

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

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

**No. 5:10-CV-04038-MWB  
(CONSOLIDATED CASES)**

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**DEFENDANTS GREAT LAKES CONCRETE, INC.'S AND KENT STEWART'S  
MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED COMPLAINT**

COMES NOW Defendants Great Lakes Concrete, Inc. and Kent R. Stewart (collectively "Great Lakes"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and hereby moves the Court for an Order dismissing Plaintiffs' Consolidated Class Action Complaint ("Complaint") for failing to state a claim upon which relief can be granted.

In support of this Motion, Great Lakes states as follows:

(1) Plaintiffs plead factually empty conclusions that Defendants conspired to set prices and price increases and to submit rigged bids for ready-mix concrete and reached agreements regarding the same. However, Plaintiffs fail to present any particularized facts sufficient to make their claim plausible on its face, as these bare conclusions are not entitled to the presumption of truth accorded factual allegations. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

(2) Plaintiffs fail to establish their standing to sue. Although the named Plaintiffs allege standing to bring the Complaint on behalf of all class members they claim to represent, Plaintiffs neither contend that a named Plaintiff purchased concrete from each Defendant nor that a named Plaintiff suffered the same injury as the class members they claim to represent.

(3) Beyond simply pleading a violation of the Sherman Act, 15 U.S.C. § 1, to succeed in a private action, a plaintiff must also show standing, causation/impact, and antitrust injury pursuant to Section 4(a) of the Clayton Act, 15 U.S.C. § 15(a). *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1058 (8th Cir. 2000). Here, however, Plaintiffs' Complaint rests solely on Defendant Steven VandeBrake's and Defendant Stewart's plea agreements, which admit to only two three discrete agreements, each of which was between only two competitors. Without more, Plaintiffs have failed to provide sufficient factual basis from which this Court could reasonably infer that an Iowa-wide conspiracy involving four corporate and two individual actors continued for more than four years.

(4) Plaintiffs fail to support their allegations of a broad conspiracy with any factual evidence that Defendants' prices for ready-mix concrete moved up and down in lock-step with one another for the four-plus years of the alleged conspiracy. Moreover, even if Plaintiffs had alleged this sort of "parallel" activity, alone these allegations alone are not sufficient for inferring an agreement or conspiracy. Plaintiffs would have to plead "plus factors," or facts that could link together alleged parallel activity, and Plaintiffs' reliance on the two plea agreements is not sufficient to create such a link. *See Blomkest Fertilizer, Inc. v. Potash Corp. of Saskatchewan, Inc.*, 203 F.3d 1028, 1032-33 (8th Cir. 2000).

(5) Finally, Great Lakes incorporates by reference the arguments set out more fully in Defendant GCC Alliance Concrete, Inc.'s Motion to Dismiss Plaintiffs' Consolidated Complaint and Brief in Support thereof, filed on September 17, 2010. (Docs. 149 & 149-1.)

WHEREFORE, Great Lakes respectfully requests that this Court grant this Motion to Dismiss Plaintiff's Consolidated Class Action Complaint and all other relief to which it may be justly entitled.

Respectfully Submitted,

/s/ David C. Mullin

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ATTORNEYS FOR DEFENDANTS  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 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.

*/s/ David C. Mullin* \_\_\_\_\_  
David C. Mullin

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