

**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)**

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**PLAINTIFFS' MOTION FOR  
APPROVAL OF PLAN OF DISTRIBUTION**

Plaintiffs Randy Waterman, Frank Audino Construction, Inc., Sioux City Engineering Co., the City of Le Mars, Iowa, Holtze Construction Company and Brown Commercial Construction, Inc. (collectively "Plaintiffs"), by Settlement Class Counsel, respectfully move the Court to approve their Plan of Distribution for the Settlement Funds created pursuant to the Alliance/Tri-State Settlement, the Alliance/Great Lakes Settlement and the Alliance/Siouxland Settlement (collectively the "Settlements"). In support of this Motion, the Plaintiffs state as follows:

1. On November 1, 2011, the Court entered Orders granting final approval to the Settlements. *See*, Order Approving Alliance/Great Lakes Settlement and Final Judgment (Dkt. 303), Order Approving GCC Alliance/Siouxland Settlement and Final Judgment (Dkt. 304), and Order Approving Alliance/Tri-State Settlement and Final Judgment (Dkt. 305) (collectively "Final Approval Orders").

2. Payments made by the Defendants pursuant to the Settlements will result in three Settlement Funds: (i) the Alliance/Great Lakes Settlement Fund in the amount of \$5,121,412.00; (ii) the Alliance/Siouxland Settlement Fund in the amount of \$2,648,253.00; and (iii) the Alliance/Tri-State Settlement Fund in the amount of \$10,730,335.00.

3. On November 9, 2011, the Court entered an Order (Dkt. 309) awarding Settlement Class Counsel \$6,666,666.67 in attorneys' fees, and \$911,445.92 as reimbursement for litigation expenses, to be paid from the three Settlement Funds in amounts proportionate to each Settlement Fund's relationship to the combined total of \$18.5 million. The Court also ordered that each of the six named Plaintiffs receive an incentive award of \$10,000, to be paid, and split in equal amounts as necessary, from the Settlement Fund or Funds for which the named Plaintiff has been designated a class representative.

4. In addition, Plaintiffs propose withholding an estimated sum from each Settlement Fund in order to provide for the payment of expenses related to providing mailed and published notice of the Settlements, providing a Settlement website with information and documents related to the Settlements, providing Claim Forms and related notices to the Settlement Classes, communicating with Settlement Class members, administering the claims process, and preparing and filing tax returns for the Settlement Funds. These services have been provided, and will continue to be provided, by the Claims Administrator, A.B. Data, Inc., and are necessary to the efficient and fair distribution of the Settlement Funds to Settlement Class members.

5. It is impossible to know at this time the actual total cost of administering the claims process, because it is unknown how many class members will submit claims, or how many of those claims will require individual attention. However, in order to provide the Court with a more complete illustration of the distribution plan, A.B. Data, Inc. has estimated that the amount that will be required to pay these expenses, including notice costs already incurred, will be \$44,175 for the Alliance/Tri-State Settlement, \$75,870 for the Alliance/Great Lakes Settlement, and \$46,997 for the Alliance/Siouxland Settlement. Declaration of Michelle M. La

Count, submitted herewith as Exhibit A (“La Count Dec.”), ¶¶ 4-8. The Plaintiffs therefore propose that these estimated amounts be withheld from each of the respective Settlement Funds.

6. A breakdown of the foregoing proposed Distribution Plan as applied to each Settlement Fund is set forth in the following tables:

<b>ALLIANCE/SIOUXLAND SETTLEMENT</b>	
<b>Defendants’ Combined Settlement Payments</b>	\$2,648,253.00
<b>Relationship to Combined \$18.5 Million in Settlement Funds</b>	14.32%
<b>Allocated Portion of Attorneys’ Fees</b>	\$954,666.67
<b>Allocated Portion of Expenses</b>	\$130,519.06
<b>Applicable Incentive Fees</b>	\$33,333.00
<b>Estimated Notice and Claims Expenses</b>	\$46,997.00
<b>Estimated Net Settlement Fund</b>	\$1,482,737.27

<b>ALLIANCE/TRI-STATE SETTLEMENT</b>	
<b>Defendants’ Combined Settlement Payments</b>	\$10,730,335.00
<b>Relationship to Combined \$18.5 Million in Settlement Funds</b>	58%
<b>Allocated Portion of Attorneys’ Fees</b>	\$3,866,666.67
<b>Allocated Portion of Expenses</b>	\$528,638.63
<b>Applicable Incentive Fees</b>	\$23,334.00
<b>Estimated Notice and Claims Expenses</b>	\$44,175.00
<b>Estimated Net Settlement Fund</b>	\$6,267,521.70

