

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

IN RE: READY-MIXED CONCRETE PRICE)	Master Docket No.
FIXING LITIGATION)	1:05-cv-00979-SEB-VSS
_____)	
THIS DOCUMENT RELATES TO:)	
ALL ACTIONS)	

AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs Kort Builders, Inc., Van Valkenburg Builders, Inc., Dan Grote, Cherokee Development, Inc., Craw-Con, Inc., Winger/Stolberg Group, Inc., Marmax Construction, LLC, Boyle Construction Management, Inc., and T&R Contractor, Inc., on behalf of themselves and all others similarly situated, by their attorneys, bring this action for treble damages and injunctive relief 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-mixed concrete directly from any of the defendants or their unnamed co-conspirators yet to be identified or any predecessors, parents, subsidiaries, or affiliates thereof, which was delivered from a facility within the Central Indiana Area, from at least July 1, 2000 through at least May 25, 2004. 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-mixed concrete. The combination and conspiracy constituted an 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-mixed concrete, agreeing to specific pricing levels, issuing price announcements or price quotations based on their agreements, and selling ready-mixed 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-mixed 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.

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-mixed concrete directly from any of the defendants or any of their co-conspirators, which was delivered from a facility within the Central Indiana Area, at any time during the Class Period but excluding defendants, their co-conspirators, their respective parents, subsidiaries, and affiliates, and federal, state, and local government entities and political subdivisions.

b. “Class Period” means the period from at least July 1, 2000 through at least May 25, 2004.

c. “Ready-mixed concrete” means a product comprised of cement, sand, gravel, water, and occasionally additional additives. Ready-mixed 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.

e. “Central Indiana Area” means Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, and Shelby Counties, Indiana.

THE PARTIES

8. Plaintiff Kort Builders, Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana. Kort Builders, Inc. purchased ready-mixed concrete directly from one or more defendants during the Class Period.

9. Plaintiff Van Valkenburg Builders, Inc. is an Indiana corporation with its principal place of business in Avon, Indiana. Van Valkenburg Builders, Inc. purchased ready-mixed concrete directly from one or more defendants during the Class Period.

10. Plaintiff Dan Grote is a sole proprietorship with his principal place of business in Crawfordsville, Indiana. Dan Grote purchased ready-mixed concrete directly from one or more defendants during the Class Period.

11. Plaintiff Cherokee Development, Inc. is an Indiana corporation with its principal place of business in Edinburgh, Indiana. Cherokee Development, Inc. purchased ready-mixed concrete directly from one or more defendants during the Class Period.

12. Plaintiff Craw-Con, Inc. is an Indiana corporation with its principal place of business in Indiana. Craw-Con, Inc. purchased ready-mixed concrete directly from one or more defendants during the Class Period.

13. Plaintiff Winger/Stolberg Group, Inc. d/b/a Winger/Stolberg Group-Claybridge, Inc., Winger/Stolberg Homes/Jackson Mills, Inc., Winger/Stolberg Land Holdings, Inc., Winger/Stolberg Homes/Brighton Point Villas, Inc., Winger/Stolberg Homes/The Villa Glen, Inc. is an Indiana corporation that purchased ready-mixed concrete directly from one or more defendants during the Class Period.

14. Plaintiff Marmax Construction, LLC is an Indiana Limited Liability Company that purchased ready-mixed concrete directly from one or more defendants during the Class Period.

15. Plaintiff Boyle Construction Management, Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana. Boyle Construction Management, Inc. purchased ready-mixed concrete directly from one or more defendants during the Class Period.

16. Plaintiff T&R Contractor, Inc. is an Indiana corporation with its principal place of business in Indianapolis, Indiana. T&R Contractor, Inc. purchased ready-mixed concrete directly from one or more defendants during the Class Period.

17. Defendant Irving Materials, Inc. (“IMI”) is an Indiana corporation with its principal place of business in Greenfield, Indiana. During the Class Period, IMI produced and sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area.

18. Defendant Prairie Material Sales, Inc. (“Prairie”) is an Illinois corporation with its principal place of business in Bridgeview, Illinois. During the Class Period, Prairie produced and sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area.

19. Defendant Builder’s Concrete & Supply, Inc. (“Builder’s”) is an Indiana corporation with its principal place of business in Fishers, Indiana. During the Class Period, Builder’s produced and sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area.

20. Defendant Shelby Gravel, Inc., d/b/a Shelby Materials (“Shelby”) is an Indiana corporation with its principal place of business in Shelbyville, Indiana. During the Class Period, Shelby produced and sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area.

21. Defendant American Concrete Company, Inc. (“American”) is an Indiana corporation with its principal place of business in Indianapolis, Indiana. During the Class Period, American produced and sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area.

22. Defendant Ready Mixed Concrete Company (“Ready”) is an Indiana corporation with its principal place of business in Indianapolis, Indiana. During the Class Period, Ready produced and sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area.

23. Defendant Hughey, Inc., d/b/a Carmel Concrete Products (“Carmel”) is an Indiana corporation with its principal place of business in Carmel, Indiana. During the Class Period, Carmel produced and sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area.

24. Defendant Beaver Gravel Corporation (“Beaver”) is an Indiana corporation with its principal place of business in Noblesville, Indiana. During the Class Period, Beaver produced and sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area.

25. Defendant Fred R. “Pete” Irving is an individual citizen of Indiana. During the Class Period, Pete Irving served as President and principal shareholder of IMI.

26. Defendant Price Irving is an individual citizen of Indiana. During the Class Period, Price Irving served as Vice President of IMI.

27. Defendant John Huggins is an individual citizen of Indiana. During the Class Period, Huggins served as Executive Vice President of IMI.

