similarly-  
situated,

Plaintiffs,

vs.

GCC ALLIANCE CONCRETE, INC.,  
SIOUXLAND CONCRETE COMPANY, VS  
HOLDING COMPANY, f/k/a ALLIANCE  
CONCRETE, INC. GREAT LAKES  
CONCRETE, INC., STEVEN KEITH VANDE  
BRAKE, and KENT ROBERT STEWART,

Defendants.

**No. C10-4038-MWB  
(Consolidated Cases)**

**CONSOLIDATED CLASS ACTION COMPLAINT  
AND DEMAND FOR JURY TRIAL**

Randy Waterman, Frank Audino Construction, Inc., Sioux City Engineering Co., the City Of Le Mars, Iowa, and Sioux Contractors, Inc. (collectively "Plaintiffs"), on behalf of themselves and all others similarly-situated, by counsel, bring this action for treble damages, injunctive relief and statutory attorneys fees under the antitrust laws of the United States, demanding a trial by jury, and make the following allegations based on information, belief, and investigation of counsel, except those allegations that pertain to Plaintiffs, which are based on personal knowledge:

**SUMMARY OF CLAIMS**

1. This lawsuit is brought as a class action on behalf of all individuals and entities who purchased Ready-Mix Concrete directly from any of the Defendants or their unnamed co-conspirators yet to be identified, or any predecessors, parents, subsidiaries, or affiliates thereof, from at least January 1, 2006 through at least April 26, 2010. Plaintiffs allege that Defendants and their co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing the price of Ready-Mix Concrete. The combination and conspiracy constituted a *per se* unreasonable restraint of trade under federal antitrust law.

2. Defendants and their co-conspirators carried out their unlawful combination by, *inter alia*, engaging in discussions about the price at which they would sell Ready-Mix Concrete or submit bids for the sale of Ready-Mix Concrete, agreeing to specific pricing levels and price lists for the sale of Ready-Mix Concrete, issuing price announcements or price quotations for the sale of Ready-Mix Concrete based on their agreements, rigging bids for the sale of Ready-Mix Concrete at collusive and noncompetitive prices, allocating customers and/or markets, and selling and receiving payment for Ready-Mix Concrete at agreed-upon supracompetitive prices.

3. As a result of the unlawful conduct of Defendants and their co-conspirators, Plaintiffs and the other members of the Class paid artificially inflated prices for Ready-Mix Concrete and have suffered antitrust injury to their business or property.

**JURISDICTION AND VENUE**

4. Plaintiffs bring this action for treble damages, costs of suit, attorneys' fees, and injunctive relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, for the injuries sustained by Plaintiffs and members of the Class arising from violations of Section 1 of

the Sherman Act, 15 U.S.C. § 1, as alleged in this Consolidated Class Action Complaint (“Complaint”).

5. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

6. Venue in this District is proper pursuant to Sections 4, 12 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C. § 1391. The combination and conspiracy charged in this Complaint were carried out in substantial part within this District. Defendants are found, or transact business within, this District, and the trade and commerce described in this Complaint were carried out in substantial part within this District.

#### **DEFINITIONS**

7. As used herein, the following terms have the meanings set forth below:

A. “Class” includes all Persons who purchased Ready-Mix Concrete directly from any of the Defendants or any of their co-conspirators, or any predecessors, parents, subsidiaries, or affiliates thereof, at any time during the Class Period, but excluding Defendants, their co-conspirators, their respective predecessors, parents, subsidiaries, and affiliates, and federal government entities.

B. “Class Period” means the period from at least January 1, 2006 through at least April 26, 2010.

C. “Ready-Mix Concrete” means a product comprised of cement, sand, gravel, water, and occasionally additional additives. Ready-Mix Concrete can be made on demand and shipped to work sites by concrete mixer trucks.

D. “Person” means any individual, partnership, corporation, limited liability company, or other business or legal entity.

**THE PARTIES**

8. Plaintiff Randy Waterman (“Waterman”) is a citizen of Iowa with a principal place of residence in Sioux Center, Iowa. Waterman purchased Ready-Mixed Concrete directly from one or more Defendants during the Class Period.

