UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA	)	
	)	
vs.	)	DEFENDANT KENT STEWART'S
	)	OBJECTIONS PRESENTENCE
	)	INVESTIGATION REPORT
KENT ROBERT STEWART	)	
a/k/a KENT STEWART	)	Docket No. CR 10-4028-1-MWB

COMES NOW the Defendant, Kent Robert Stewart, by and through his attorney Larry Stoller, and for his objections to the draft copy of the Presentence Investigation Report respectfully states:

GENERAL OBJECTION FOR FAILURE TO PROPERLY IDENTIFY THE APPROPRIATE CONTEXT OF THE DEFENDANT'S ACTIONS

Kent Robert Stewart respectfully objects to the Presentence Report for the reason that the investigator does not properly identify the entire context in which the anti-trust violations occurred. To assist the investigator in properly understanding the context a glossary of terms and individuals involved is provided as is a timeline which the Defendant respectfully request be included in the final report to the court.

These two documents help to identify the totality of the circumstances in which Kent Stewart found himself in trying to operate his small business in the spirit of free enterprise when faced with a competitor of overwhelming size, influence, and economic advantage.

The statements contained herein to encourage the investigator to recommend leniency to the sentencing judge are not meant as an excuse or a justification, but as an explanation. Legal excuse or justification admits that a crime was committed, but seeks to excuse the commission of

the crime by the Defendant. The Defendant does not seek to excuse his conduct, but to explain his conduct.

A detailed factual background would evidence that Kent Stewart's father and a partner started the original Rehms-Stewart business in 1964 as a small ready mix plant. Kent Stewart, after completing his education and working in the industry, returned to work in the family business and eventually was forced to become the head of the business when his father was killed in a job related accident. The business, under his leadership until 2004, consisted of two small ready mix facilities in Ocheyedan and Milford, Iowa.

While not desiring to become larger Kent realized that given the increasing mergers of his competitors resulting in large scale operations that he had no choice but to expand through merger. He finally agreed to the logical merger of his two facilities with three other facilities located in the same general geographic area and owned by three individuals who also owned much larger unrelated ready mix facilities. His ownership in the merged entity was only 33% and he received a fix salary with no bonus.

Unknown to Kent Stewart his other shareholders sold their interests in their other much larger companies to GCC making themselves multimillionaires. When approached by those shareholders to do the same thing with Great Lakes Concrete Kent resisted as he desired to basically maintain local ownership and control of what was once his family business. He went so far as to hiring an attorney to block any unwelcome take over. Logically then he would have no reason to greedily involve himself in violations of anti-trust law when any enrichment from those violations would benefit his shareholders to the extent of 66% of the enrichment and when Kent had already passed up the opportunity for riches through the sale of Great Lakes Concrete to GCC.

Kent Stewart's involvement in the anti-trust violations was not in the typical context of personal enrichment, but in the context of survival and that does not seem to be recognized or commented upon in the presentence report. A small company surrounded by a giant competitor with the ability at any time to crush the small company enjoys the same position that the State of Israel as a small county finds itself in when surrounded by 250,000,000 enemies. You fight when you need to and cooperate when it is your only choice.

The comments to the federal sentencing guidelines manual and the position of several appellate courts in interpreting appropriate sentences looks to a "heartland" which appears to mean in layman's terms a set of facts that define the most typical and common circumstances of anti-trust violation. In the commentary following section 2R1.1 of the U.S.S.G. the commission looks to several factors in identifying the "heartland" and the variances from the heartland. Those include instigation of the crime, leadership, extent of participation, personal profit, volume of commerce, necessity for punishment, and incentive to desist from further violations.

Judge Bennett in his October 21, 2010, letter to counsel (a copy of which is attached hereto-absent the attachment) reflects on the heartland of the offense and shows his concern that this type of crime goes to the heart of our economic free enterprise system. He also comments that this type of crime is much more difficult to discover. He also comments appropriately on the leadership of Steve VandeBrake in organizing anti-trust conspiracies involving not only GCC, but at least three of its employees and three other companies. Conspiracies which apparently started as early as 2006 while the participation of Kent Stewart and Great Lakes Concrete was limited arguable to only eight months in 2009.

Since GCC Alliance, Inc., was formed in January of 2008, it would seem logical that Steve VandeBrake began working for the company at that time after previously being employed

by Alliance Concrete, Inc., and its predecessors. Apparently no investigation was made of his activities or of the activities of Alliance prior to 2006 when the two companies that merged formed Alliance (Joe's and Russell's) competed in the same territories and same towns.

Judge Bennett at page five lists his own seven concerns in the application of the sentencing guidelines, but the presentence report does little to differentiate Kent Stewart from Steve VandeBrake. If that differentiation was appropriately made the report would include the following:

(1) The length of participation by Kent Stewart and Great Lakes Concrete in the conspiracy was limited to months and not years.

(2) Free enterprise is an ideal, but unfortunately not a reality. Free enterprise is the June and Ward Cleaver ideal of business-Eddy Haskal is the economic reality that small individual companies have a difficult time in competing with multi-national giants. A key differentiating point of the actions of Kent Stewart as compared to the actions of a person participating in a "heartland" conspiracy to commit anti-trust are that Kent Stewart did not participate to unjustly enrich himself or his company, but instead to survive the oppressions of a larger competitor. It is submitted that in an ideal world Kent Stewart would have sought legal advice to combat the unfair practices of his competitor and would have been advised by his attorney to submit his concerns to the Government and to seek civil remedies. The reality is that given the years it takes to investigate an anti-trust matter and the cost and time of civil litigation Great Lakes Concrete may very well have been forced out of business before it had any adequate remedy.

(3) The Government in its Trial Information in three counts against Steve VandeBrake lists at Counts I and III several means and methods used to further the conspiracy. The Government in its Trial Information against Steve VandeBrake at Count II (the Count dealing with Kent Stewart and Great Lakes Concrete) basically limits the conduct and methods to bid rigging.

(4) Both the Government and VandeBrake have admitted VandeBrake's roles as the instigator and creator of the scheme and Stewart has not been identified as an instigator, creator, or leader.

(5) VandeBrake's dramatic personal wealth is acknowledged by the court and contrasted with his total lack of voluntary restitution. In comparison Stewart is not dramatically wealthy and his personal financial statements contained in the Presentence Investigation Report show only a comfortable lifestyle, competent

raising of a family and extended family, an investment for he and his wife's later years.

(6) The impact on the public was given consideration in Kent Stewart's plea agreement with the Government as was restitution.

(7) Any section 1B1.8 protection afforded Kent Stewart by the plea agreement would not significantly impact his sentence under the guidelines.

In summary, Kent Stewart objects that the Presentence Investigation Report does not adequately convey to the sentencing judge the full context of the circumstances which should be considered in the sentencing of Kent Stewart. Full context should be reported to the sentencing judge.

SPECIFIC REPORT OBJECTIONS

The balance of the objections to the Presentence Report are given for the most part in reference to specifically numbered paragraphs of the report followed then by expanded sections objecting to the report's recommendations on:

1. Acceptance of responsibility.
2. Offense level computation.
3. Objections to computation of value in commerce.

While these expanded sections may be somewhat duplicative we deem them to be important.

The specific objections are as follows:

1. That the Defendant has received a copy of a letter of October 12, 2010, from the US Department of Justice to Shane Moore which purports not to raise any objections to the first draft, but instead to correct or clarify a few minor points. The Defendant does not object to any of the suggested corrections with the following exceptions:

(a) Paragraph 22 – the Defendant cannot determine what the Department of Justice is suggesting that the second sentence should say.

(b) Paragraph 23 – if the report is to advise that neither of the itnesses are currently working for GCC it should further advise in the same sentence that they both did at the time information was obtained from them.

(c) Paragraph 33 – Defendant objects to the inclusion of the additional wording suggested because there is no factual support for the sentence.

(d) Paragraph 49 – Defendant objects to the addition of the phrase "at least".

2. Objection to Paragraph 12. Paragraph 12 is captioned as "change of plea". On May 24, 2010, the Defendant entered his plea of guilty. He had never previously entered any other plea and therefore there was no change of plea.

3. Objection to Paragraph 13. Summary of the Plea Agreement – Defendant objects to the summary of the plea agreement as set forth because the summary is incomplete and it does not present to the court an accurate description of the circumstances surrounding the plea. The presentence investigation should report to the court that the Defendant was interviewed by attorneys from the US Department of Justice on January 13, 2009, and given an opportunity to make a proffer on that date as evidenced by the proffer letter attached hereto. The presentence investigation should also note for the court that the plea agreement was prepared prior to the Defendant's proffer as evidenced by the email attached hereto dated January 11, 2010, from DOJ Attorney Robert Jacobs to Defendant's counsel sending him a copy of the plea agreement and

that the plea agreement subsequently signed and submitted to the court did not vary substantially from the plea agreement offer the Defendant prior to his proffer.

The presentence investigation in advising the court of the summary of the plea agreement should also include that the parties have stipulated that the volume of commerce was less than one million dollars ($1,000,000.00). The report should also advise the court that the United States agreed to make a motion pursuant to U.S.S.G. Section 5K1.1 for a three level downward departure from the guidelines fine imprisonment range in this case because of the Defendant's substantial assistance in the government's investigation and prosecution of violations of federal criminal law in the ready mix industry. This motion is subject to the full and continuing cooperation of the Defendant as set forth in paragraph 12 of the plea agreement. Paragraph 12 provides that the Defendant will cooperate fully and truthfully with the Unites States in the prosecution of this case, conduct of current federal investigation of violations of federal antitrust and related criminal laws...any other federal investigation...and any litigation or other proceedings arising or resulting from such investigation to which the United States is a party. The report should note that the Defendant has produced all documents requested, made himself available for interviews, never been asked about any other investigation or defendant, and has never been called upon to testify in any proceeding.

The presentence investigation should further note that at paragraph 9 of the plea agreement the United States acknowledges the Defendant's substantial assistance in the

government's investigation and prosecutions of violations of federal criminal law within the ready mix industry.

Paragraph 10 of the plea agreement also obligates the United States to fully advise the court and probation office of the fact, manner, and extent of the Defendant's cooperation and it does not appear that the United States has honored that obligation.

4. Defendant objects to the US Probation Office's recommended two level enhancement based upon the volume of commerce and further objects to the Probation Office's recommendation that the court not reduce the Defendant's offense level pursuant to U.S.S.G Section 3E1.1. (acceptance of responsibility). The Defendant's objections are based on the following:

(a) The parties stipulated that the volume of commerce attributable to the Defendant was not greater than one million dollars ($1,000,000.00).

(b) The preparer of the report seeks to increase the value of commerce based upon inclusion of a project called the "East Okoboji Beach Project" as well as the value of projects proffered by the Defendant on January 13, 2010, as well as a calculation by the Department of Justice based upon a theory of general price fixing of price sheets. It should be noted that the DOJ was well aware of the East Okoboji Beach Project at the time of the proffer and at the time the plea agreement was entered into and rightfully chose not to include the project as an offense. The DOJ had also interviewed Steve Vandebrake prior to the Defendant's

proffer and apparently had not testimony from Vandebrake supporting inclusion of the East Okoboji Beach Project as an offense. Steve Vandebrake's plea taking was held before that of the Defendant and prior to Vandebrake's plea taking the United States filed an information containing three counts to which Vandebrake plead guilty. Count II of the Vandebrake information relates to Stewart and under the means and methods of the conspiracy section alleges only the submission of rigged bids while under Counts I and III in the description of the means and methods of the conspiracy specifically alleges the further allegation that Vandebrake, with other coconspirators, engaged in discussions to raise their prices on respective price lists for ready mix concrete sold in the Northern District of Iowa. That document is signed by five attorneys on behalf of the United States and certainly the failure to allege in Count II price fixing based on price sheets was not merely an error. The Department of Justice had access to the price sheets of both Stewart and Vandebrake's companies prior to entering into any plea agreements and it appears that after the rejections of Vandebrake's initial plea by the court he began "manufacturing" additional evidence to curry favor with the court.

(b) Kent Stewart accepted responsibility for his offense from the first interview at his home, to the proffer in Chicago, including naming projects the government had not named, and in being the party to come forward to the government at an early stage seeking a plea agreement. Please take note of the commentary following Section 3E1.1 and particularly at note 1(a) stating, "note that the defendant is not required to volunteer, or affirmatively admit, relevant

conduct beyond the offense of conviction in order to obtain a reduction under subsection (a). A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection." Under this note Kent Stewart could have remained silent after the entry of his plea bargain and acceptance by the court and in lieu of remaining silent certainly would not have lied with regard to further information given to the United States.

5. The Defendant objects to paragraphs 21 and 22 of the report in that it emphasizes that there were one hundred (100) telephone calls between Stewart and Vandebrake without advising the court of the time period of those calls or noting for the court that Stewart advised the DOJ attorneys that many of the calls were related to a joint venture between the two companies and also to his ordering in 2008 of deliveries of cement powder to be hauled by GCC and beginning in 2009 calls to place orders for cement powder purchased from GCC. GCC is in the business of hauling cement powder as well as selling and in 2008, though Great Lakes Concrete was buying its cement powder elsewhere, it was contracting with GCC to haul the cement powder to the Great Lakes Concrete facilities.

6. Defendant further objects to paragraph 22 and paragraph 27 as they relate to an alleged email from Ryan Lake to Steve Vandebrake dated January 22, 2008, while both were employees of GCC. The objections are as follows:

(a) The company referred to as "GCC" actually is GCC Alliance, Inc., which was originally incorporated as Corn Corner Acquisitions, Inc., on January 7, 2008, and on January 14, 2008, amended its Articles of Incorporation to change its corporate name to GCC Alliance, Inc. This was because it had acquired the assets of Alliance, Inc., which formerly employed Steve Vandebrake and probably formerly employed Ryan Lake as well as Alliance had purchased Lake's company in the fall of 2007. The point being that it is not a reasonable interpretation of the Lake email that it refers to an ongoing agreement between Stewart and GCC Alliance as GCC Alliance did not exist until January 14, 2008, and no agreement could have existed prior to that time. Kent Stewart has testified to the DOJ that he was not aware of the purchase by GCC of the assets of Alliance until after it took place. The DOJ in its numerous interviews with Kent Stewart has not brought forward a single piece of evidence other than this alleged email to show any conspiracy, and to the contrary the price sheets of the two companies in 2008 showed great disparities.

(b) At paragraph 27 the report advises that Lake stated in his interview that he believed Vandebrake and the Defendant rigged numerous bids on projects, but he was not privy to the details of the agreement. His comments therefore are merely speculation and refer to bids on projects and general price fixing. At no where do I find any statement from Lake as to any general price fixing.

(c) The report fails to state that Kent Stewart testified that the first contact he had regarding bid rigging was from Lee Konz in December of 2008. Konz likewise does not offer any information about price sheet fixing.

(d) The report should further advise the court whether Lake is an un-indicted coconspirator or received immunity in exchange for his testimony.