28. Daniel C. Butler is an individual citizen of Indiana. During the Class Period, Butler served as Vice President of IMI.

29. Defendant Gus B. (“Butch”) Nuckols, III is an individual citizen of Indiana. During the Class Period, Nuckols worked as an executive of Builder’s.

30. Defendant Scott D. Hughey is an individual citizen of Indiana. During the Class Period, Hughey worked as an executive of Carmel.

31. Defendant Richard Haehl is an individual citizen of Indiana. During the Class Period, Richard Haehl worked as an executive of Shelby.

32. Defendant Phillip Haehl is an individual citizen of Indiana. During the Class Period, Shelby worked as an executive of Shelby.

33. Gary Matney is an individual citizen of Indiana. During the Class Period, Matney served as general manager for Prairie in the Central Indiana Area.

34. Various other persons, firms and corporations not named as defendants herein have participated as co-conspirators with IMI, Prairie, Builder’s, Shelby, American, Ready, Carmel, Beaver, Pete Irving, Price Irving, Huggins, Butler, Nuckols, Hughey, Richard Haehl, Phillip Haehl, and Matney 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 Indianapolis-area companies from which members of the Class purchased ready-mixed concrete directly during the relevant time period.

TRADE AND COMMERCE

35. During all or part of the Class Period, defendants and their co-conspirators produced and/or sold ready-mixed concrete to purchasers in the United States, including in the Central Indiana Area. These business activities substantially affected interstate trade and commerce. Moreover, the ready-mixed concrete produced and sold by defendants is comparable to and interchangeable with the ready-mixed concrete produced and/or sold by their competitors.

CLASS ACTION ALLEGATIONS

36. 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-mixed concrete directly from any of the defendants or any of their co-conspirators, which was delivered from a facility within the Central Indiana Area, at any time during the Class Period but excluding defendants, their co-conspirators, their respective parents, subsidiaries, and affiliates, and federal, state, and local government entities and political subdivisions.

Certain defendants operate beyond the Central Indiana Area, and plaintiffs intend to modify and expand the geographic scope of the class definition as appropriate.

37. 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, plaintiffs allege on information and belief that the Class numbers at least in the hundreds so that joinder of all members is impracticable.

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

39. 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.

40. 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. Plaintiffs' interests coincide with, and are not antagonistic to, those of the Class.

41. 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-mixed concrete;
- b. the scope and extent of the conspiracy;
- c. whether the conspiracy affected the prices of ready-mixed 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 plaintiffs and other members of the Class are entitled to declaratory or injunctive relief;
- h. the appropriate measure of damages sustained by plaintiffs and other members of the Class; and

i. whether defendants and their co-conspirators affirmatively and fraudulently concealed the conspiracy.

42. 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.

43. 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

44. 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-mixed concrete in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

45. This combination and conspiracy consisted of an agreement, understanding 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-mixed concrete.

46. 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-mixed concrete.

47. On June 29, 2005, the United States Department of Justice announced that defendant IMI had agreed to plead guilty and pay a \$29.2 million criminal fine, the largest fine ever levied in a domestic antitrust investigation, for conspiring and fixing the price of ready-mixed concrete in violation of the Sherman Act. In addition, four current and former IMI executives agreed to plead guilty, pay fines and serve time in prison for their roles in the conspiracy. The investigation is ongoing.

EFFECTS

48. As a result of the combination and conspiracy between defendants and their co-conspirators, prices of ready-mixed concrete were artificially increased.

49. 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-mixed concrete and eliminating competition, in *per se* violation of Section 1 of the Sherman Act.

FRAUDULENT CONCEALMENT

50. 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 plaintiff and other members of the Class, and intended that their communications with each other and their resulting actions be kept secret from plaintiff and other class members.

51. Defendants discussed and formed their anticompetitive agreements during secret meetings and conversations, often conducted at undisclosed, out-of-the way locations. No one other than the co-conspirators was invited or present at these meetings, and, by design, note taking was restricted. Defendants conducted these meetings in secrecy to prevent the discovery of their conspiracy by the members of the Class.

52. Although one or more Class members and their counsel had been investigating possible pricing irregularities by defendants for approximately one year prior to the June 2005 announcement by the United States Department of Justice of the guilty plea entered by IMI, as a result of defendants' efforts to conceal their wrongdoing such investigation did not result in the discovery of sufficiently conclusive information to file a claim prior to the Department of Justice's June 2005 announcement.

53. 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.

54. Based on the foregoing, customers of defendants and their co-conspirators, including plaintiffs and members of the Class, were unaware that prices for ready-mixed concrete had been artificially raised and maintained as a result of the wrongful conduct as alleged in this Complaint.

DAMAGES TO PLAINTIFFS AND MEMBERS OF THE CLASS

55. As a direct result of the unlawful conduct alleged in this Complaint, prices for ready-mixed 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-mixed 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-mixed 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.

JURY TRIAL DEMANDED

56. Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

REQUEST FOR RELIEF

57. 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 plaintiffs' attorneys as lead 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 the Court adjudge and decree that defendants and their co-conspirators are jointly and severally liable for three fold the damages resulting from their conduct.

d. 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 as allowed by law, together with the costs of this action, including reasonable attorneys' fees.

e. 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 the 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; and

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-mixed 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.

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

Dated: October 19, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2005, a copy of the foregoing *Amended Consolidated Class Action Complaint* was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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I hereby certify that on October 20, 2005, a copy of the foregoing *Amended Consolidated Class Action Complaint* was mailed, by first-class U.S. Mail, postage prepaid and properly addressed to the following:

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