9. Plaintiff Frank Audino Construction, Inc. (“Audino”) is an Iowa corporation with its principal place of business in Sioux City, Iowa. Audino purchased Ready-Mixed Concrete directly from one or more Defendants during the Class Period.

10. Plaintiff Sioux City Engineering Co. (“Sioux City Engineering”) is an Iowa corporation with its principal place of business in Sioux City, Iowa. Sioux City Engineering purchased Ready-Mix Concrete directly from one or more Defendants during the Class Period.

11. Plaintiff City of Le Mars, Iowa (“Le Mars”) is an Iowa municipality and the county seat of Plymouth County. Le Mars had a population of 9,237 in the 2000 census. Le Mars purchased Ready-Mix Concrete directly from one or more of the Defendants during the Class Period.

12. Plaintiff Sioux Contractors, Inc. (“Sioux Contractors”) is an Iowa corporation with its principal place of business in Sioux City, Iowa. Sioux Contractors purchased Ready-Mix Concrete directly from one or more Defendants during the Class Period.

13. Defendant GCC Alliance Concrete, Inc. (“GCC Alliance”) is an Iowa corporation with its principal place of business in Orange City, Iowa. During the Class Period, GCC Alliance produced and sold Ready-Mix Concrete to members of the Class, including Class members located in this District.

14. Defendant Siouxland Concrete Co. (“Siouxland”) is a Nebraska corporation with its principal place of business in South Sioux City, Nebraska. During the Class Period,

Siouxland produced and sold Ready-Mix Concrete to members of the Class, including Class members located in this District.

15. Defendant VS Holding Co., fka Alliance Concrete, Inc., is an Iowa Corporation with its principal place of business in Sioux Center, Iowa. During the Class Period, VS Holding produced and sold Ready-Mix Concrete to members of the Class, including Class members located in this District.

16. Defendant Great Lakes Concrete, Inc. (“Great Lakes”) is an Iowa corporation with its principal place of business in Spencer, Iowa. During the Class Period, Great Lakes produced and sold Ready-Mix Concrete to members of the Class, including Class members located in this District.

17. Defendant Steven Keith Vande Brake (“Vande Brake”) is an individual citizen of Iowa who was an officer, director, employee and/or partial owner of GCC Alliance and one or more of its predecessors during the Class Period.

18. Defendant Kent Robert Stewart (“Stewart”) is an individual citizen of the State of Iowa who was an officer, director and/or employee of Great Lakes during the Class Period.

19. Various other persons, firms and corporations not named as Defendants herein have participated as co-conspirators with the Defendants, and have performed acts in furtherance of the conspiracy. These co-conspirators may be identified as this litigation proceeds and Plaintiffs may amend their complaint to add them as named Defendants, if appropriate. Upon information and belief, Defendants’ co-conspirators include, but may not be limited to, other companies from which members of the Class purchased Ready-Mix Concrete directly during the Class Period.

**READY-MIX CONCRETE INDUSTRY**

20. Ready-Mix Concrete, often confused with cement, is a mixture of cement and other materials such as sand, crushed stone, water, and at times other additives.

21. Ready-Mix Concrete is made on demand at batch plants, where the proportions of input materials are measured, combined with water in a rotating drum mounted on a truck, and then mixed in the truck's drum on the way to the construction site. Because the addition of water begins an irreversible chemical reaction, and because the concrete is poured directly at the construction site, truck arrival must be timed so that the concrete hardens at the appropriate time.

22. The strength of the concrete is determined by the amount of water added, and is measured in pounds per square inch ("psi").

23. Ready-Mix Concrete is sold by the cubic yard, and is priced in dollars per cubic yard.

24. Ready-Mix Concrete is used principally in commercial, governmental, and residential construction projects, including sidewalks, driveways, bridges, tunnels, and highways. Absent the unlawful conspiracy, the Defendants would compete among themselves for the sale of Ready-Mix Concrete.

25. Concentration in a particular industry facilitates the operation of a price-fixing cartel because it makes it easier to coordinate behavior among co-conspirators, and at the same time it makes it more difficult for customers to avoid the effects of collusive behavior. The Ready-Mix Concrete industry in the Iowa region is highly concentrated, with just a handful of major producers manufacturing the vast majority the Ready-Mix Concrete used in the region.

