

FILED

FAYETTE COUNTY, ILLINOIS

APR 06 1998

Marsha Wodtke
CLERK OF THE CIRCUIT COURT
FAYETTE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF)
ILLINOIS, *ex rel.* JAMES E.)
RYAN, ATTORNEY GENERAL,)

Plaintiff,)

v.)

No. 98 CH 12

ROBERT L. DEBRUN, d/b/a Robert)
Debrun Asphalt Service, and GEORGE)
HAUSMANN, d/b/a Vandalia Asphalt)
Service,)
Defendants.)

CIVIL COMPLAINT

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* James E. Ryan, Attorney General, for their complaint against the defendants, state as follows:

General Allegations

1. Plaintiff brings this civil action under the Illinois Antitrust Act, 740 ILCS 10/1 *et seq.* ("the Act"), and in particular section 7 thereof, which authorizes the Attorney General to bring suit for violation of section 3 of such Act.

2. Defendant ROBERT L. DEBRUN, a resident of Illinois, at all relevant times up until March of 1996, was the owner or operator of Robert Debrun Asphalt Service, an unincorporated entity headquartered in Assumption, Illinois, engaging in, among other things, the road oil spreading business. He sold substantially all of his business equipment to Louis Marsch, Inc., in March of 1996

3. Defendant GEORGE HAUSMANN, a resident of Illinois, at all relevant times up until

July of 1996, was the owner or operator of Vandalia Asphalt Service, an unincorporated entity headquartered in Vandalia, Illinois, similarly engaging in, among other things, the road oil spreading business. HAUSMANN entered into a token transaction with his wife Ruby Hausmann in 1988 whereby HAUSMANN purported to sell substantially all of his business assets to Ruby Hausmann, but he continued in substantial control of the business thereafter, until at least July of 1996, when the assets were sold to HAUSMANN's step son, Ruby Hausmann's son, Stacy Stewart.

4. At all times relevant, the defendants were competitors of each other -- or, but for the illegal agreements described below, would have been competitors of each other -- in that each competed for road oil spreading work within Fayette County, Illinois.

5. At all times relevant, both Fayette County as a governmental entity and the township governmental entities within the county contracted to have road maintenance work performed annually. The annual road maintenance work included the spreading of road oil. The road oil spreading work was contracted for on a bid basis, with interested contractors submitting bids in a bid letting conducted in April of the year. The winning contractor would then enter into a contract with the appropriate governmental entity and perform the work during the summer months.

6. For each year's bid letting that is the subject of this Civil Complaint, the defendants entered into agreements to the effect that HAUSMANN would submit the low bid for all or substantially all the oil spreading work for both Fayette County and the townships within the county. As part of the agreements, he was then to subcontract to DEBRUN the oil spreading work for certain townships within the county, including, in most years, Avena, Bowling Green,

Carson, North Hurricane, South Hurricane and Wheatland townships.

7. The plaintiff did not know and reasonably could not have known of the defendants' agreements which form the bases for the causes of action set forth herein until it took the oral examination of HAUSMANN on October 1, 1997, pursuant to a pre-complaint subpoena served upon him under section 7.2 of the Act. On that date, HAUSMANN for the first time substantially disclosed the nature of the arrangement between him and DUBRUN.

8. Prior to October 1, 1997, moreover, the defendants actively concealed the plaintiff's causes of action set forth herein. They did so by submitting what purported to be competitive bids in each of the bid lettings described below, thus making it appear that they had no agreement with respect to the bid prices being submitted. In addition, DEBRUN specifically denied the existence of any such arrangement when questioned about it by government officials in an interview that took place in April of 1997.

Count I (1990)

1-8. As paragraphs 1 through 8 of Count I, the plaintiff restates and incorporates the allegations of paragraphs 1 through 8 of the General Allegations as if set forth herein.

9. The defendants submitted bids for road oil spreading work to be performed on county and township roads in connection with a bid letting held in Fayette County on or about April 24, 1990.

10. Shortly prior to the bid letting, DEBRUN agreed with HAUSMANN to disclose, and then in fact did disclose, his proposed bid prices to HAUSMANN so as to permit HAUSMANN to underbid DEBRUN. In return, HAUSMANN agreed or understood that, if he were the low bidder, he would subcontract to DEBRUN the oil spreading work for certain townships in

Fayette County, including all or most of the townships mentioned in paragraph 6, *supra*, and compensate DEBRUN the full payment for which HAUSMANN had contracted.

11. The purpose or effect of this agreement was (a) to fix, control or maintain the price to be charged for the oil and the spreading of the oil on county and township roads, and (b) to allocate or divide customers for the work to be done.

