

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

ACTION READY MIX CONCRETE INC.,  
SUPERIOR CONCRETE AND FLORIDA  
BUILDING MATERIALS, INC., DANIEL  
MORGAN CONSTRUCTION, INC., SHEAR  
CONSTRUCTION AND DEVELOPMENT, INC.,  
and SQUARE D. HOMES, INC. on Behalf of  
Themselves and all Others Similarly Situated,

Plaintiffs,

vs.

CEMEX CORP., FLORIDA ROCK  
INDUSTRIES, INC., HOLCIM (US) INC.,  
LAFARGE NORTH AMERICA, INC., LEHIGH  
CEMENT COMPANY, OLDCASTLE  
MATERIALS, SUWANNEE AMERICAN  
CEMENT LLC, TITAN AMERICA LLC, and  
VOTORANTIM CIMENTOS NORTH  
AMERICA, INC.,

Defendants.

Case No. \_\_\_\_\_

**09-23187**

CLASS ACTION COMPLAINT

CIV-ALTONAGA MAGISTRATE JUDGE  
BROWN

JURY TRIAL DEMANDED

FILED by AS D.C.  
INTAKE  
**OCT 21 2009**  
STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. MIAMI

Action Ready Mix Concrete Inc., Superior Concrete and Florida Building Materials, Inc., Daniel Morgan Construction, Inc., Shear Construction and Development, Inc., and Square D. Homes, Inc. ("Plaintiffs"), on behalf of themselves and all others similarly situated, bring this action for treble damages, injunctive relief and costs of suit under Section 1 of the Sherman Act and Section 4 of the Clayton Act against Cemex Corp., Florida Rock Industries, Inc., Holcim (US) Inc., Lafarge North America, Inc., Lehigh Cement Company, Oldcastle Materials, Suwannee American Cement LLC, Titan America LLC, and Votorantim Cimentos North America, Inc., (collectively "Defendants"), and allege, on information and belief, but on personal knowledge as to allegations relating to Plaintiffs, as follows:

**NATURE OF CLAIM**

1. This case arises from an unlawful conspiracy among Portland cement manufacturers to fix, raise, stabilize or maintain prices of and allocate customers and markets for Portland cement (“Cement”) and ready-mix concrete (“Concrete”) in the State of Florida in violation of Section 1 of the Sherman Act and Section 4 of the Clayton Act.

2. As a result of this illegal conspiracy, Defendants charged supra-competitive prices for Cement and Concrete sold throughout the State of Florida, thereby injuring Plaintiffs and members of the proposed Classes (defined below).

3. Defendants dominate and control the Florida Cement market. They conspired to fix the prices of Cement at supra-competitive levels by agreeing on the amount and timing of price increases and by allocating customers and markets, among other anticompetitive acts, thus eliminating competition among themselves to the detriment of purchasers of Cement.

4. Defendants also dominate and control the Florida Concrete market. The primary ingredient of Concrete is Cement. A substantial number of the Concrete producers in Florida are wholly-owned by the Defendant Cement manufacturers. This allowed Defendants to successfully conspire to fix the prices of Concrete at supra-competitive levels by agreeing on the amount and timing of price increases and by allocating customers and markets, among other anticompetitive acts, thus eliminating competition among themselves to the detriment of purchasers of Concrete.

5. In addition, Defendants’ concerted actions in the Cement and Concrete markets were specifically aimed at eliminating their primary competitors in the Concrete market, independent Concrete producers (“ICPs”), thus further reducing competition.

6. As a result of Defendants' unlawful conspiracy, Plaintiffs and the proposed Classes paid supracompetitive prices for Cement and Concrete throughout the Class Period (defined below).

### **JURISDICTION AND VENUE**

7. This action arises under Section 1 of the Sherman Act and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 1, 15 and 26.

8. This Court has jurisdiction under Sections 4, 12 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a), 22 and 26, and 28 U.S.C. §§ 1331 and 1337.

9. Venue is proper in this District pursuant to Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. § 1391(b) and (c). Defendants reside, transact business, are found, or have agents in this District. Further, a substantial part of the events or occurrences giving rise to the claims alleged occurred in the District.

### **PARTIES**

10. Plaintiff Action Ready Mix Concrete Inc. ("Action Ready Mix") is a Florida corporation with its principal place of business in Orlando, Florida. During the Class Period, Action Ready Mix purchased Cement directly from one or more of the Defendants, including Cemex, Florida Rock, and Holcim, and was damaged as a result of Defendants' unlawful conduct.

11. Plaintiff Superior Concrete and Florida Building Materials, Inc. ("Superior") is a Florida corporation with its principal place of business in Orlando, Florida. During the Class Period, Superior purchased Cement directly from one or more of the Defendants, including Cemex, Titan, and Florida Rock, and was damaged as a result of Defendants' unlawful conduct.

12. Plaintiff Daniel Morgan Construction, Inc. ("Morgan Construction") is a Florida corporation with its principal place of business in Orlando, Florida. During the Class Period, Morgan Construction purchased Concrete directly from one or more wholly-owned subsidiaries of the Defendants, including Cemex, Florida Rock, and VCNA, and was damaged as a result of Defendants' unlawful conduct.

13. Plaintiff Shear Construction and Development, Inc. ("Shear") is a Florida corporation with its principal place of business in Miami, Florida. During the Class Period, Shear purchased Concrete directly from one or more wholly-owned subsidiaries of the Defendants, including Florida Rock, and was damaged as a result of Defendants' unlawful conduct.

14. Plaintiff Square D. Homes, Inc. ("Square D") is a Florida corporation with its principal place of business in Alachua, Florida. During the Class Period, Square D purchased Concrete directly from one or more wholly-owned subsidiaries of the Defendants, including Florida Rock, and was damaged as a result of Defendants' unlawful conduct.

15. Defendant Cemex Corp. ("Cemex") is a Delaware corporation with its principal place of business in Houston, Texas. Cemex Corp. is a wholly-owned subsidiary of CEMEX, S.A.B. de C.V., a Mexican corporation. Cemex produces and distributes Cement, Concrete, aggregate, concrete block, concrete pipe, and related building materials throughout the United States. Cemex operates three Cement plants, ten Cement import terminals, and approximately 71 Concrete suppliers in Florida. During the Class Period, Cemex sold Cement and Concrete in the State of Florida.

16. Defendant Florida Rock Industries, Inc. ("Florida Rock") is a New Jersey corporation with its principal place of business in Jacksonville, Florida. Florida Rock is a

subsidiary of Vulcan Materials Company, a New Jersey corporation based in Alabama. Florida Rock manufactures and sells construction materials, including Cement, Concrete, aggregates, pre-stressed concrete, and concrete block. Florida Rock operates one Cement plant, two Cement import terminals, and approximately 63 Concrete suppliers in Florida. During the Class Period, Florida Rock sold Cement and Concrete in the State of Florida.

17. Defendant Holcim (US) Inc. ("Holcim") is a Delaware corporation with its principal place of business in Waltham, Massachusetts. Holcim is a subsidiary of Holcim Ltd., a Swiss company. Holcim manufactures and sells Cement, Concrete, aggregates and asphalt. Holcim operates two Cement import terminals and at least one Concrete supplier in Florida. During the Class Period, Holcim sold Cement and Concrete in the State of Florida.

18. Defendant Lafarge North America, Inc. ("Lafarge") is a Maryland corporation with its principal place of business in Herndon, Virginia. Lafarge is a part of Lafarge Group, a French entity. Lafarge manufactures and sells Cement, Concrete, gypsum wallboards, aggregates, asphalt, and related products and services. Lafarge operates one Cement import terminal and approximately four Concrete suppliers in Florida. During the Class Period, Lafarge sold Cement and Concrete in the State of Florida.

19. Defendant Lehigh Cement Company ("Lehigh") is a Delaware corporation with its principal place of business in Allentown, Pennsylvania. Lehigh is a subsidiary of HeidelbergCement Group ("Heidelberg"), a German entity. Lehigh produces Cement, Concrete, aggregates, concrete pipe and block, and pre-cast and pre-stress concrete units throughout North America. In Florida, Lehigh obtains Cement from other manufacturers and imports Cement at the Port of Cape Canaveral through its subsidiary, Continental Florida Materials Inc. ("Continental"). Lehigh also sells Cement under the brand Continental. Lehigh operates three

Cement import terminals and at least one Concrete supplier in Florida. During the Class Period, Lehigh sold Cement and Concrete in the State of Florida.

20. Defendant Oldcastle Materials (“Oldcastle”) is a Delaware corporation with its principal place of business in Atlanta, Georgia. Oldcastle is a subsidiary of CRH, an Irish corporation. Oldcastle claims to be the leading vertically-integrated supplier of aggregates, asphalt, Concrete and construction and paving services in the United States. Oldcastle partners with American Cement Company to produce and deliver Cement in Florida, and supplies Concrete through its subsidiary, Preferred Materials, Inc. Oldcastle operates one Cement plant and approximately 26 Concrete suppliers in Florida. During the Class Period, Oldcastle sold Cement and Concrete in the State of Florida.