26. "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be "inelastic" if an increase in the

price of a product results in only a small (if any) decline in the quantity sold of that product. In other words, customers have nowhere to turn for alternative, cheaper products of similar grade or quality, and so continue to purchase despite a price increase.

27. Because Ready-Mix Concrete is a major and necessary component of commercial, governmental, and residential construction, a small but significant, non-transitory increase in the price of Ready-Mix Concrete will not cause construction companies to switch to a different construction material, even if such a material is even available and compatible with the needs of a given construction job.

28. The U.S. Department of Justice (DOJ) has challenged a merger in the Ready-Mix Concrete industry because it concluded that demand for Ready-Mix Concrete is highly inelastic: “a small but significant post-acquisition increase in the price of ready mix concrete that meets the bid specifications would not cause the purchasers of ready mix concrete for large projects to substitute another building material in sufficient quantities, or to utilize a supplier of ready mix concrete [who would otherwise not be considered a competitor for the business] with sufficient frequency so as to make such a price increase unprofitable.” *U.S v. Cemex, S.A.B. de C.V.*, Amended Complaint, D.D.C. No. 07-cv-006400, at 6-7.

29. When products offered by different suppliers are viewed as interchangeable by the purchaser, it creates an environment more conducive for the suppliers to unlawfully agree on the price for the product, and in turn to effectively monitor agreed-upon prices.

30. Ready-Mix Concrete is a commodity, which is interchangeable across manufacturers. Although construction projects can be bid under various concrete specifications, all of the Defendants have the equipment and expertise to meet these specifications.

**TRADE AND COMMERCE**

31. During all or part of the Class Period, Defendants and their co-conspirators produced and/or sold Ready-Mix Concrete in a continuous and uninterrupted flow of interstate commerce to purchasers in the United States, including without limitation purchasers in the States of Iowa, Minnesota, South Dakota, and Nebraska. These business activities substantially affected interstate trade and commerce. Moreover, the Ready-Mix Concrete produced and sold by Defendants is comparable to and interchangeable with the Ready-Mix Concrete produced and/or sold by their competitors.

**CLASS ACTION ALLEGATIONS**

32. Plaintiffs bring this action on behalf of themselves and, under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), as representatives of the following Class:

All Persons who purchased Ready-Mix Concrete directly from any of the Defendants or any of their co-conspirators, or any predecessors, parents, subsidiaries, or affiliates thereof, at any time during the Class Period, but excluding Defendants, their co-conspirators, their respective predecessors, parents, subsidiaries, and affiliates, and federal government entities.

33. Plaintiffs do not know the exact size of the Class but allege that Defendants and their co-conspirators possess such information. Given the trade and commerce involved, including the sale by Alliance Concrete, Inc. of at least tens of millions of dollars in Ready-Mix Concrete during the Class Period, Plaintiffs allege on information and belief that the Class numbers at least in the hundreds so that joinder of all members is impracticable.

34. There are questions of law and fact common to the Class, including the existence, scope, and efficacy of the conspiracy alleged.



35. Plaintiffs are members of the Class, and their claims are typical of the claims of Class members generally. Plaintiffs' claims arise from the same conduct giving rise to the claims of the Class, and the relief Plaintiffs seek is common to the Class.

36. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are represented by competent counsel experienced in the prosecution of class action antitrust litigation, including antitrust claims against Ready-Mix Concrete manufacturers. Plaintiffs' interests coincide with, and are not antagonistic to, those of the Class.

37. Questions of law and fact common to all class members predominate over any questions affecting only individual class members. Predominating common questions include, without limitation:

- A. whether Defendants and their co-conspirators conspired to fix, raise, stabilize or maintain the price of Ready-Mix Concrete;
- B. the scope and extent of the conspiracy;
- C. whether the conspiracy affected the prices of Ready-Mix Concrete paid by class members during the Class Period;
- D. the identity of each member of the conspiracy;
- E. the time period during which the conspiracy existed;
- F. whether the combination, agreement or conspiracy violated Section 1 of the Sherman Act;
- G. whether the conduct of Defendants and their co-conspirators caused injury to the business and property of Plaintiffs and other members of the Class;
- H. whether Plaintiffs and other members of the Class are entitled to declaratory or injunctive relief;

I. the appropriate measure of damages sustained by Plaintiffs and other members of the Class; and

J. whether Defendants and their co-conspirators affirmatively and fraudulently concealed the conspiracy.

38. A class action is superior to any other available method for the fair and efficient adjudication of this controversy. Indeed, it is the only realistic method for litigating the large number of claims at issue herein. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously and efficiently. There are no difficulties likely to be encountered in the management of this lawsuit that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of the controversy.