7. Defendant disputes paragraphs 32 and 33 wherein it is concluded that Kent Stewart engaged in bid rigging for a project called Spencer/Lincoln School 2009. The dispute is based upon the following:

(a) Again, the only evidence of bid rigging was that Lake told investigators that Vandebrake gave him a price to bid for the project and that the price was supposed to be the same as that of Great Lakes.

(b) It is noted that the government has not been able to obtain the price quote Great Lakes submitted to contractors. It was the testimony of Kent Stewart that no bids were requested from contractors because the contractors bidding the project already had a set price of $98.00 for the type of concrete to be used. There was no reason for them to obtain bids from Great Lakes. The report also incorrectly states, "Great Lakes bids on occasion include a $5.00 per cubic yard discount if the invoice is paid by the 10th of the month following the statement." This is a misstatement of Kent Stewart's consistent testimony that large paving contractors were always given a discount, not occasionally, and that the discount was set on an annual basis and

was not dependent on payment of the invoice by the 10th of the month. His testimony was that the contractors always paid in a timely manner anyway and the discount was given prior to billing so as to not inflate the sales tax the contractor had to pay. The United States incorrectly concludes that by bidding $103.00 GCC was affectively giving the project to Great Lakes when in fact had there been any price fixing Stewart could have easily told GCC to bid $99.00 and Great Lakes would have still had the project. There is also no testimony or statements offered by the United States as to what GCC was to receive in return for allowing Great Lakes this project.

(c) If the United States will present bids for review by the writer of this report the writer will see that Great Lakes Concrete gave bids for various projects addressed to all contractors while GCC gave bids addressed specifically to a contractor and the bids it gave for the same project to different contractors were at different prices. Those bids were shown to Kent Stewart at his interview on September 8, 2010, but had to be given back to the United States and therefore cannot be produced by the Defendant.

8. The Defendant objects to paragraph 34 regarding the conclusions drawn by the report writer involving the East Okoboji Beach paving project. Apparently the writer of the report does not understand clearly the situation. Ready mix producers generally give bids to paving contractors who formulate their own bids for the laying of the concrete based upon the cost of the materials supplies as well as their own labor and overhead. Certain large paving companies have their own portable ready mix concrete plants which they can transport to a given

project if it is large enough and then buy the ingredients to make concrete and mix it themselves. In successfully trying to sell ready mix concrete for projects such as these the local company must bid low enough so that it is more profitable for concrete paver having its own portable plant to purchase locally rather than set up its own plant and low enough to contractors not having their own portable plants that they have any reasonable chance of success in winning the bid against the larger contractors.

Kent Stewart testified on numerous occasions and very consistently that Steve Vandebrake called him about this project first to suggest a joint venture between the two companies. Vandebrake was advised by Stewart that Stewart had two plants in close proximity to the project whereas Vandebrake's closest plant was an additional thirteen (13) miles further away and Stewart was able to handle the project on his own. He testified further that he advised Vandebrake that he would be bidding on behalf of Great Lakes Concrete because of the potential of portable plants and working on a very small margin as acknowledged by this report writer in his presentence investigation. The report writer also accurately notes that in comparison to the other bids where the Defendant admitted collusion all of those bids were very close in price while Vandebrake's bid on East Okoboji Beach was $17.00 per yard higher.

It appears that only after the acceptance of his amended plea agreement by the court did Vandebrake then offer statements to the United States that he had asked Kent Stewart what he should bid on the project. Stewart very clearly remembered responding to Vandebrake's

price request by telling Vandebrake that he should bid whatever he wanted to. Certainly Kent Stewart could not keep Steve Vandebrake from calling him about a project, but the discussion of the East Okoboji Beach project between the two did not even suggest collusion, but instead Stewart matter of factly telling Vandebrake that he was not interest in any agreement or any collusive setting of prices.

In conclusion, the total volume of commerce represented by the East Okoboji Beach Project and the Spencer/Lincoln School 2009 Project should not be included in the total volume of commerce.

9. Commencing at paragraph 38 and thereafter the Defendant objects to any conclusion that any price fixing agreement existed in 2009 relating to the price sheets issued by the two companies. The Defendant objects as follows:

(a) As previously stated, all of the price sheets of the two companies were available to the DOJ prior to the time that they entered into any plea agreements with either individual defendant.

(b) At paragraph 38 is a statement that Ryan Lake corroborated Vandebrake's account, stating to investigators that, when Vandebrake told him about GCC's 2009 price increase in early 2009 Lake expressed his concern at the size of the price increase, but Vandebrake informed him that Stewart would match GCC's prices. Stewart's testimony to the DOJ attorneys was that he had only indicated to Vandebrake that he thought prices would be

going up based upon the cost of materials and operating costs, but that he was waiting to see the price sheets from American (another competitor) before issuing his own. In fact, it is more plausible that Vandebrake anticipated Great Lakes price increase. Please note as per the attached price lists and referring to 4,000 pound concrete that in 2006 Great Lakes' (put out as Northwest Ready Mix) price was $80.00 per cubic yard. In 2007 the same price increased by $5.00 to $85.00 per cubic yard. In 2008 the price increased by $7.00 to $92.00 per cubic yard. In 2009 the price increased by the very same $7.00 to $99.00 per cubic yard. Great Lakes' prices have traditionally been higher than those of Alliance and the increases were consistent from year to year.

(c) **ALL OTHER CUSTOMERS OF GREAT LAKES CONCRETE PURCHASING STANDARD WEIGHT MIXES RECEIVED DISCOUNTS BASED UPON THEIR ANTICIPATED ANNUAL VOLUME AND NOWHERE IS THERE ANY TESTIMONY OR EVIDENCE BY VANDEBRAKE, LAKE, KONZ, OR ANY OTHER PERSON OR ANY WRITTEN EVIDENCE THAT STEWART AND VANDEBRAKE CONSPIRED WITH REGARD TO ANY DISCOUNTS. WITHOUT THAT EVIDENCE THERE IS NO EVIDENCE OF ANY PRICE FIXING RELATED TO PRICE SHEETS.**

(d) The calculations of the volume of commerce attributable to price sheet price fixing is inaccurate and not applicable for the reasons set forth above and more fully expanded on in the following sections of this objection dealing with the computation of volume of

commerce. Additionally, at paragraph 26 the presentence investigation concludes that in or around June 2009 Vandebrake and the Defendant ceased rigging bids because both companies had bid and won a very large project through a joint venture. The report also states, for unsubstantiated reasons, that although they (Vandebrake and Stewart) did not formally end the conspiracy (referring to the time in June 2009) that the project they were working on took up Great Lakes' production capacity until August 2009. The report further concludes, again without substantiation, that the conspiracy ended in August 2009 when the prosecutors' investigation went overt. More realistically the conspiracy was limited to specific projects and no conspiracy existed with regard to specific projects after May 11, 2009. Attached here to is a chronological order of projects showing none occurring after May 11, 2009.

(e) Kent Stewart has consistently admitted that Steve Vandebrake contacted him with regard to 2009 price sheets, but has consistently denied that any agreement was reached.

10. Request for additional statement in the presentence investigation – Defendant would request a statement in the presentence investigation as follows, "the Defendant, Kent Stewart, by entering into a plea agreement, gave up the very valuable constitutional right to trial by jury which would require the United States to prove beyond a reasonable doubt any criminal charges against him. He did so in reliance on the terms of the plea agreement and on the good faith of the Department of Justice in entering into the plea agreement. The DOJ has, in letter form, provided the author of the Presentence Investigation Report with alleged statements

of witnesses, its own innuendos and opinions as to what those statements mean, and references to other alleged documentation in possession of the Department of Justice which the investigator has been asked to accept at face value and in doing so the Government has circumvented the necessity of proving the alleged evidence and is effectively asking the investigator preparing the report to make his recommendations to the sentencing judge on an expanded list of crimes to which the Defendant has never been charged. The Department of Justice has never amended its Trial Information to include these alleged additional crimes and apparently has not even made an attempt to verify the reliability of any of the testimony or investigated the credibility of the persons offering the testimony. The DOJ has apparently provided the author of the presentence investigation with statements of witnesses, innuendos, and other alleged documentation that he has been asked to accept as face value and in doing so the government has circumvented the necessity of proving the alleged evidence and is effectively asking the court to sentence the Defendant to charges of which he has never been convicted. The Department of Justice has apparently not even made any attempt to verify the reliability of any of this testimony or investigated the credibility of the persons offering the testimony."

