

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

**IN RE: IOWA READY-MIX  
CONCRETE ANTITRUST  
LITIGATION**

**No. C10-4038-MWB  
(CONSOLIDATED CASES)**

---

**JOINT MOTION TO STAY LITIGATION AS TO  
SETTLING DEFENDANTS**

Plaintiffs and Defendants GCC Alliance Concrete, Inc., VS Holding Company (f/k/a Alliance Concrete, Inc.), Steven Keith VandeBrake, Great Lakes Concrete, Inc., Kent Robert Stewart, and Siouxland Concrete, Inc. (“Settling Defendants”) jointly move the Court as follows:

1. Plaintiffs and Settling Defendants (“Settling Parties”) have reached settlements in principle and are currently drafting the needed papers.<sup>1</sup> Those papers include formal settlement agreements, a motion for preliminary approval and proposed order, forms of notice to the proposed settlement classes and a proposal final judgment.

2. Settling Parties respectfully ask the Court to stay the litigation as to Settling Defendants in the interest of settlement and judicial economy. The requested stay would promote the policy of encouraging settlements and reduce the costs to the Settling Parties. Settling Defendants in particular have agreed in principle to pay certain settlement amounts partially in consideration of the saving of substantial litigation expenses. A stay would also save expenses of Plaintiffs, resulting in a greater net recovery to Plaintiffs and the settlement classes. By staying the case, this Court will save itself and the parties from expending enormous resources unnecessarily litigating issues that will have no impact on the resolution of this case.

---

<sup>1</sup> Counsel for Plaintiffs and counsel for Tri-State Ready Mix, Inc. and Chad Van Zee remain in ongoing settlement negotiations and will promptly report any developments.

On the other hand, if the Court does not enter a stay, the parties would likely have to conduct numerous depositions and present extensive motion practice to the Court, all to no end.

3. The scope of the stay as to Settling Defendants would include all current deadlines in the litigation as to the claims against Settling Defendants only.<sup>2</sup>

4. The Settling Parties are working diligently to finalize and file the settlement and approval papers and this request will not occasion undue delay in the resolution of this matter.

5. The law supports granted the requested stay. For example, in *Sandpiper Vill. Condo. Ass'n v. Louisiana-Pacific Corp.*, 428 F.3d 831 (9th Cir. 2005), the Court held that a federal district court properly stayed proceedings in *another* court in order to safeguard the settlement process in a nationwide class action. As the Ninth Circuit explained, a stay was appropriate to permit the settlement-approval process to proceed undisturbed: “We concluded that a temporary stay pending settlement of the nationwide class action was appropriate . . . . A competing state class action covering a portion of the federal class posed a significant danger to the delicate and transitory process of approving a settlement agreement, and thereby threatened the district court’s ability to resolve the litigation.” *Id.* at 845. Thus, the Ninth Circuit recognized both the sensitivity and the importance of finalizing class-action settlements, and held that those interests warranted even a stay of proceedings in *another* court. *Id.*; see also *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 927 (8th Cir. 2005) (noting district court’s stay of all other class actions pending settlement of the case before it). In this case, of course, the Court

---

<sup>2</sup> Pending deadlines in the near term include without limitation the deadlines:

1. For Settling Defendants to respond to Plaintiffs’ Motion to Certify Class;
2. For Settling Defendants to disclose their expert reports on class certification issues;
3. For Plaintiffs to respond to the following motions to dismiss the Second Amended Consolidated Class Action Complaint: [D.E. 239] by Defendant VS Holding Company (Entered 05/10/2011) (Responses Due 05/27/2011); [D.E. 242] by Defendant GCC Alliance Concrete, Inc. (Entered 05/16/2011) (Responses Due 06/02/2011); [D.E. 243] by Defendant Steven Keith VandeBrake (Entered 05/16/2011) (Responses Due 06/02/2011); and [D.E. 245] by Defendants Great Lakes Concrete Inc. and Kent Robert Stewart (Entered 05/16/2011) (Responses Due 06/02/2011); and
4. For Settling Defendants to reply to Plaintiffs’ resistances to the foregoing motions to dismiss.

need not impinge upon another court's jurisdiction in order to safeguard "the delicate and transitory process of approving a settlement agreement . . . ." Instead, it need only stay its own proceedings pending its own consideration of the proposed settlements. This Court unquestionably has the power, and would exercise it properly, by staying the case under these circumstances.