39. Defendants and their co-conspirators have acted on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

#### **VIOLATIONS ALLEGED**

40. Throughout the Class Period, Defendants and their co-conspirators engaged in a continuing combination and conspiracy in unreasonable restraint of trade and commerce in Ready-Mix Concrete in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

41. This combination and conspiracy consisted of agreements, understandings and concerted action among Defendants and their co-conspirators, the substantial objective of which was to raise and maintain at artificially high levels the prices of Ready-Mix Concrete.

42. For the purpose of forming and effectuating their combination and conspiracy, Defendants and their co-conspirators did those things which they combined and conspired to do,

including, among other things, discussing, forming and implementing agreements to raise and maintain at artificially high levels the prices for Ready-Mix Concrete.

43. On April 26, 2010, defendant Vande Brake was charged by the United States of America in an Information filed in the United States District Court for the Northern District of Iowa in *United States of America v. Steven Keith Vande Brake a/k/a Steve Vande Brake*, Criminal Case No. CR10-4025 MWB, with violations of Section One of the Sherman Act, 15 U.S.C. § 1. On May 4, 2010, Vande Brake entered a plea of guilty to these charges pursuant to a plea agreement with the United States Department of Justice (“DOJ”).

44. Vande Brake has admitted under oath that he and certain co-conspirators, including other individuals and at least three corporations other than Alliance Concrete, Inc., entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices and rigging bids for sales of Ready-Mix Concrete by, *inter alia*: (i) engaging in discussions concerning price increases for the conspirators’ price lists for Ready-Mix Concrete; (ii) agreeing during those discussions to raise prices on their respective price lists for Ready-Mix Concrete; (iii) engaging in discussions concerning project bids for sales of Ready-Mix Concrete; (iv) agreeing during those discussions to submit rigged bids for sales of Ready-Mix Concrete at collusive and noncompetitive prices; (v) submitting bids and selling Ready-Mix Concrete at collusive and noncompetitive prices; and (vi) accepting payment for sales of Ready-Mix Concrete at collusive and noncompetitive prices.

45. On May 6, 2010, defendant Stewart was charged by the United States of America in an Information filed in the United States District Court for the Northern District of Iowa in *United States of America v. Kent Robert Stewart a/k/a Kent Stewart*, Criminal Case No. CR10-4028 DED, with violations of Section One of the Sherman Act, 15 U.S.C. § 1. On May 24,

2010, Stewart entered a plea of guilty to these charges pursuant to a plea agreement with the DOJ.

46. Stewart has admitted under oath to entering and engaging in a combination and conspiracy with certain competitors to suppress and eliminate competition by fixing prices and rigging bids for sales of Ready-Mix Concrete by, *inter alia*: (i) engaging in discussions concerning project bids for sales of Ready-Mix Concrete; (ii) agreeing during those discussions to submit rigged bids at collusive and noncompetitive prices to customers; (iii) submitting bids and selling Ready-Mix Concrete at collusive and noncompetitive prices; and (iv) accepting payment for sales of Ready-Mix Concrete at collusive and noncompetitive prices.

47. Throughout the Class Period, Defendants and their co-conspirators conspired to set agreed-upon prices, to set agreed-upon price increases, and to submit non-competitive and rigged bids for Ready-Mix Concrete sold in the Northern District of Iowa and elsewhere.

48. Throughout the Class Period, Defendants and their co-conspirators reached agreements to set agreed-upon prices, to set agreed-upon price increases, and to submit non-competitive and rigged bids for Ready-Mix Concrete sold in the Northern District of Iowa and elsewhere.

49. As a result of the combination and conspiracy between Defendants and their co-conspirators, the prices of Ready-Mix Concrete paid by the Plaintiffs and Class members were artificially sustained or increased.