11. The Defendant objects to paragraph 53 of the presentence investigation concluding that the Defendant is denying relevant conduct and therefore not accepting responsibility and accordingly not entitled to a two level reduction pursuant to USSG Section 3E1.1(a). This issue has previously been partially addressed in this objection. The author of the

presentence investigation bases his conclusion on information provided by the prosecutor which has been refuted in this objection. The prosecutor alleges he did not learn of additional relevant conduct related to East Okoboji Beach paving project until after the entry of the plea by the Defendant, but the Defendant was thoroughly interviewed in his proffer about the project. Vandebrake and Lake have not been established as reliable or credible witnesses and their allegation of fixing prices on the 2009 price sheets, while appearing to be logical on their face, fall apart when it is realized that almost all sales were discounted from the price sheet and there is no allegation that there was any conspiracy as to fixing the amount of the discounts.

Accordingly it is respectfully requested that the recommendation of the Department of Probation be changed to recommend the two level reduction. In changing the recommendation you should note paragraph 50 of the presentence investigation advising that notifications were sent to potential victims of their right to submit a victim impact statement and request restitution and that no victims have responded.

12. At paragraph 70 of the report it is incorrectly stated that the Defendant was arrested in 1997 and 1983 for driving while intoxicated and that the disposition of these offenses are not known. The Defendant in his interview with the probation officer stated that he was convicted on both of these charges. It should be noted for the court that the Defendant requested this correction.

ACCEPTANCE OF RESPONSIBILITY

At paragraph 8(d) of the Defendant's plea agreement the United States, having had the full benefit of its own investigation, the Defendant's proffer, and interviews with other witnesses and the Steve VandeBrake agreed that Kent Stewart should receive a two-level downward adjustment for acceptance of responsibility pursuant to U.S.S.G. section 3E1.1(a). At paragraph 53 of the Presentence Report the investigator determines otherwise and does not recommend the two-level reduction. Defendant's objects to this recommendation as not being supported by the facts of the case, contrary to the conduct of the Defendant, Kent Stewart, and in violation of the Defendant's rights of due process. The investigator seems to rely on the fact that Steve VandeBrake made 11th hour self serving statements after his plea was accepted by the court and corroborated by the unreliable Ryan Lake as his basis for determining that Kent Stewart had not acted truthfully in accepting responsibility. The facts are to the contrary. The investigator should reconsider his position in light of the following:

1. Kent Stewart accepted responsibility from the first day that he was interviewed by attorneys of the DOJ and the FBI. He admitted participating in the bid rigging on certain projects and his wrong doing.

2. On the very same day at the request of the prosecution Stewart called Steve VandeBrake to gain information as requested by the FBI and when he received a return call from VandeBrake advising him not to talk to anyone and to get an attorney he reported that immediately to the prosecutors and continued to cooperate.

3. Kent Stewart asked his attorney early on in the proceedings to approach the prosecution about a plea agreement and is appropriately noted thereby enabling the prosecutor to avoid preparing for trial.

4. He timely answered all subpoenas and attended all interviews requested.

5. He truthfully testified at his proffer and in reliance on proffer agreement gave evidence of two potential projects that the government had not discovered on its own.

6. At the request of the government he gave interviews on two additional occasions and even insisted the final interview be recorded by a court reporter so that his statements would later not be misinterpreted and because statements in previous interviews were being attributed to him that he did not believe were true.

7. He remained as consistent as possible in his answers given his nervousness, fear, and the time periods that had passed since the alleged actions.

8. He pled guilty to an offense conduct statement alleging that beginning at least as early as January 2008 and continuing as late as August 2009, he was engaged in a conspiracy. He did so because this was the only plea bargain offered and he deemed it in his best interest to accept the bargain to obtain the sentencing incentives offered by the prosecution. In the Government's Trial Information filed in this matter and specifically in Description of Offense paragraph one the Government states, "beginning at least as early as January 2008 and continuing until as late as August 2009, the exact dates being unknown to the United States..." indicating that the Government was uncertain of specific times involved, but was insistent that these were the dates that would be used if the Defendant was to be offered a plea agreement. Subsequently the investigation revealed no bid rigging projects in 2008 and no price sheet fixing in 2008. In reality six projects were identified which took place between February 16, 2009, and July 8, 2009. At his proffer he acknowledged that he was contacted in December of 2008 by GCC representative Lee Koonz about Great Lakes Concrete giving GCC a project it wanted and Great Lakes Concrete getting one in return, but couldn't remember the specifics. He also vehemently

denied bid rigging on a project called "Spencer/Lincoln School 2009" referenced at paragraph 32 of the Presentence Report. It was determined that Great Lakes did not give a bid to the winning concrete contractor on that project because it had previously given in an annualized price of $98.00 per cubic yard. GCC apparently bid that project at $103.00 per yard and noted that it lost the project and that the contractor was Barry DeLoss. The investigator is incorrect in his assumption at paragraph 32 that the Great Lakes bids on occasion include a $5.00 per cubic yard discount if the invoice is paid by the 10th of the month as prompt payment discounts apply to price sheet customers and not established contractors. The investigators misanalysis should not be held to be a lack of acceptance of responsibility on the part of Kent Stewart.

9. The allegations of VandeBrake with regard to East Okoboji Beach project and the rigging of 2009 price sheets are completely self serving, unreliable, and should be completely discredited. Kent Stewart would have been crazy to not bring forth these matters in his proffer in Chicago when under the proffer agreement they could not be used against him.

10. The investigator has failed to investigate the number of bidders on the East Okoboji Beach project both as ready mix concrete suppliers and concrete contractors to even determine if Great Lakes Concrete and GCC were the only bidders. The evidence will show that at least five separate concrete contractors were bidding on the project. It is difficult to conspire to rig bids when there are other bidders. Particularly when it is acknowledged by the investigator that Great Lakes Concrete bid was on a very slim margin of profit and GCC's bid was not in a price range consistent with projects for which there had been a bid rigging conspiracy.

VICTIM IMPACT

The investigator has not chosen to address the issue of victim impact or restitution as evidence or acceptance of non acceptance of responsibility, but those issues could be very well

addressed at this point. It is noted at paragraph 50 of the Presentence Report that the US Attorney's Office sent a joint letter notifying the potential victims of their right to submit a victim impact statement and request restitution. It is further noted that to date no victims have responded.

The interviewer should further note that pursuant to paragraph 8(h) of the plea agreement it is noted that restitution is not required from the Defendant, pursuant to U.S.S.G. section 5E1.1, because restitution will be obtained from the Defendant's employer Great Lakes. It is further acknowledged by the prosecution that any alleged victims have civil remedies which are currently be pursued.

It should further be acknowledged that under current law only the direct purchasers of goods are entitled to recover damages and none of those victims have sought restitution. It has further not been alleged or proven that any direct purchasers incurred any damages.