12. The defendants reached agreement with respect to each of the following items in the bid letting, for which they submitted bids as indicated:

<u>Product</u>	<u>Hausmann Bid Price</u>	<u>Debrun Bid Price</u>
County Bids		
Liquid Asphalt E-2, E-3	.58/gal	.59/gal
Liquid Asphalt SC-800, 3000	.61/gal	.62/gal
Asphalt Cement AC-2.5 or 5	158/ton	163/ton
Township Bids		
Liquid Asphalt E-2, E-3	.58/gal	.59/gal
Liquid Asphalt SC-800, 3000	.58/gal	.62/gal

13. HAUSMANN was in fact low bidder on each of these items, and, accordingly, subcontracted the designated townships to DEBRUN.

14. The agreement reached with respect to each of the bids set forth in paragraph 12, *supra*, constitutes a violation of subsections 3(1)a and 3(1)c of the Act.

Wherefore, the plaintiff prays that this Court

(a) pursuant to section 7(4) of the Act, enter judgment in favor of the plaintiff and against each of the defendants in the amount of \$50,000 for each bid submitted by the defendants in violation of the Act, as listed in paragraph 12, *supra*;

- (b) permanently enjoin the defendants from any further violations of the Act; and
- (c) grant such further relief as may be necessary or appropriate.

Count II (1991)

1-8. As paragraphs 1 through 8 of Count II, the plaintiff restates and incorporates the allegations of paragraphs 1 through 8 of the General Allegations as if set forth herein.

9. The defendants submitted bids for road oil spreading work to be performed on county and township roads in connection with a bid letting held in Fayette County on or about April 22, 1991.

10. Shortly prior to the bid letting, DEBRUN agreed with HAUSMANN to disclose, and then in fact did disclose, most of his proposed bid prices to HAUSMANN so as to permit HAUSMANN to underbid DEBRUN. In return, HAUSMANN agreed or understood that, if he were the low bidder, he would subcontract to DEBRUN the oil spreading work for certain townships in Fayette County, including all or most of the townships mentioned in paragraph 6, *supra*, and compensate DEBRUN the full payment for which HAUSMANN had contracted.

11. The purpose or effect of this agreement was (a) to fix, control or maintain the price to be charged for the oil and the spreading of the oil on county and township roads, and (b) to allocate or divide customers for the work to be done.

12. The defendants reached agreement with respect to each of the following items in the bid letting, for which they submitted bids as indicated:

<u>Product</u>	<u>Hausmann Bid Price</u>	<u>Debrun Bid Price</u>
County Bids		
Bituminous Materials E-2, E-3	.66/gal	.68/gal
Bituminous Materials SC-88, 3000	.69/gal	.70/gal
Bituminous Materials AC-2.5 or 5	158/ton	160/ton

Township Bids		
Bituminous Materials E-2, E-3	.66/gal	.67/gal
Bituminous Materials SC-800, 3000	.69/gal	.70/gal

13. In addition, the defendants submitted township bids for Bituminous Materials HFE-150, with HAUSMANN bidding .6435/gal and DEBRUN bidding .64/gal. This item was an insignificant one in the overall bid letting, and DEBRUN's low bid for it did not affect the agreements on the other bid items or the agreement for HAUSMANN to subcontract townships to DEBRUN.

14. HAUSMANN was in fact low bidder on each of the items listed in paragraph 12, and, accordingly, subcontracted the designated townships to DEBRUN.

15. The agreement reached with respect to each of the bids set forth in paragraph 12, *supra*, constitutes a violation of subsections 3(1)a and 3(1)c of the Act.

Wherefore, the plaintiff prays that this Court

(a) pursuant to section 7(4) of the Act, enter judgment in favor of the plaintiff and against each of the defendants in the amount of \$50,000 for each bid submitted by the defendants in violation of the Act, as listed in paragraph 12, *supra*;

(b) permanently enjoin the defendants from any further violations of the Act; and

(c) grant such further relief as may be necessary or appropriate.

Count III (1992)

1-8. As paragraphs 1 through 8 of Count III, the plaintiff restates and incorporates the allegations of paragraphs 1 through 8 of the General Allegations as if set forth herein.

9. The defendants submitted bids for road oil spreading work to be performed on county and township roads in connection with a bid letting held in Fayette County on or about April 14, 1992.

10. Shortly prior to the bid letting, DEBRUN agreed with HAUSMANN to disclose, and then in fact did disclose, his proposed bid prices to HAUSMANN so as to permit HAUSMANN to underbid DEBRUN. In return, HAUSMANN agreed or understood that, if he were the low bidder, he would subcontract to DEBRUN the oil spreading work for certain townships in Fayette County, including all or most of the townships mentioned in paragraph 6, *supra*, and compensate DEBRUN the full payment for which HAUSMANN had contracted.

11. The purpose or effect of this agreement was (a) to fix, control or maintain the price to be charged for the oil and the spreading of the oil on county and township roads, and (b) to allocate or divide customers for the work to be done.

