

DOJ Probe Leads To Discovery Delay In Cement Antitrust Suit

A Georgia federal judge delayed discovery by six months Tuesday in a suit accusing cement and concrete producers of creating cartels in the Southeast after the U.S. Department of Justice said an ongoing government criminal probe needs to play out first.

U.S. District Judge Eleanor L. Ross signed an order pushing back discovery until July 22. The DOJ filed papers to intervene in the civil case Friday because the agency said evidence-gathering by the litigants could interfere with the DOJ Antitrust Division probe.

In the litigation, concrete seller Ready Mix LLC has alleged that several businesses in the cement and concrete industries, led by Argos North America Corp., ran two separate but related cartels to fix prices, divvy up geographic markets and rig bids for the construction materials.

The links between what the DOJ is examining and allegations in the civil case are unclear, and a memo elaborating on the government's move to pause the case was filed under seal. But the DOJ antitrust arm said the effort to intervene — which it said none of the parties opposed — arose from “facts that overlap” with ongoing criminal antitrust investigations the government is conducting.

“Continued litigation of this civil action is likely to result in the disclosure of information that will harm the ongoing criminal antitrust investigations,” the DOJ said.

The government's decision to step in came just as discovery got underway in Southeast Ready Mix's attempt to prove that Argos, as a vertically integrated supplier of cement and concrete, ran a conspiracy with several other industry players in the Southeast to dominate the markets and push out new entrants that did not cooperate with the alleged scheme. The suit alleges that cartel participants lowballed prices for concrete so those smaller players couldn't compete.

Southeast Ready Mix and now-defunct Mayson Concrete Inc. brought the suit against Argos and several other companies in July 2017, saying Argos conspired with two other suppliers, Holcim Inc. and Cemex Inc., to corner the market for portland cement, a key ingredient in making ready-mix concrete. The suit also claimed Argos and Evans Concrete LLC, Thomas Concrete LLC and Elite Concrete LLC divided up customers, rigged bids and boycotted competitors selling ready-mix concrete.

According to the initial complaint, the alleged scheme started in 2009 in the ready-mix concrete market in southeast Georgia, when participants joined together to fix prices for the product. The activity increased in 2016 when the conspirators allocated geographic areas in the region among themselves, according to the suit.

DOJ said in Friday's motion that it has ongoing criminal antitrust investigations into the ready-mix concrete and cement industries, giving the court details in an ex parte declaration under seal.

The government said it had learned that around Oct. 26, parties in the civil action served the first round of discovery requests and later agreed to a 60-day extension for responding, with a new deadline of Jan. 25.

"The United States' criminal investigations into potential antitrust violations related to the ready-mix concrete and cement industries present circumstances that warrant intervention," DOJ said. "Courts routinely grant motions to intervene by the United States for the purpose of seeking a stay of discovery related to a criminal investigation."

DOJ noted that it has intervened in federal civil actions even when a criminal investigation is still in the pre-indictment stage.

"We are obviously following this development of a criminal investigation carefully, but cannot comment further at this time," legal counsel for Southeast Ready Mix, Jarod Bona of Bona Law PC, told Law360 in an email Tuesday.

Representatives for the other parties involved did not immediately respond to requests for comment.

The government is represented by Eytayo St. Matthew-Daniel and Somadinna Nwokolo of the U.S. Department of Justice Antitrust Division.

Southeast Ready Mix is represented by Jarod M. Bona, Aaron R. Gott and Steven Levitsky of Bona Law PC and **Richard L. Robbins** and **Rachel F. Gage** of **Robbins Alloy Belinfante Littlefield LLC**.

Argos is represented by Meghan McIntee Rachford of McGuireWoods LLP.

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