Finally, Kent Stewart has been advised by his civil attorneys that any offer of restitution could be deemed an admission against interest or the creation of a formula for damages in the civil proceedings and unfortunately the current state of the law is that in many instances Defendant's may not even apology for actions without having adverse legal consequences and are best off to follow the advice of their attorneys.

In summary the Defendant objects to the recommendation that he not be given a two-step downward departure for acceptance of responsibility and further that restitution or lack thereof not be included as an element in the court's determination of acceptance of responsibility in this matter for the reasons set forth.

DEFENDANT'S OBJECTIONS TO OFFENSE LEVEL COMPUTATIONS

Kent Robert Stewart agrees and objects to the offense level computations commencing at paragraph 54 of the Presentence Report as follows:

1. Agrees at paragraph 55 that the base level offense is 12 and because the conduct included an agreement to submit noncompetitive bids the base level should be increased by 1 to 13.

2. For the reasons set forth in this objection the Defendant objects to a 2 increased level based on the volume of commerce exceeding $1,000,000 because it has been shown that the value of commerce did not exceed $1,000,000.

3. Defendant objects to the investigator's recommendation that he not be given a two-step downward departure for acceptance of responsibility, because clearly he has accepted responsibility throughout this proceeding.

4. The Defendant's offense level accordingly should be at 11.

5. Pursuant to paragraph 9 of his plea agreement the United States has agreed, subject to the full and continuing cooperation of the Defendant and prior to sentencing that the United States will make a motion pursuant to U.S.S.G. section 5K1.1 for a three level downward departure from the guidelines fine and imprisonment range in this case because of the Defendant's substantial assistance in the government's investigation in prosecution of violations of federal criminal law in the ready mix industry. Accordingly the offense level should be 8. The Defendant's cooperation is set forth in the plea agreement at paragraph 12 and the Defendant has complied fully with the requirements of paragraph 12. In the event that the government is not going to honor its agreement for section 5K1.1 departure the court should su esponte make that departure.

6. At paragraph 83 of the Presentence Report the investigator has noted the Defendant's employment in the industry since 1982 and that since 2004 he has worked as the President and General Manager of Great Lakes Concrete in Ocheyedan, Iowa. The Defendant objects that the interviewer has not gone far enough in advising the court how crucial the Defendant is to this small business and that his incarceration would have a detrimental effect on not only the business, but its numerous employees and their families. The investigator is directed to US v. Milikowsky 65 F. 3d 4 (2nd Circuit 1995) where it was held that the effect imprisonment of the Defendant would have on employees of companies in which he was a principal was an extraordinary circumstance justifying downward departure from the sentencing guidelines. Most notably the court found that the Defendant was the principal of several small businesses and that his circumstances differed from those of the other high-level business people it had sentenced in that the court was convinced that this was a situation where the loss of his daily guidance would extraordinarily impact on the persons who were employed by him. Id page 7. Like the Defendant in that case Kent Stewart is the only individual with the knowledge, skill, experience, and relationships to run his company as well as being the sole buyer of all materials and the person with the ability and authority to bid jobs and deal with customers and suppliers. Kent Stewart has the additional burden of being the only owner of his company who can act in management capacity given that this other shareholders sold out to a multinational competitor and by virtue of non-compete clauses may not take an active interest in the business. The sole management decisions then for five facilities and all of their employees rest with Kent Stewart.

Unlike the Milikowsky court's comparison of him to "other high level executives" Kent Stewart is not exactly a high level executive in a multimillion dollar business. He is not a highly compensated employee who receives bonuses, he works out of a pickup truck with a cell phone,

and has one office manager in charge of the financial records and business correspondence. Without his direction the company will certainly fail.

Several cases from the 8th Circuit also allow the court to consider the fact that the Defendant is overcoming hardships and struggling in a difficult environment in considering a downward departure in his sentence. Granted most of those cases deal with personal hardships and personal adversities, but a parallel may drawn to this case in that Great Lakes Concrete, Inc., is one of only two independently and locally owned ready mix facilities in Northwest Iowa facing extreme economic uncertainty because of the proliferation of buyouts by multinational corporations which threaten the existence of locally and independently owned businesses. Certainly the investigator should consider this situation.

SUMMARY

In summary the Defendant objects to a guidelines level of 15 and suggests that a guidelines level of 8 is more appropriate in this matter given all of the circumstances.

OBJECTION TO COMPUTATION OF VALUE IN COMMERCE

At paragraphs 31 through 49 of the Presentence Report the preparer attempts to determine the total value in commerce attributable to Kent Robert Stewart and Great Lakes Concrete, Inc. The determination of the value in commerce is divided into the following categories:

1. Projects that Kent Stewart and the government agreed were part of the instant offense.
2. Disputed volume of commerce related to bid rigging.
3. Disputed volume of commerce related to price sheets.

At paragraph 49 of the Presentence Report the investigator determines the volume of commerce to total $2,464,852.40. It is respectfully submitted that the true volume of commerce should be $743,001.95 and in the worst case scenario $898,840.84.

In making this objection the Defendant respectfully relies upon the following:

1. 6 projects listed at paragraph 31of the report have been admitted by the Defendant and the Defendant does not object to the value in commerce of $743,001.95.

2. At paragraph 4 (a) of the Stewart plea agreement the United States and Stewart agree and stipulate that the volume of commerce attributable to Stewart is less than $1,000,000. The plea agreement was entered into well after the Department of Justice had interviewed Kent Stewart at his home in November of 2009, Kent Stewart had made his proffer on January 13, 2010, a search warrant had been served on the company's premises in November of 2009 obtaining all relevant documents, and Kent Stewart had provided answers to the Government's subpoenas both personally and corporately which included the company's price sheets for the relevant periods of time which included the company's price sheets for the relevant periods of time as well as disclosing in his proffer two projects which may have constituted offenses which the United States agreed at paragraph three of the proffer letter of January 13, 2009, would not

be used against Kent Stewart in any legal proceeding except to impeach his testimony or to rebut evidence offered on his behalf. An inclusion of the value of commerce of those two projects should not rightfully be included in the total value of commerce. Accordingly, the value in commerce of $101,773 for the Spencer/Lincoln school projects should not be included in the volume of commerce in determining Mr. Stewart's sentence.

3. Included in the presentence report is the "East Okoboji Beach Paving Project" where the prosecutor has calculated the volume of commerce at $694,573.50. Kent thoroughly discussed the East Okoboji Beach product at with the Department of Justice at his proffer on January 13, 2010, and it was determined that this project did not constitute an offense. Specifically the Defendant has consistently maintained that there was no agreement with Steve VandeBrake on the East Okoboji Beach Product. To the contrary, Stewart freely admitted that VandeBrake had originally called him to propose that the two companies joint venture the project, but that Stewart had advised VandeBrake that Great Lakes Concrete had at least two plants in the immediate vicinity that could handle the project on their own and that VandeBrake's closest plant was at least 13 miles further away.

Stewart further advised VandeBrake that he knew of at least four concrete contractors who were considering bringing in their own portable plants and that Great Lakes Concrete would be having to bid the project very low and negotiate with the owners of the portable plants to dissuade them from setting up those portable plants and instead buy their concrete locally. At paragraph 34 of the presentence report the investigator admits that, "the 2009 project bids reflect that the $85.00 price per yard given concrete contractors for East Okoboji Beach was far below the prices given on other projects in the area. The financial statements of the company indicate

the East Okoboji Beach project was done on a very small profit margin to at least get the business and amortize fixed overhead and keep employees working."

