IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LOEB INDUSTRIES, INC., LOS ANGELES SCRAP IRON & METAL CORP., and METAL PREP COMPANY, INC., on behalf of themselves and all others similarly situated,,

Plaintiffs,

v.

J.P. MORGAN & CO., INC., and MORGAN GUARANTY TRUST COMPANY OF NEW YORK,

Defendants.

ORDER

00-C-0274-C

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This antitrust case is before the court on the motion of defendants J.P. Morgan & Co., Inc. and Morgan Guaranty Trust Company of New York. Plaintiffs Loeb Industries, Inc., Los Angeles Scrap Iron & Metal Corp. and Metal Prep Company, Inc. contend that defendants are liable under the Clayton and Sherman antitrust acts for their involvement in a cartel formed for the purpose of manipulating copper prices worldwide. Defendants contend that plaintiffs' complaint falls short of alleging an actionable claim against defendants because it contains no allegation that defendants ever engaged in any transaction manipulating or affecting the

London Metals Exchange, the Comex (the American metal futures market), the physical copper markets or the scrap copper markets. In addition, they ask that the case be dismissed on the same grounds relied upon by the court in two related actions, in which it denied the motions of these plaintiffs for class certification and dismissed their complaints.

Plaintiffs argue vigorously that they have alleged sufficient facts to show that they have stated a claim by alleging that defendants' actions affected the copper markets. They oppose defendants' request that the court dismiss this complaint on the same grounds that it dismissed plaintiffs' earlier ones, saying that it was improper for the court to dismiss those complaints and it would be even more improper to do so in this case when the parties have not adduced any facts beyond those alleged in the complaint.

Technically, plaintiffs are correct. The only matter pending in this case is the motion to dismiss; motions to dismiss are to be decided solely on the basis of the facts alleged in the complaint. However, it seems an unjustifiable expenditure of the court's and the parties' time and other resources to ignore the reality that when plaintiffs were put to the test in In re Copper Antitrust Litigation, M.D.L. Docket No. 1303, 2000 WL 1225041, they could not show that they or their proposed class had antitrust standing to sue the alleged participants in the copper cartel. In deciding the consolidated cases, I found that the intervening causes affecting scrap metal dealers such as plaintiffs and their proposed class were so numerous that

it would be an inordinately difficult task to trace causation and measure damages and that allowing these relatively remote plaintiffs to sue could result in damages far in excess of those required for deterrence purposes and potentially duplicative recovery. Id. at *8. I found also that plaintiffs were unable to define an identifiable class that would enable prospective class members to know whether they were or were not members of the class. Id. at *11.

Before concluding that the complaint in this case should be dismissed on the ground that plaintiffs cannot show that they have antitrust standing to bring the suit, I will allow plaintiffs until November 9, 2000, in which to submit any evidence or argument they have that was not submitted in the two earlier cases and that would tend to show that plaintiffs have standing to sue the defendants in this case. Defendants may have until November 30, 2000, in which to respond to plaintiffs' submission.

ORDER

IT IS ORDERED that plaintiffs may have until November 9, 2000, in which to submit any evidence or argument they have that was not submitted in the two earlier cases and that would tend to show that plaintiffs have standing to sue the defendants in this case. Defendants may have until November 30, 2000, in which to respond to plaintiffs'

submission, if they wish.

Entered this 19th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge