

## Concrete Cos. Want Cement Cartel Antitrust Suit Reopened

Law360 (March 17, 2022, 2:10 PM EDT) — Two Georgia companies want to reopen civil allegations that fellow cement and concrete suppliers created cartels in the Southeast, telling a Georgia federal judge that although a related criminal case remains ongoing, essential evidence is deteriorating as they wait for their day in court.

Concrete companies Southeast Ready Mix LLC and the now-defunct Mayson Concrete Inc. told the court they shouldn't be forced to wait any longer to pursue allegations that Argos North America, Evans Concrete LLC, Holcim (US) Inc., Cemex Inc. and others conspired to fix prices and corner the market for portland cement, a key ingredient in making ready-mix concrete.

The plaintiffs told the court Tuesday in their motion to reopen that while the court decided last year to administratively close the civil antitrust suit until the end of the related criminal case, "inordinate delays" in the parallel proceedings warrant the judge's reconsideration of tabling the civil suit.

"Continued, interminable delay will prejudice plaintiffs because evidence deteriorates over time," the motion said, expressing concern about the ability to obtain key documents, witnesses being unable to recall fading memories and defendants eventually lacking the resources to pay any potential judgment.

U.S. District Judge Eleanor L. Ross closed the antitrust suit without prejudice in March 2021 after denying the U.S. Department of Justice's request for an indefinite stay in the civil proceedings pending the outcome of the related criminal case.

The federal government had sought to extend an existing stay of discovery in the antitrust suit, but the court refused since there was no clear timeline for the length of the stay. The existing stay limiting discovery had been in place for two years to protect the integrity of the federal government's investigation and grand jury proceedings in the criminal matter, according to court filings.

But since the court closed the lawsuit last year, the federal government's investigation into the cement market was closed and its investigation into the ready-mix market was completed and led to indictments for five defendants.

"Accordingly, the concern that motivated the prior discovery stays and administrative closing — protecting the government's investigation and grand jury proceedings — is no longer pressing," the plaintiffs told the court.

What is pressing, however, is allowing plaintiffs to proceed with the civil suit, the motion argued.

The plaintiffs urged the court to reopen the suit and allow discovery to get underway without limitation, saying the complete ban on depositions that was imposed through prior discovery orders can't be reinstated

because it "risks the loss of crucial evidence as memories deteriorate."

The plaintiffs told the court there is no trial date on the books for federal prosecutors' criminal case. As of now, pretrial motions are expected in May, and federal prosecutors believe trial won't get underway until at least this fall "and possibly not until 2023," plaintiffs said.

Southeast Ready Mix and Mayson Concrete brought claims in July 2017 of monopolization, conspiracy to restrain trade and tortious interference with business relations against about a dozen Southeast concrete and cement production companies.

They claimed Georgia-based Argos North America Corp. and Argos Ready Mix LLC led a scheme for almost a decade involving two separate but related cartels to fix prices, divvy up geographic markets and rig bids for portland cement and ready-mix concrete.

Argos, as a vertically integrated supplier of cement and concrete, allegedly ran a conspiracy with several other industry players in Georgia and South Carolina to dominate the markets and push out new entrants that did not cooperate with the alleged scheme, per the complaint. The suit alleges that cartel participants low-balled prices for concrete so those smaller players couldn't compete, and that Mayson Concrete was forced out of business as a result.

Holcim (US) Inc. and Cemex Inc. and its affiliates are accused of conspiring with Argos to fix prices and corner the market for portland cement. Argos, Evans Concrete LLC, Thomas Concrete Inc. and subsidiaries, and Elite Concrete LLC and affiliates also allegedly divvied up customers, rigged bids and boycotted competitors to inflate prices for ready-mix concrete.

A federal grand jury indicted Evans Concrete LLC and four individuals on Sherman Antitrust Act violations in the Southern District of Georgia in September. The individuals — James Pedrick, Gregory Melton, John "David" Melton and Timothy "Bo" Strickland — are current and former employees of Evans Concrete, Argos and Elite Concrete, per the indictment.

The DOJ announced in a January 2021 statement that Argos USA LLC had admitted to participating in the conspiracy and would pay a \$20 million fine as well as implement a program to detect antitrust violations, in exchange for deferred prosecution of a Sherman Act violation.

Counsel for the parties didn't immediately return requests for comment Thursday.

Southeast Ready Mix and Mayson Concrete are represented by Aaron R. Gott, Jarod M. Bona and Jon Cieslak of Bona Law PC, and ***Richard L. Robbins and Rachel F. Gage of Robbins Ross Alloy Belinfante Littlefield LLC.***

Argos has been represented by Howard Feller, J. Brent Justus, Nicholas J. Giles and M. Laughlin Allen of McGuireWoods LLP. Elite Concrete has been represented by Justin P. Gunter and Robert M. Brennan of Parker Hudson Rainer & Dobbs LLP. Evans Concrete has been represented by Jeffrey W. DeLoach of Epps Holloway DeLoach & Hoipkemier LLC. Thomas Concrete has been represented by W. Augustus Todd and Gregory R. Hanthorn of Jones Day. Holcim has been represented by Elizabeth "Betsy" Farrington, Jennifer L. Greenblatt, Laura A. Sexton and Tarek Ismail of Goldman Ismail Tomaselli Brennan & Baum LLP and Seth A. Litman of Thompson Hine LLP. Cemex has been represented by James R. "Jim" McGibbon,

Kaitlin A. Carreno and Patricia A. Gorham of Eversheds Sutherland.

The DOJ is represented by Julia M. Maloney and Patrick Brown of its Antitrust Division.

The case is Southeast Ready Mix LLC et al. v. Argos North America Corp. et al., case number 1:17-cv-02792, in the U.S. District Court for the Northern District of Georgia.