21. Defendant Suwannee American Cement LLC (“Suwannee”) is a Delaware limited liability company with its principal place of business in Branford, Florida. Suwannee’s members are Anderson Columbia Company, a Florida corporation, and Votorantim Cimentos, part of the Brazilian Votorantim Group. Suwannee operates one Cement plant in Florida. During the Class Period, Suwannee sold Cement in the State of Florida.

22. Defendant Titan America LLC (“Titan”) is a Delaware Limited Liability Company with its principal place of business in Norfolk, Virginia. Titan’s ultimate parent is Titan Cement Company S.A., a Greek company. Titan produces and sells Cement, Concrete and other building materials in the Eastern United States. Titan operates one Cement plant, one Cement import terminal and approximately 37 Concrete suppliers in Florida. During the Class Period, Titan sold Cement and Concrete in the State of Florida.

23. Defendant Votorantim Cimentos North America, Inc. (“VCNA”) is a Delaware corporation with its principal place of business in Toronto, Canada. VCNA is a subsidiary of

Votorantim Group, a Brazilian industrial group. VCNA manufactures and sells Cement, Concrete, and aggregates in North America. VCNA operates approximately 31 Concrete suppliers in Florida through its subsidiary Prestige AB Ready Mix, Inc. ("Prestige"). During the Class Period, VCNA sold Cement throughout the United States and Concrete in the State of Florida.

#### **UNNAMED CO-CONSPIRATORS**

24. Various other companies and individuals not named as Defendants in this Complaint participated as co-conspirators in the acts complained of, and performed acts and made statements in furtherance of the unlawful conduct.

#### **INTERSTATE TRADE AND COMMERCE**

25. Throughout the Class Period, there has been a continuous and uninterrupted flow of transactions in and shipments of Cement in interstate commerce throughout the United States and Florida. Concrete, which has Cement as its primary ingredient, is part of a continuous and uninterrupted flow of transactions and shipments in interstate commerce.

26. A significant volume of Cement and construction materials was transported into Florida from other states, including Georgia and Alabama, and/or from other countries. The unlawful activities of Defendants and their co-conspirators have been within the flow of interstate and international commerce.

#### **THE RELEVANT MARKETS**

27. There are two relevant product markets: Cement and Concrete. The relevant geographic market is the State of Florida.

28. Cement is the major ingredient of Concrete. Since Cement is primarily sold to Concrete producers, demand for both products tends to rise and fall together. In Florida, the changes in consumption of Cement and Concrete paralleled each other during the past five years.

29. The vast majority of Concrete manufacturers in Florida are wholly-owned subsidiaries of the Defendant Cement manufacturers. The Defendants control their respective wholly-owned subsidiary Concrete companies.

### **Cement**

30. Portland cement, the most common type of Cement, is the primary binding ingredient in a number of construction materials, including Concrete.

31. Cement is a fine powder created by grinding clinker, the product of heating raw materials including limestone, in a kiln. Raw materials for cement production include limestone, clay, sand, and gypsum, which are all added at different stages of production.

32. Capital equipment for clinker production includes grinders to break down the raw materials, kilns or pre-heaters to begin the heating process for clinker production, and cooling stations to cool the clinker and prepare it for cement production. To convert clinker into cement, steel tubes and steel balls break down the clinker and mix it with gypsum.

33. Cement is stored in silos and shipped by truck, rails, and barge. For smaller projects, cement is stored in bags when shipped to customers.

34. Cement is typically sold in bulk by the metric ton, priced in dollars per metric ton, or in 94 lb. bags, priced in dollars per bag. Due to Cement's high weight and low cost relative to volumes shipped, freight is a significant factor in the price at which Cement is sold.

35. In Florida in 2008, over 6.4 million metric tons of Cement, valued at approximately \$960 million, were produced at seven Cement plants owned and/or operated by Defendants.

36. Concrete producers – consisting of those that are (1) wholly-owned and operated by the Defendants, and (2) independently owned and operated (ICPs) – consume approximately 75% of the Cement used in Florida. The remainder of the Cement produced by Defendants is sold to various types of concrete product manufacturers and contractors.

37. In addition to being produced within Florida and elsewhere in the United States, Cement is imported into Florida and the United States from other countries, including China, Canada, Columbia, Mexico and the Republic of Korea, particularly during periods when demand for Cement is high, such as at the peak of the housing boom around 2005.

38. Due to widespread acquisitions and consolidation, the Florida Cement market is now controlled by a small number of international companies, all of which are Defendants.

39. In late 2007, Cemex acquired Rinker Materials (“Rinker”), an Australian Cement and construction materials company that had a significant presence in Florida and elsewhere. Following the acquisition, Cemex has become the largest supplier of Cement and Concrete in Florida.

#### **Ready-Mix Concrete**

40. Ready-mix concrete is a mixture of Cement, its primary component, and other materials such as sand, gravel and water.