6. Finally, a stay will not prejudice the nonsettling parties, namely Plaintiffs and Defendants Tri-State Ready Mix, Inc. and Chad Van Zee. The litigation will continue apace as to Plaintiffs' claims against nonsettling defendants. The remaining parties will suffer no prejudice that could weigh against the encouragement of settlements and the conservation of resources that will result from a stay.

### CONCLUSION

For the foregoing reasons, Plaintiffs and Settling Defendants respectfully request that the Court enter the proposed Order *infra* granting this motion and staying all proceedings in this action as to the Settling Parties only pending finalization of the settlements among those parties.

Dated: May 19, 2011

Respectfully submitted,

**Counsel for Plaintiffs:**

/s/ Irwin B. Levin  
Irwin B. Levin  
Richard E. Shevitz  
Scott D. Gilchrist  
Eric S. Pavlack  
COHEN AND MALAD, LLP  
One Indiana Square, Suite 1400  
Indianapolis, IN 46204  
Telephone: (317) 636-6481  
Facsimile: (317) 636-2593  
[ilevin@cohenandmalad.com](mailto:ilevin@cohenandmalad.com)  
[rshevitz@cohenandmalad.com](mailto:rshevitz@cohenandmalad.com)  
[sgilchrist@cohenandmalad.com](mailto:sgilchrist@cohenandmalad.com)  
[epavlack@cohenandmalad.com](mailto:epavlack@cohenandmalad.com)

/s/ Gregory P. Hansel  
Gregory P. Hansel  
Randall B. Weill  
Joshua R. Carver  
PRETI, FLAHERTY, BELIVEAU &  
PACHIOS, LLP  
One City Center  
P.O. Box 9546  
Portland, ME 04112-9546  
Telephone: (207) 791-3000  
Facsimile: (207) 791-3111  
[ghansel@preti.com](mailto:ghansel@preti.com)  
[rweill@preti.com](mailto:rweill@preti.com)

Interim Co-Lead Counsel for Plaintiffs and the Class

Interim Co-Lead Counsel for Plaintiffs and the Class

/s/ Mark L. Zaiger

Mark L. Zaiger  
Jennifer E. Rinden  
SHUTTLEWORTH & INGERSOLL, P.L.C.  
115 Third Street SE, Suite 500  
P.O. Box 2107  
Cedar Rapids, IA 52406-2107  
Telephone: (319) 365-9461  
Facsimile: (319) 365-8564  
[MLZ@ShuttleworthLaw.com](mailto:MLZ@ShuttleworthLaw.com)  
[JER@ShuttleworthLaw.com](mailto:JER@ShuttleworthLaw.com)

Liaison Counsel for Plaintiffs and the Class

/s/ David E. Everson

David E Everson  
Misty Cooper Watt  
STINSON MORRISON & HECKER, LLP  
1201 Walnut  
Kansas City, MO 64106  
Phone: (816) 691 3108  
Fax: (816) 412 1131  
[deverson@stinson.com](mailto:deverson@stinson.com)  
[mwatt@stinson.com](mailto:mwatt@stinson.com)

Counsel for Siouxland Concrete Company

/s/ William R. Pakalka

William R. Pakalka  
Anne M. Rodgers  
Don J. DeGabrielle  
Sumera Khan  
FULBRIGHT & JAWORSKI L.L.P.  
1301 McKinney, Suite 5100  
Houston, Texas 77010  
Phone: (713) 651-5151  
Fax: (713) 651-6246  
[wpakalka@fulbright.com](mailto:wpakalka@fulbright.com)  
[arodgers@fulbright.com](mailto:arodgers@fulbright.com)  
[ddegabrielle@fulbright.com](mailto:ddegabrielle@fulbright.com)  
[skhan@fulbright.com](mailto:skhan@fulbright.com)

Counsel for Defendant GCC Alliance Concrete, Inc.

/s/ Bryan S. Hatch

Bryan S. Hatch  
STINSON, MORRISON & HECKER LLP  
1299 Farnam Street, Ste. 1500  
Omaha, NB 68102  
Phone: (402) 930-1709  
Fax: (402) 829-8711  
[bhatch@stinson.com](mailto:bhatch@stinson.com)

Counsel for Siouxland Concrete Company

/s/ Matthew G. Whitaker

Matthew G. Whitaker  
Janelle Niebuhr  
WHITAKER HAGENOW GBMG  
400 East Court Avenue, Ste. 346  
Des Moines, IA 50302  
Phone: (515) 284-5001  
Fax: (515) 864-0035

Counsel for GCC Alliance Concrete, Inc.

/s/ Thomas J. Costakis

Thomas J. Costakis  
C. Joseph Russell  
Bryan S. Strawbridge  
KRIEG DeVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
Phone: (317) 636-4341  
Fax: (317) 636-1507  
[tcostakis@kdlegal.com](mailto:tcostakis@kdlegal.com)  
[crussell@kdlegal.com](mailto:crussell@kdlegal.com)  
[bstrawbridge@kdlegal.com](mailto:bstrawbridge@kdlegal.com)

Counsel for Defendant Steven Keith  
VandeBrake

/s/ Francis L. Goodwin

Francis L. Goodwin  
BARON, SAR, GOODWIN, GILL & LOHR  
750 Pierce Street  
PO Box 717  
Sioux City, IA 51101  
Phone: (712) 277-1015  
Fax: (712) 277-3067  
[flgoodwin@baronsar.com](mailto:flgoodwin@baronsar.com)

Counsel for Defendant Steven Keith  
VandeBrake

/s/ Hayward L. Draper

Hayward L. Draper  
Thomas H. Walton  
NYEMASTER GOODE VOIGTS WEST  
HANSELL & O'BRIEN, P.C.  
700 Walnut, Suite 1600  
Des Moines, IA 50309  
Phone: (515) 283-3149  
Fax: (515) 283-8045  
[hdraper@nyemaster.com](mailto:hdraper@nyemaster.com)  
[twalton@nyemaster.com](mailto:twalton@nyemaster.com)

Counsel for Defendant VS Holding Company

/s/ Daniel L. Hartnett

Daniel L. Hartnett  
Marc L. Iseminger  
CRARY-HUFF-INKSTER-HECHT-  
SHEEHAN-RINGENBERG-HARTNETT-  
STORM  
614 Pierce Street  
PO Box 27  
Sioux City, IA 51102  
Phone: (712) 277-4561  
Fax: (712) 277-4605  
[dhartnett@craryhuff.com](mailto:dhartnett@craryhuff.com)  
[miseminger@craryhuff.com](mailto:miseminger@craryhuff.com)

Counsel for Defendant VS Holding Company

/s/ Larry A. Stoller

Larry A. Stoller  
Stoller Law Office  
PO Box 441  
Spirit Lake, IA 51360  
Phone: (712) 336-1752  
Fax: (712) 36604299  
[lastoller@iabar.org](mailto:lastoller@iabar.org)

Counsel for Defendants Great Lakes  
Concrete, Inc. and Kent Robert Stewart

/s/ Mark C. Laughlin

Mark C. Laughlin  
David C. Mullin  
Kelsey N. McChane  
FRASER STRYKER PC, LLLO  
500 Energy Plaza  
409 South 17<sup>th</sup> Street  
Omaha, NE 68102  
Phone: (402) 978-6000  
Fax: (402) 341-8290  
[mclaughlin@fraserstryker.com](mailto:mclaughlin@fraserstryker.com)  
[dmullin@fraserstryker.com](mailto:dmullin@fraserstryker.com)  
[kmcchange@fraserstryker.com](mailto:kmcchange@fraserstryker.com)

Counsel for Defendants Great Lakes Concrete,  
Inc. and Kent Robert Stewart

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

**IN RE: IOWA READY-MIX  
CONCRETE ANTITRUST  
LITIGATION**

**No. C10-4038-MWB  
(CONSOLIDATED CASES)**

---

**[PROPOSED] ORDER ON JOINT MOTION TO STAY LITIGATION AS TO  
SETTLING DEFENDANTS**

THIS CAUSE having come before the Court on the foregoing joint motion, it is hereby  
ORDERED AND ADJUDGED that the motion be and the same is hereby GRANTED and  
the action is stayed as to Plaintiffs' claims against Settling Defendants only, pending further  
Order of the Court.

DONE AND ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2011.

---

Mark W. Bennett  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19 2011, a copy of the foregoing document was served on all counsel of record via the ECF system.

/s/ Gregory P. Hansel  
Gregory P. Hansel  
PRETI, FLAHERTY, BELIVEAU &  
PACHIOS, LLP  
One City Center  
P.O. Box 9546  
Portland, ME 04112-9546  
Telephone: (207) 791-3000  
Facsimile: (207) 791-3111  
ghansel@preti.com