

UNITED STATES DISTRICT COURT

DISTRICT OF COLORADO

UNITED STATES OF AMERICA,

Plaintiff,

v.

METRO DENVER CONCRETE ASSOCIATION;
PRE-MIX CONCRETE, INC.;
WALT FLANAGAN AND COMPANY;
READY MIXED CONCRETE COMPANY;
JEFFERSON TRANSIT MIX CO.;
MOBILE CONCRETE, INC.; and
SUBURBAN REDDI-MIX COMPANY,

Defendants.

Civil Action No. C 2478

Equitable Relief Sought

Filed: August 6, 1970

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain the violation by the defendants, as herein-after alleged, of Section 1 of the Sherman Act.

2. Each of the defendants transacts business and is found within the District of Colorado.

II

DEFENDANTS

3. Metro Denver Concrete Association (hereinafter referred to as "MDCA"), is made a defendant herein. MDCA is an unincorporated association organized and existing within the State of Colorado with its principal office in Denver, Colorado. Its membership consists of six ready mix concrete suppliers in the metropolitan Denver area.

4. Each of the six corporations named below is made a defendant herein. Each of these corporations is organized and exists under the laws of the State of Colorado and has its principal place of business in the locality indicated. Each of these corporations is a ready mix concrete supplier and a member of MDCA.

<u>CORPORATION</u>	<u>PRINCIPAL PLACE OF BUSINESS</u>
Pre-Mix Concrete, Inc.	Denver, Colorado
Walt Flanagan and Company	Denver, Colorado
Ready Mixed Concrete Company	Denver, Colorado
Jefferson Transit Mix Co.	Wheat Ridge, Colorado
Mobile Concrete, Inc.	Denver, Colorado
Suburban Reddi-Mix Company	Arvada, Colorado

III

CO-CONSPIRATORS

5. Various individuals and companies not made defendants in this complaint have participated as co-conspirators in the offense charged herein and have performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

6. As used herein, the term:

- (a) "Ready mix concrete" means a mixture of cement and other materials, such as sand, stone, and water and, at times, additives, which mixture is widely used in the construction and improvement of various types of structures and their appurtenances.
- (b) "Ready mix concrete supplier" means a person who is engaged in the business of producing and selling ready mix concrete.
- (c) "Metropolitan Denver area" means the four county area of Arapahoe, Jefferson, Adams, and Denver counties in the State of Colorado.

V

TRADE AND COMMERCE

7. The corporate defendants are engaged in the production of ready mix concrete in the metropolitan Denver area and the sale of such concrete throughout that area to general contractors, owners of homes and buildings and others on the basis of written or oral price quotations rendered to such customers. Said customers use ready mix concrete in the construction, repair, alteration and improvement of highways and governmental, institutional, commercial and residential structures.

8. The corporate defendants' aggregate gross sales of ready mix concrete in the metropolitan Denver area in 1969 were approximately \$15.2 million. In 1969 the corporate defendants represented about 83 percent of the total gross sales by ready mix concrete suppliers doing business in the metropolitan Denver area.

9. Cement, the basic ingredient in the production of ready mix concrete, represents approximately 50 percent

of the total cost of materials used to produce such concrete. Ready mix concrete suppliers order and purchase cement on the basis of existing orders and anticipated demand for ready mix concrete. In 1969 ready mix concrete suppliers doing business in the metropolitan Denver area purchased approximately \$7.7 million of cement. Of this total, approximately \$6.7 million was purchased by the corporate defendants. Approximately 43 percent of the cement purchased by the corporate defendants is produced in states other than the State of Colorado and is delivered, often on a daily basis, by suppliers thereof to the corporate defendants.

10. The corporate defendants therefore, act as conduits through which cement flows in a continuous uninterrupted stream in interstate commerce from the states in which it is produced to ready mix concrete production facilities maintained by the corporate defendants in the metropolitan Denver area where it is incorporated into ready mix concrete and from there delivered to job sites.

VI

OFFENSE CHARGED

11. Beginning in the middle of 1968, the exact date being unknown to the plaintiff, and continuing thereafter up to the date of this complaint, the defendants and co-conspirators entered into and engaged in an unlawful combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in the sale of ready mix concrete in the metropolitan

Denver area, in violation of Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

12. Said combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been:

- (a) to raise and stabilize the price of ready mix concrete in the metropolitan Denver area;
- (b) to refrain from soliciting certain ready mix concrete purchasers in the metropolitan Denver area designated as the customers of other corporate defendants or co-conspirators;
- (c) to limit the submission of competitive bids for the sale of ready mix concrete to general contractors in the metropolitan Denver area; and
- (d) to allocate among the corporate defendants and co-conspirators fixed and predetermined shares of the total volume of ready mix concrete in the metropolitan Denver area.

VII

EFFECTS

13. The combination and conspiracy had the following effects, among others:

- (a) price competition in the sale of ready mix concrete in the metropolitan Denver area has been restrained;

- (b) customers of the corporate defendants and co-conspirators have been deprived of the opportunity to purchase ready mix concrete in an open and competitive market;
- (c) prices of ready mix concrete have been increased and the market stabilized in the metropolitan Denver area.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that each of the defendants has engaged in a combination and conspiracy, as charged herein, in unreasonable restraint of the afore-said interstate trade and commerce in the sale of ready mix concrete in the metropolitan Denver area, in violation of Section 1 of the Sherman Act.
2. That each of the corporate defendants, its successors, assignees, transferees, directors, officers, agents, employees, representatives, and all other persons or corporations acting or claiming to act for or on its behalf, be perpetually enjoined and restrained from continuing, maintaining or renewing, directly or indirectly, the combination and conspiracy hereinbefore alleged, and from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect.


3. That the defendant MDCA be dissolved and disbanded, and that each of the corporate defendants be enjoined and restrained from organizing, joining, participating in or belonging to any other trade association, organization or industry group with knowledge that any of the activities of such association, organization or group are inconsistent with any term of any judgment entered herein.

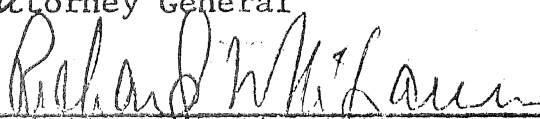
4. That each of the corporate defendants, its successors, assignees, transferees, directors, officers, agents, employees, representatives and all other persons or corporations acting or claiming to act for or on its behalf, be perpetually enjoined and restrained from combining and conspiring among themselves or with any other person or corporation to raise or stabilize the price of ready mix concrete; to refrain from soliciting one another's ready mix concrete customers; to limit the submission of competitive bids for the sale of ready mix concrete; or to allocate shares of the total ready mix concrete market in the metropolitan Denver area.

5. That, for a period of five years following the date of entry of such judgment, each of the corporate defendants be required to affix to every sealed bid or quotation for the sale of ready mix concrete a written certification, signed by an officer of the corporation, that such bid or quotation was not in any way the result of any agreement, understanding, or communication between the corporation and any other ready mix concrete supplier.

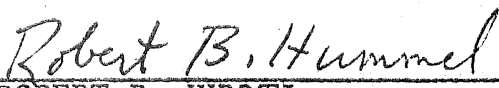
6. That the plaintiff have such other and further relief as the Court may deem just and proper.

7. That the plaintiff recover the costs of this suit.


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