50. The conduct of Defendants and their co-conspirators was undertaken for the purpose and with the specific intent of raising and maintaining prices of Ready-Mix Concrete and eliminating competition, in *per se* violation of Section 1 of the Sherman Act.

**FRAUDULENT CONCEALMENT**

51. Throughout the Class Period, Defendants and their co-conspirators intended to and did affirmatively and fraudulently conceal their wrongful conduct and the existence of their unlawful combination and conspiracy from Plaintiffs and other members of the Class, and intended that their communications with each other and their resulting actions be kept secret from Plaintiffs and other Class members.

52. Defendants' illegal price fixing conspiracy is, by its nature, inherently self-concealing and the affirmative actions of the Defendants and their co-conspirators were wrongfully concealed and carried out in a manner that precluded detection. Defendants discussed and formed their anticompetitive agreements during secret meetings and conversations. No one other than the co-conspirators was invited or present at these meetings or conversations. Defendants conducted these meetings and conversations in secrecy to prevent the discovery of their conspiracy by members of the Class.

53. By virtue of the fraudulent concealment by Defendant and their co-conspirators, the running of any statute of limitations has been tolled and suspended with respect to any claims that Plaintiff and the other class members have as a result of the unlawful contract, combination and conspiracy alleged in this Complaint.

54. Plaintiffs and members of the Class could not have discovered the combination and conspiracy alleged herein at any earlier date by the exercise of reasonable due diligence, because of the deceptive practices and techniques of secrecy employed by Defendants and their co-conspirators to avoid detection of and affirmatively conceal their actions.

55. Based on the foregoing, customers of Defendants and their co-conspirators, including Plaintiffs and members of the Class, were unaware that prices for Ready-Mix Concrete

had been artificially raised and maintained as a result of the wrongful conduct as alleged in this Complaint until at least the filing of the criminal Information against defendant Vande Brake.

**DAMAGES TO PLAINTIFFS AND MEMBERS OF THE CLASS**

56. As a direct result of the unlawful conduct alleged in this Complaint, prices for Ready-Mix Concrete sold by Defendants and their co-conspirators were fixed and maintained at artificially high and noncompetitive levels. Plaintiffs and members of the Class were not able to purchase Ready-Mix Concrete at prices determined by free and open competition, and consequently have been injured in their business and property in that, *inter alia*, they have paid more for Ready-Mix Concrete than they would have paid in a free, open, and competitive market. As a result of Defendants' wrongful conduct, Plaintiffs and the other members of the Class have suffered substantial damages in an amount to be determined at trial.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs request:

A. That the Court determine that this action may be maintained as a class action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that the Court determine that Plaintiffs are adequate and appropriate representatives of the class, that the Court designate the undersigned Interim Co-Lead Counsel as counsel for the class, and that the Court direct that the best notice practicable under the circumstances be given to members of the Class pursuant to Rule 23(c)(2);

B. That the Court adjudge and decree that Defendants and their co-conspirators engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act;

C. That Defendants and their co-conspirators, their respective affiliates, successors, transferees, assignees and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be restrained from, in any manner:

1. continuing, maintaining or renewing any contract, combination or conspiracy alleged herein, or engaging in any other contract, combination or conspiracy having a similar purpose or effect, and adopting or following any practice, plan, program or device having a similar purpose or effect;

2. communicating or causing to be communicated to any other person engaged in the production, distribution or sale of any product that Defendants and their co-conspirators also produce, distribute or sell, including Ready-Mix Concrete, information concerning prices or other terms or conditions of any such product, except to the extent necessary in connection with a *bona fide* sales transaction between parties to such communications;

D. That the Court adjudge and decree that Defendants and their co-conspirators are jointly and severally liable to Plaintiffs and the Class for three-fold the damages resulting from their conduct;

E. That the Court enter judgment for Plaintiffs and the Class against Defendants and their co-conspirators and each of them, jointly and severally, for three times the amount of damages sustained by Plaintiffs and the Class, together with the costs and expenses of this action, including reasonable attorneys' fees, all as allowed by law;

F. That Plaintiffs and the Class be awarded pre-judgment and post-judgment interest at the highest rate allowed by law; and

G. That the Court grant such additional and further relief as may be deemed just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

DATED: July 26, 2010

Respectfully submitted,

/s/ Scott D. Gilchrist

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2010, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

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