The investigator goes on to find, "VandeBrake's bid of $102.00 per yard was $17.00 per yard higher. If compared to the other bids where the Defendant admitted collusion, all of those bids were very close in price." The investigator himself appears to reach the conclusion that there was no collusion on this project and there was not even any basis for collusion. However, contrary to his own conclusions the investigator then seems to conclude that this was a project that violated the anti-trust laws. He apparently basis his assumptions on statements made by VandeBrake only after VandeBrake had entered his guilty plea which was once rejected by the court and by its final acceptance by the court subjected VandeBrake to more discretionary sentencing which obviously gave him a motive to try and strengthen his position of cooperation with the government and does not explain his sudden recollection. The investigator also relies on the statements of Ryan Lake who apparently then told investigators that VandeBrake provided a bid price to him on the project instead of letting him develop a bid price on his own-a practice consistent with when VandeBrake rigged bids with the Defendant. Lake does not go so far to say that he has any actual knowledge that VandeBrake was rigging a bid and obviously he did not as his bid was not even close and VandeBrake gives no explanation as to why his bid was so much higher when on other projects the bids were very close. Stewart remembered very clearly that VandeBrake had asked him for a price to bid and Stewart told him that he should bid whatever he wanted and no way can this be construed as a collusive effort to increase prices.

In summary there was clearly no collusion or conspiracy on this project and the value in commerce should not be included in determining Kent Stewart's sentence.

4. Kent Stewart objects to the conclusion reached by the investigator in determining that there was price fixing with regard to customer price sheets and with the methodology used to determine the value in commerce. The objections are based on the following:

(a) No allegation has been made that there was any price sheet fixing for 2008. In fact the prices on Great Lakes price sheet for 2008 are much higher than those of GCC Alliance and that is consistent with Kent Stewart's statements in all interviews. VandeBrake himself recalls that he had a discussion with 2009 price sheets in early 2009. At paragraph 41 of the presentence report the investigator states, "In contrast, GCC's and Great Lakes' price sheets for "standard mix" were never identical in 2006-2008." If the examiner will review the price sheets of both companies for 2006-2008 he will see that there were substantial price differences and in each instance Great Lakes price sheet for "standard mixes" was significantly higher.

(b) The whole issue of price sheets has been blown out of proportion. Price sheets may be changed at any time by any company and the standard prices a company is charging for concrete are is as easy to obtain as are the prices that gas stations are charging in a specific town by merely driving through and looking at the posted prices.

(c) Kent Stewart will introduce evidence at sentencing that GCC's upper lever executives had instructed Steve VandeBrake to raise the prices for standard mix concrete by $10.00 for 2009 and that was VandeBrake's motivating force, not an agreement with Kent Stewart. Reviews of the 2007, 2008, and 2009 Great Lakes Concrete price sheets reveal that Great Lakes raised its prices a consistent $5.00 to $7.00 per yard in each of those years regardless of what GCC and its predecessors were charging and Great Lakes prices were below or consistent with the prices of its competitors to the north and east. This again is consistent with Kent Stewart's statements that his prices were based upon sound business decisions which he computed as well as a survey of the overall market prices. It must be remembered that GCC Alliance and its predecessors were not Great Lakes Concrete's only competition.

(d) Steve VandeBrake never alleged any price sheet fixing until after his plea was accepted by the court and it is apparent that the Department of Justice had both company's price sheets before entering into a plea with either Defendant and could have certainly challenged the price sheets at any time, but chose not to do so. DOJ attorney Rob Jacobs acknowledged in January 2010, prior to Kent Stewart's traveling to Chicago to make his proffer, that the Department of Justice had the price sheets for 2008 and 2009 and wanted to discuss them and asked that the 2007 price sheet be brought along.

(e) At paragraph 38 of the presentence report it is reported that VandeBrake proposed the 2009 price increase to Stewart and "understood" from Stewart's response that Stewart agreed to match VandeBrake's prices. VandeBrake had initially stated that Stewart had proposed the prices for 2009. VandeBrake never affirmatively says that Stewart agreed to match prices and VandeBrake couldn't even initially recall who made the proposal. He also failed to advise the DOJ that he was given a directive from his management to raise prices. As a matter of fact Stewart did not match VandeBrake's prices and instead took his normal markup.

(f) Ryan Lake's testimony with regard to VandeBrake informing him that Stewart would match GCC prices is nothing more than unreliable hearsay.

(g) In his proffer of January, 2010, Stewart was truthful and forthcoming in admitting that VandeBrake had called him to discuss annual price sheets, but denied that any agreement was formed. He consistently maintained in that interview and in subsequent interviews that all he told VandeBrake was that given increasing material cost and cost of operation he anticipated that prices would be going up. He also consistently maintained that he would not issue his price list until he review the prices being offered by his competitors to the north and to the east.

The Government attorneys, in their correspondence to you, failed to recognize that Great Lakes Concrete's prices were the same for all of their five plants which included not only the plants that overlapped with GCC, but which competed with other third party competitors. Great Lakes Concrete was not in a position to fix public pricing with one competitor when it had at least three competitors to deal with.

Both you and the Government have also been provided with the financial statements for Great Lakes Concrete for 2007-2009 and you will see that its margins of profit and cost of sales were very consistent throughout those years which creates a preponderance of the evidence in favor of the fact that Great Lakes Concrete's pricing set by a business model and good business practices and not by price fixing.

(h) It is unreported in the presentence report that Stewart advised the DOJ that prices in Minnesota (just 19 miles from Spirit Lake) were generally much higher and this was confirmed by Stewart's attorney on November 5, 2010, when he spoke with Tara Hansen in Jackson, Minnesota, who confirmed that her company's standard price for 4,000 pound concrete was $96.00 per yard from 2008-2010 and that she and her husband had only been in the ready mix business for three years. After operating as a cement pumping service they were but were forced into the concrete business when GCC purchased the Bosshart operation and advised them that they would not be able to purchase concrete from GCC for their pumping operation. The concrete pumping business is a specialized business where the proprietors own expensive trucks and equipment that are used to pump concrete

on a job site from the delivery truck to the location where the concrete is being laid when the truck cannot get close enough or the concrete is being extended into the air. Generally the job contractor buys its concrete from a ready mix concrete producer and higher the services of a pumping truck company. GCC apparently was in or getting into the pumping business as well and sough to force out its competition in this manner. Great Lakes Concretes price for 4,000 pounds concrete in 2008 was $92.00 per yard which is $4.00 per yard less expensive than the Jackson, Minnesota price and in 2009 $3.00 per yard more than Jackson, Minnesota price. Stewart's attorney also spoke with Curt Norland of American Concrete in Emmetsburg, Iowa, on November 2010, and Mr. Norland verified that the 2009 price for 4,000 pound concrete from American was $97.50 per yard. Again, very close in price to Great Lakes Concrete.

(i) At paragraph 45 of the presentence report the investigator advises that VandeBrake informed the prosecutors in this case that this agreement (price sheet fixing) would have affected GCC's Lake Park and Spencer plants and Great Lakes Concrete's Spirit Lake and Spencer plants as they closely overlapped. The Department of Justice has already said that the period of the conspiracy was from January 2009 through August of 2009 and sought to determine the value of commerce on that basis. It further arbitrarily decided that since only a portion of Great Lakes Concrete Spirit Lake plant and GCC's Lake Park plant overlapped that the commerce affected was only a portion of each plant and according to the calculation at paragraph 48 apparently the overlap was only 65%.

(j) THE MOST GLARING ERROR OF THE DEPARTMENT OF THE JUSTICE IN FORMULATING ITS METHODOLOGY TO DETERMINE THE VALUE IN COMMERCE WAS THAT IT ASKED FOR THE WRONG INFORMATION FROM GREAT LAKES CONCRETE AND IMPROPERLY COMPUTED NUMBERS BASED ON THE WRONG INFORMATION. THE PROSECUTORS ASKED GREAT LAKES CONCRETE FOR (AND BY THE BY WAY GREAT LAKES CONCRETE VOLUNTARILY PROVIDED) A PERCENTAGE OF ITS TOTAL SALES OF THE SPIRIT LAKE AND SPENCER PLANTS OF "STANDARD MIX" CONCRETE. WHILE THE 30% FIGURE GIVEN BY GREAT LAKES CONCRETE WAS MOST PROBABLY ACCURATE AS TO ITS OVERALL PERCENTAGE OF SALES OF STANDARD MIX CONCRETE IT WAS NOT THE PERCENTAGE OF SALES OF STANDARD MIX CONCRETE BASED ON CONSUMER PRICE SHEET.

KENT STEWART HAS REPEATEDLY ADVISED THE PROSECUTORS THAT VERY FEW SALES OF STANDARD WEIGHT CONCRETE WERE GENERATED FROM THE STANDARD PRICE SHEET WHILE THE VAST MAJORITY OF STANDARD MIX CONCRETE WAS SOLD TO CONTRACTORS AT DISCOUNTS RANGING FROM $5.00 PER YEARD $11.00 PER YARD OFF THE STANDARD PRICE SHEET. THIS TESTIMONY WILL BE CORROBORATED BY CAROL KLEVE WHO IS

THE CHIEF CUSTODIAN OF THE FINANCIAL RECORDS AS WELL AS THE PLANT MANAGERS FOR BOTH SPENCER AND SPIRIT LAKE. DURING THE WEEK OF NOVEMBER 1, 2010, MS. KLEVE, USING HER COMPUTER RECORDS, DETERMINED THE TOTAL VOLUME OF NON DISCOUNTED STANDARD READY MIX SALES FOR EACH OF THE COMPANY'S FIVE FACILITIES FOR THE ENTIRE YEAR OF 2009. THAT ACCOUNTING IS ATTACHED HERETO AND IT SHOULD BE NOTED THAT THE SALES OF THE MILFORD FACILITY AND THE OCHEYEDAN FACILITY ARE COMBINED AS NWRM AND ARE NOT RELEVANT ANYWAY. THE ONLY APPARENT RELEVANT FIGURES ARE THOSE OF SPENCER AND SPIRIT LAKE. AS SHOWN ON THE 2ND STATEMENT ATTACHED THE TOTAL NON DISCOUNTED SALES OF STANDARD WEIGHT CONCRETE FROM THE PRICE SHEET FOR SPENCER AND SPIRIT LAKE FOR THE PERIOD OF JANUARY 1, 2009, THROUGH AUGUST 30, 2009, WERE IN THE TOTAL OF $59,895.97. WHEN 35% OF THE SALES OF SPIRIT LAKE ARE DEDUCTED AS NOT OVERLAPPING WITH LAKE PARK THERE IS SUBSTRACTED THE SUM OF $5,830.08 GIVING A TOTAL VALUE IN COMMERCE $54,065.89 AND NOT $925,540.

WHILE STEVE VANDEBRAKE, IN HIS ATTEMPTS TO SUIT HIS BEST INTERESTS, HAS ALLEGED CONSPIRACY ON THE PRICE SHEETS AND THAT THEY AFFECTED THE SPIRIT LAKE AND SPENCER PLANTS OF GREAT LAKES CONCRETE HE HAS NEVER MADE ANY ALLEGATION THAT THERE WAS ANY DISCUSSION BETWEEN HE AND KENT STEWART OF THE CONTRACTOR DISCOUNTS THAT WOULD BE GIVEN TO CONTRACTORS USING STANDARD MIX WEIGHT CONCRETE PRODUCTS AND THE PROSECUTORS HAVE ASSERTED NO ALLEGATIONS OF ANY CONSPIRACY TO RIG DISCOUNTS TO CONTRATORS. THEREFORE EVEN IF THERE WAS ANY AGREEMENT AS TO PRICE SHEET FIXING (AND DEFENDANT STEWART AND CONTINUES TO VEHEMENTLY DENY THAT ALLEGATION) THE TOTAL VALUE IN COMMERCE WOULD UNDISPUTEDLY ONLY BE $54,065.89.

SUMMARY

For the reasons set forth above Kent Stewart objects to the computation of value in commerce and to any departure upward from the sentencing guidelines based on a value in commerce of over $1,000,000. In the worst case scenario if the court should choose to include the protected Spencer/Lincoln school projects and the non discounted price sheet sales in its overall computations of value in commerce the total amount attributable to Great Lakes Concrete

would be $898,840.84. The evidence in this case when viewed only as a preponderance of the evidence does not support that figure and the true value in commerce that should be attributable to Great Lakes Concrete and Kent Stewart is $743,001.95.

SPENCER 2009

January	-0-
February	-0-
March	464.31
April	3,470.23
May	9,159.87
June	6,474.70
July	9,165.15
August	14,504.35
September	11,900.18
October	2,921.91
November	3,893.01
December	533.87
Total	62,487.58

NO DISCOUNT SALES

SPIRIT LAKE 2009

January	-0-
February	-0-
March	288.35
April	1,529.93
May	2,166.38
June	6,107.76
July	2,663.98
August	3,900.96
September	7,135.60
October	4,945.52
November	3,880.49
December	-0-
Total	32,618.97

NWRM 2009

January	-0-
February	-0-
March	125.96
April	924.35
May	10,981.84
June	7,529.48
July	10,057.54
August	6,899.16
September	3,343.14
October	5,813.95
November	1,965.20
December	-0-
Total	47,640.62

Estherville 2009

January	-0-
February	-0-
March	-0-
April	2,327.22
May	3,675.26
June	1,337.93
July	4,165.16
August	11,554.10
September	8,648.56
October	7,383.86
November	443.48
December	-0-
Total	39,535.57

January 1-August 9, 2009
Non-Discounted Price Sheet Sales
Great Lakes Concrete
Spencer and Spirit Lake Facilities

Spencer:	$43,238.61
Spirit Lake:	$16,657.36
Less 35% of Spirit Lake sales:	($5,830.08)
Total:	$54,065.89

Total value 6 undisputed projects:	$743,001.95
Non-Discounted sales:	$ 54,065.89
Spencer/Lincoln school:	$101,773.00
Worst case total:	$898,840.84

GLOSSARY OF TERMS, INDIVIDUALS, ENTITIES, AND TIMELINE

To fully understand the transactions between Great Lakes Concrete, Inc., and GCC Alliance, Inc., it is important to understand the following terms and timelines:

1. 1962-1964: According to the records of the Iowa Secretary of State Russell's Concrete was formed by the VandeBrake family in 1962: Joe's Ready Mix by the Sandbolt family in 1963 and Rehms-Stewart Concrete by Mr. Rehms and Kent Stewart's father in 1964.

2. 1987-Great Lakes Concrete, Inc., was incorporated and to the best of our knowledge the shareholders were Norlyn VandeBrake, Dennis Rode and Bryan Bosshart. Bosshart and Rode also owned Bosshart Concrete in Minnesota which was an unrelated company. Great Lakes Concrete was unrelated to Joe's and Russell's.

3. 2000-2004-Norlyn VandeBrake on several occasion approached Kent Stewart about merging the former Rehms-Stewart (now known as Northwest Ready Mix) into Great Lakes Concrete and Stewart was disinterested until 2004 when he realized that his two small plants in Ocheyedan, Iowa, and Milford, Iowa, would have difficulty surviving as independents in an age of merger. On July 1, 2004, Great Lakes Concrete with facilities in Spirit Lake, Spencer, and Estherville, merged with Northwest Ready Mix and the surviving company became Great Lakes Concrete with five facilities owned one-third by Kent Stewart, one-third by Norlyn VandeBrake, one-sixth by Dennis Rode, and one-sixth by Bryan Bosshart.

4. 2003-Ryan Lake forms Lake Ready Mix, LLC in Lake Park, Iowa, and later potentially with partners, forms Lake Ready Mix of Spencer.

5. March 30, 2005-VandeBrake and Sandbolt form Northwest Ready Mix Holding which shortly thereafter changes its name to V.S. Holdings and on January 1, 2007 changes its name to Alliance Concrete, Inc.

6. September 2007-Alliance Concrete purchases Lake Ready Mix and changes the name of its facilities to Alliance of Lake Park and Alliance of Spencer.

7. January 8, 2008-Corn Corner Acquisitions, Inc., is formed as an Iowa limited liability company and on January 17, 2008, changes its names to GCC Alliance, Inc., and announces the purchase of the assets of Alliance Concrete which according to GCC's press releases at the time Alliance had sales at the end of 2007 of $52,000,000 per year in comparison to sales of Great Lakes Concrete at the end of 2007 of $12,500,000. Please note that GCC Alliance, Inc., is the subsidiary of GCC (Grupo Cementos De Chihuahua) which is a multinational company with assets in the billions of dollars. GCC also purchased the assets of Bosshart Concrete in Minnesota and in the previous year 2006 had purchased substantial other assets in the Midwest and mid southern United States in addition to establishing a state of the art cement plant in Pueblo, Colorado.

8. March 2008-Norlyn VandeBrake advised Kent Stewart of his desire to sell the assets of Great Lakes Concrete to GCC and Kent Stewart hired attorney Larry Stoller to investigate whether as a shareholder he could block the sale and preserve his family business. The reported, but unverified purchase price of VandeBrake's and Sandbolt's interest in Alliance by GCC was said to be $75,000,000 paid to members of the VandeBrake and Sandbolt families. The purchase for the Bosshart/Rode interest is unknown. However, Norlyn VandeBrake, Bosshart, and Rode entered into non compete provisions which did not allow them to operate, hold officer status, or be on the Board of Directors of Great Lakes Concrete. In January of 2008, Steve VandeBrake and Ryan Lake went to work for GCC Alliance.

RELEVANT TERMS

1. Price Sheet- a listing of standard prices for various types of concrete, additives, and delivery costs which are generally made available by each ready mix producer to the general public. This pricing is generally only used for customers making very small purchases which generally require extra delivery time and overtime for weekend pouring. Most contractors receive a discount established by each ready mix producer.

2. Contractor discount-this is a discount established by each ready mix producer for its larger customers and for the customers of Great Lakes Concrete for the relevant years ranged from $4.00 to $11.00 per yard from the standard sheet price. There has been no allegation of collusion between any of the company's involved or individuals involved in establishing the discounts given to contractors. This discount is often set by the year. This discount does not appear as a deduction from standard pricing on any invoices, but instead the invoices are at the discounted price. The price also includes the cost of hauling of the concrete which may vary from company to company.

3. Prompt payment discount-this is a discount non-contractor purchasers receive as a percentage discount for payment of their bill by the 10th of the month and is deducted by those purchasers when they make payment.

4. Bid project-this is a project where concrete contractors will ask ready mix producers for a bid price to supply concrete to them for a specific project. The concrete contractor will use the bid price in figuring, amongst its other costs, overhead, and desired profit the ultimate price it will bid for a job. It was a policy of Great Lake Concrete to give the same bid to all contractors bidding on a project. It was not common for Great Lakes Concrete to give a bid price to the ultimate customer. In some instances where Great Lakes Concrete had already established a

contractor discount it did not give bids for specific projects to contractors bidding on those projects, but instead they relied on the annual discounted price they received.

5. Engineered project-this is generally a project where the specifications for the type and amount of concrete to be poured by the concrete contractor is specified by an engineer and in the bid the concrete supplier may also be asked to provide testing and various other additions at additional cost.

6. Cement-cement is a powdered form of limestone which is a major ingredient in the making of ready mix concrete. There are very few cement producers because of the tremendous cost of establishing a cement processing plant and the necessity of having a source of limestone nearby. The majority supplier of cement powder in Northwest Iowa is GCC. GCC is also in the business of transporting cement powder produced by other cement powder producers.

7. Aggregate-aggregate is a combination of stone, sand, and other ingredients that are a key part of the production of concrete along with water and other additives to form various grades, mixes, and designs of concrete.

8. Ready mix concrete-ready mixed concrete is concrete that is formulated at a ready mix concrete plant which adds cement powder, aggregate, water, and other additives to form a ready mixed concrete which is then dispatched to a construction site in a truck with a rotating drum and is often subject to regulations for the maximum amount of time the ready mix concrete can be used after it has been formulated. For this reason most ready mix concrete plants limit their territorial range to 20 miles radius from their plant. Prior to the introduction of ready mix concrete it was common that cement powder, aggregate, water, and the like would be hauled individually to a construction site and mixed by the concrete contractor in concrete mixers on site.

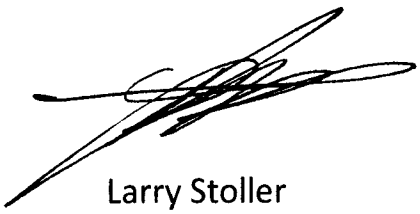
9. Portable ready mix plants-portable ready mix plants are transportable pieces of equipment that can be assembled on a significant job site to allow the concrete contractor to mix its own ready mix on site instead of buying from a stationary ready mix facility. Large contractors often have their own portable ready mix plants that they can transport to a job site and quickly set up in hopes of lowering their cost of ready mix concrete when opposed to buying from a local ready mix facility. In 2009 several concrete contracting companies were bidding projects in the Iowa Great Lakes Area where they were considering bringing their own portable concrete plants. Portable concrete plants are currently in operation in Northwest Iowa and do not require a significant investment.

10. Standard weight concrete-standard weight concrete is a term used to describe concrete composed of standard cement powder, aggregate, and water with strengths of 2,500 pounds, 3,000 pounds, 3,500 pounds and 4,000 pounds. This poundage refers to the strength of the concrete and not the weight per cubic yard. Other concrete mixes are known as design or specialty mixes.

11. Norlyn VandeBrake-Norlyn VandeBrake was a member of a family that owned Russell's Ready Mix which later merged with Joes' Ready Mix to become Alliance Concrete. Alliance Concrete was sold to GCC and became GCC Alliance, Inc. Norlyn VandeBrake and other partners were originally the owners of Great Lakes Concrete, Inc., which merged with Northwest Ready Mix. Norlyn VandeBrake individually, or through one of his company's, purchased Lake Ready Mix, LLC in Lake Park and Spencer, Iowa. Norlyn VandeBrake is the father of Steven VandeBrake.

12. Steven VandeBrake- Steven VandeBrake is the son of Norlyn VandeBrake and was part owner of Alliance Concrete, Inc., when it was sold to GCC and became GCC Alliance, Inc., He apparently took an upper level management position with GCC Alliance in 2008.

Respectfully submitted



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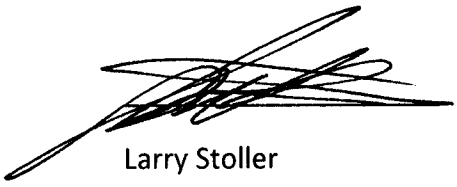
CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2010, a copy of the foregoing document was filed electronically in accordance with the instructions provided in the presentence report. Notice of this filing will be sent to counsel of record, the U.S. Probation Office and Presiding Judge by operation of the Court's electronic filing system.



Larry Stoller