<b>ALLIANCE/GREAT LAKES SETTLEMENT</b>	
<b>Defendants' Combined Settlement Payments</b>	\$5,121,412.00
<b>Relationship to Combined \$18.5 Million in Settlement Funds</b>	27.68%
<b>Allocated Portion of Attorneys' Fees</b>	\$1,845,333.33
<b>Allocated Portion of Expenses</b>	\$252,288.23
<b>Applicable Incentive Fees</b>	\$3,333.00
<b>Estimate Notice and Claims Expenses</b>	\$75,870.00
<b>Estimated Net Settlement Fund</b>	\$2,944,586.44

7. Plaintiffs propose that for each Settlement, the “Net Settlement Funds” – the amount of the Settlement Fund remaining after the deduction of attorneys’ fees, reimbursed expenses, incentive awards and estimated notice and claims expenses – be distributed to Settlement Class Members who submit timely and properly executed Claim Forms, on a *pro rata* basis relative to the amounts of their Qualifying Purchases. A “Qualifying Purchase” is a *direct purchase* by a Settlement Class Member of ready-mix concrete from one or more of the Defendant company plants identified in the Settlement Class definitions at any time during the Class Period.

8. For each Settlement, a Settlement Class member’s *pro rata* percentage of the Net Settlement Funds will be calculated by dividing the amount of their Qualifying Purchases by the total amount of Qualifying Purchases of all Settlement Class Members who submit Qualifying Claims for that Settlement, using the following simple formula:

$$\frac{\text{Class Member's Qualifying Purchases}}{\text{Total Qualifying Purchases}} = \text{Class Member's Pro Rata Percentage of Net Settlement Funds}$$

This distribution calculation will be applied independently for each Settlement. However, a person or company may well be a member of more than one Settlement Class, and thus may submit a Claim Form, and receive a *pro rata* distribution, from one, two or all three of the Settlements depending on their purchases.

9. For each Settlement, a Claim Form and an accompanying Notice setting forth definitions, instructions and deadlines for filing, will be sent to all known Settlement Class members. Where possible, in order to facilitate the submission of claims by Settlement Class members the Claim Form will be customized to include the amounts of the Settlement Class member's known Qualifying Purchases, according to available data, from each of the Defendant companies. Settlement Class members will then be given an opportunity to check this presumptive amount of purchases against their own records and either accept the presumptive amount or provide an alternative figure and supporting documentation.

10. Additional information may be needed from Settlement Class members in order to properly identify and allocate Qualifying Purchases in 2006 from certain Joe's Ready-Mix and Russell's Ready-Mix plants. If so, the purchase information that is already available to the Plaintiffs will be provided to the Class member with instructions on how to state the allocation of the purchases according to their own documentation or knowledge. As necessary, the Claims Administrator will work with Class members to assist them in this process.

11. Additionally, a "General Claim Form" – without customer-specific information included – will also be made available to persons or entities that believe they made purchases of ready-mix concrete from the Defendant companies during a Class Period, but for whom electronic data does not reflect purchases. The General Claim Form will be readily available

upon request from the Claims Administrator and on the Settlement website. Potential Settlement Class members will be asked to provide the amounts of their purchases from each of the Defendant companies and to submit the records upon which those amounts are based.

12. Sample versions of the customized Notice and Claim Form for each of the Settlements are submitted herewith as Exhibit B, C and D. Each of the Notices and Claim Forms will include a claims deadline approximately sixty (60) days after the date that the Notices and Claim Forms are mailed to known Class members.

13. The Claims Administrator has advised Settlement Class Counsel that, based on her experience, it is in the best interest of Class members to mail the Notices and Claim Forms after January 1, 2012, in order to reduce the likelihood of Notices and Claim Forms being lost or misplaced as a result of the high volume of mail during the holidays and the many days during the holidays and year end that businesses are closed. Settlement Class Counsel will therefore direct the Claims Administrator to mail the Notices and Claim Forms during the week after January 1, 2012.

14. To maximize the opportunity for Class members to participate in the distribution of Settlement funds, Plaintiffs will also publish a summary notice of the commencing of the claims process, including notice of the claims deadline and instructions for obtaining a General Claim Form and further information from the Claims Administrator and the Settlement Website. Publication of the summary notice will take place in the same newspapers in which notice of the Settlements was previously published, and will approximately correspond to the mailing of Notices and Claim Forms.

15. In further support of this Motion, the Plaintiffs incorporate herein the description of the Plaintiffs' Plan of Distribution, and related authority, set forth in Plaintiffs' Brief in Support of Joint Motion for Final Approval of Settlements. (Dkt. 294).

WHEREFORE the Plaintiffs, by Settlement Class Counsel, request the entry of an Order approving the Plan of Distribution set forth herein and directing Settlement Class Counsel and the Claims Administrator to undertake the Plan of Distribution in a reasonably prompt manner.

Respectfully submitted,

/s/ Irwin B. Levin

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*Plaintiffs' Liaison Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 12, 2011, the attached document was electronically transmitted to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to all registered counsel of record.

/s/ Irwin B. Levin

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