

[Print Page](#)

## Glacial Lakes files suit

By Terry O'Keefe, Staff Writer

Posted: Monday, February 16, 2009 10:11 AM CST

Watertown ethanol producer Glacial Lakes Energy has filed a lawsuit against a former industry partner located in Minnesota.

According to court documents, GLE filed the complaint against Granite Falls (Minn.) Energy and seven of its board members Feb. 3 in district court in Yellow Medicine (Minn.) County, alleging breach of contract and oversight duties and asking for restoration of its 20 percent interest in GFE along with seeking attorney's fees and damages in excess of \$50,000.

The lawsuit follows a dispute between the two ethanol producers that goes back more than two years and originally involved GLE's management contract with the Minnesota company.

That dispute was resolved when a settlement was reached last year that included GLE relinquishing its management role, but retaining about 6,500 shares in GFE and having the right to appoint two members of the GFE board of directors.

In December, GLE and Fagen, Inc., a plant design and construction firm involved in the ethanol industry and headquartered in Granite Falls, reached a tentative agreement for Fagen to purchase 2,000 units of GLE's interest in the Granite Falls plant at a cost of \$1,000 per unit, or a total of \$2 million.

If completed, the purchase and transfer of those membership units was to take place on an undetermined closing date within seven months of the original agreement. The closing on the deal between GLE and Fagen has not yet happened.

According to documents and correspondence filed with the Securities and Exchange Commission, GLE alleges that the Minnesota ethanol producer set its own closing date for the deal and arbitrarily transferred the membership units and removed GLE's board members as of Jan. 13.

On that same date, Michael Weaver, an attorney with a Minneapolis law firm representing GLE, sent a letter to lawyers for Granite Falls Energy saying the governing board's resolution and action was illegal according to GFE's own unit purchase and transfer rules.

"Please be advised that the (board's) resolution directly contradicts the express language of the purchase agreement between Glacial Lakes Energy and Fagen, Inc., covering the purchase and sale of the 2,000 membership units," Weaver said in the letter. "Glacial Lakes does not agree that Granite Falls Energy may unilaterally determine when the sale of 2,000 membership units occurred for its own self interest, in contravention of the express language of the purchase agreement."

Weaver went on to say the move by the board of directors also removed GLE's ability and agreement with Fagen for the possible sale of its entire 6,500 membership units as a block.

"This action fundamentally diminishes the value of the 6,500 units, value that both Glacial Lakes Energy and Fagen, Inc., agreed to preserve under their agreement with each other and could result in millions of dollars of damages to Glacial Lakes Energy to the extent it would prevent Glacial Lakes Energy.... from selling all 6,500 units as a block, with the right to appoint two persons to the Granite Falls Board," Weaver wrote.

Weaver asked that the board formally reverse its resolution on the GLE-Fagen deal and restore GLE's existing seats on the company's board.

When the GFE board did not move to rescind its original resolution, Weaver sent a second letter dated Jan. 27, threatening legal action against the company.

“We continue to believe that the Granite Falls’ board action directly contradicts the purchase agreement entered into by Glacial Lakes and Fagen, Inc., covering the sale and purchase of 2,000 of the GFE units owned by Glacial Lakes,” Weaver said in the second letter. “We hereby demand that Granite Falls Energy immediately take action to rescind the board action and to reinstate the two board appointees from Glacial Lakes Energy to which they are entitled.”

In his letters, Weaver also suggests the action results from lingering bad feelings between GFE’s board members over the earlier management dispute and “It would certainly seem that one result of this action will be to create ill-will and distrust in its membership as to what the motives of the Granite Falls board truly are.”

According to court documents, the earlier dispute between the two entities centered around GLE’s management contract with Granite Falls Energy. Under the original agreement, GLE was paid to provide management for the Granite Falls ethanol plant for five years.

In late 2006, approximately one year after the agreement, the court papers say GFE terminated the agreement and removed the South Dakota company as manager.

Glacial Lakes Energy filed suit against GFE in early 2007 alleging breach of contract and wrongful termination and asked for several million dollars in damages. GFE filed a counter claim and also asked for a similar damage award.

“Although these claims and counter claims were eventually settled under a Confidential Settlement Agreement reached through mediation in 2008, the claims and counter claims between Glacial Lakes and Granite Falls resulted in bitter litigation and an acrimonious relationship existed between the parties throughout 2008,” the court documents state.

The court filing indicates GLE alleges Granite Falls Energy held a special board meeting in January with the specific intent of removing the Glacial Lakes board members and approving the transfer of the GLE units to Fagen, although the two parties have not reached a final agreement on the deal.

In doing so, GLE alleges Granite Falls has the intent of dropping Glacial Lakes’ interest in the Minnesota company below the 20 percent requirement for its seats on the GFE board.

The complaint asks the court to reverse the board resolution on the transfer of the GLE units to Fagen, reinstate GLE’s board seats and restore GLE’s right to sell its entire 6,500 units as a block to a third party with the same voting rights that exist.

The complaint claims GFE and the seven board members are in violation of breach of contract, conversion, breach of fiduciary duty and in violation of the Minnesota Limited Liability Company Act.

Close Window