41. Concrete is produced at batch plants, where the proportions of input materials are measured, combined with water in a rotating drum mounted on a truck, and then mixed in the truck’s drum on the way to the construction site. Because the addition of water begins an

irreversible chemical reaction, and because the Concrete is poured directly at the construction site, truck arrival must be timed so that the Concrete hardens at the appropriate time.

42. The strength of the Concrete is determined by the amount of water added, and is measured in pounds per square inch ("psi").

43. Concrete is sold by the cubic yard, and is priced in dollars per cubic yard.

44. Concrete is used principally in commercial, governmental, and residential construction. The primary purchasers of Concrete in Florida are construction companies. There are thousands of construction companies in the State of Florida. Absent the unlawful conspiracy, the Defendants' Concrete manufacturing subsidiaries would compete among themselves and with the ICPs for the sale of Concrete in Florida.

45. Large projects, such as municipal and commercial construction projects, require Concrete suppliers with significant resources. Suppliers must have access to a large amount of Concrete, as well as the ability to pour significant amounts of Concrete daily, to deliver Concrete of varying strength, to test the Concrete, and to send trucks to the construction site on a continuing basis to complete multiple pours.

46. Concrete suppliers may also need to provide multiple batch plants in a geographic area, backup plants, many Concrete trucks, a well-trained workforce, the ability to produce Concrete for multiple specifications and large projects, and significant financial backing to remedy construction problems.

### **THE CONSPIRACY**

47. This case involves a conspiracy by Defendants to eliminate competition in the markets for Cement and Concrete by charging artificially high prices for Cement and Concrete in Florida.

48. Defendants effectuated their unlawful conspiracy by engaging in the following conduct: (1) agreeing to fix, raise, maintain and/or stabilize prices of Cement; (2) agreeing to fix, raise, maintain and/or stabilize prices of Concrete; and (3) allocating customers and markets, including: (i) allocating Defendants' customers for Concrete; (ii) allocating Defendants' customers for Cement; (iii) allocating ICPs' Customers for Concrete by territory; and (iv) dividing up the Florida Concrete market by territory.

49. Defendants unlawfully conspired and agreed to artificially inflate prices for Cement and Concrete from at least January 1, 2000 to the present (the "Class Period").

50. Through in-person meetings, telephone, and other communications, Defendants unlawfully agreed, among other things, to the magnitude and timing of price increases of Cement and Concrete and to refrain from competing for each others' Cement and Concrete customers throughout the Class Period.

51. Defendants regularly met at trade association meetings, social events and even corporate meetings that were held at the same time in the same hotel.

52. Close business and personal relationships among the executives employed by Defendants facilitated the formation and implementation of the conspiracy. For example, Karl Watson, Jr., president of Rinker Materials West and, after the acquisition by Cemex, the Regional President of the Cemex's East Region, was an architect of the conspiracy. Watson is or was a close friend of one or more officers at each of the other Florida Defendant Cement companies, including Jorge Wagner, President of Prestige/AB Ready Mix, Inc. ("Prestige," a subsidiary of VCNA), Rick Edwards, President of Florida Rock, and Harvey Johnson of Tarmac America LLC ("Tarmac," a subsidiary of Titan), as well as Robert "Frank" Craddock, Executive

Vice President of Commercial for Cemex. These individuals, among others, met on several occasions, including at least once during the Summer of 2008 over drinks in the Tampa area.

53. Defendants' unlawful agreement served several illicit purposes: to fix prices of Cement and Concrete in Florida, and to eliminate Defendants' primary competitors for the sale of Concrete – the ICPs.

54. Defendants fixed, raised, maintained or stabilized Cement prices to non-competitive, artificial levels in the State of Florida, and price competition among them was eliminated. Not only did Defendants fix the price of Cement through agreement, but also through customer and market allocation.

55. By allocating customers of Cement, Defendants were able to maintain artificial prices and eliminate cheating by co-conspirators by preventing the purchasers of Cement, primarily the ICPs, from seeking out a better price for Cement from different Defendant manufacturers.

56. Defendants also fixed, raised, maintained and/or stabilized Concrete prices to non-competitive, artificial levels in the State of Florida, and price competition among them was eliminated. Not only did Defendants fix the price of Concrete through agreement, but also through customer and market allocation.

57. By allocating customers of Concrete, Defendants were able to maintain artificial prices and eliminate cheating by co-conspirators by preventing the purchasers of Concrete, primarily construction companies, from seeking out a better price for Concrete from different Defendants' wholly-owned concrete subsidiaries.

58. Defendants' scheme placed the ICPs, who were the principal competitors of the Cement manufacturers' Concrete subsidiaries in Florida and not part of the conspiracy, at a