12. The defendants reached agreement with respect to each of the following items in the bid letting, for which they submitted bids as indicated:

<u>Product</u>	<u>Hausmann Bid Price</u>	<u>Debrun Bid Price</u>
County Bids		
Bituminous Materials E-2, E-3	.50/gal	.59/gal
Bituminous Materials SC-800, 3000	.5425/gal	.59/gal
Bituminous Materials AC-2.5	117/ton	140/ton

Township Bids

Bituminous Materials HFE-150	.5235/gal	.58/gal
Bituminous Materials E-2, E-3	.50/gal	.59/gal
Bituminous Materials SC-800, 3000	.5425/gal	.59/gal

13. HAUSMANN turned out not to be low bidder on many of these items due to competition from another contractor. He was, however, low bidder for the E-3 to be furnished and spread for the townships, and, accordingly, he subcontracted all or some of the E-3 oil spreading work to DEBRUN for the designated townships.

14. The agreement reached with respect to each of the bids set forth in paragraph 12, *supra*, constitutes a violation of subsections 3(1)a and 3(1)c of the Act.

Wherefore, the plaintiff prays that this Court

(a) pursuant to section 7(4) of the Act, enter judgment in favor of the plaintiff and against each of the defendants in the amount of \$50,000 for each bid submitted by the defendants in violation of the Act, as listed in paragraph 12, *supra*;

(b) permanently enjoin the defendants from any further violations of the Act; and

(c) grant such further relief as may be necessary or appropriate.

Count IV (1993)

1-8. As paragraphs 1 through 8 of Count IV, the plaintiff restates and incorporates the allegations of paragraphs 1 through 8 of the General Allegations as if set forth herein.

9. The defendants submitted bids for road oil spreading work to be performed on county and township roads in connection with a bid letting held in Fayette County on or about April 13, 1993.

10. Shortly prior to the bid letting, DEBRUN agreed with HAUSMANN to disclose, and

then in fact did disclose, his proposed bid prices to HAUSMANN so as to permit HAUSMANN to underbid DEBRUN. In return, HAUSMANN agreed or understood that, if he were the low bidder, he would subcontract to DEBRUN the oil spreading work for certain townships in Fayette County, including all or most of the townships mentioned in paragraph 6, *supra*, and compensate DEBRUN the full payment for which HAUSMANN had contracted.

11. The purpose or effect of this agreement was (a) to fix, control or maintain the price to be charged for the oil and the spreading of the oil on county and township roads, and (b) to allocate or divide customers for the work to be done.

12. The defendants reached agreement with respect to each of the following items in the bid letting, for which they submitted bids as indicated:

<u>Product</u>	<u>Hausmann Bid Price</u>	<u>Debrun Bid Price</u>
County Bids		
Bituminous Materials E-2, E-3	.629/gal	.64/gal
Bituminous Materials AC-2.5	160/ton	170/ton
Bituminous Material HFE-150	.589/gal	.60/gal
Township Bids		
Bituminous Materials E-2, E-3	.629/gal	.64/gal
Bituminous Materials SC-800, 3000	.629/gal	.64/gal
Bituminous Materials HFE-150	.589/gal	.60/gal

13. In addition, DEBRUN submitted a township bid for Bituminous Materials HFE-300, for which HAUSMANN did not submit a bid. DEBRUN's uncontested bid for this item did not affect the agreements on the other bid items or the agreement for HAUSMANN to subcontract townships to DEBRUN.

14. HAUSMANN was in fact low bidder on each of the items listed in paragraph 12, and, accordingly, subcontracted the designated townships to DEBRUN.

15. The agreement reached with respect to each of the bids set forth in paragraph 12, *supra*, constitutes a violation of subsections 3(1)a and 3(1)c of the Act.

Wherefore, the plaintiff prays that this Court

(a) pursuant to section 7(4) of the Act, enter judgment in favor of the plaintiff and against each of the defendants in the amount of \$50,000 for each bid submitted by the defendants in violation of the Act, as listed in paragraph 12, *supra*;

(b) permanently enjoin the defendants from any further violations of the Act; and

(c) grant such further relief as may be necessary or appropriate.

Count V (1994)

1-8. As paragraphs 1 through 8 of Count V, the plaintiff restates and incorporates the allegations of paragraphs 1 through 8 of the General Allegations as if set forth herein.

9. The defendants submitted bids for road oil spreading work to be performed on county and township roads in connection with a bid letting held in Fayette County on or about April 7, 1994.

10. Shortly prior to the bid letting, DEBRUN agreed with HAUSMANN to disclose, and then in fact did disclose, his proposed bid prices to HAUSMANN so as to permit HAUSMANN to underbid DEBRUN. In return, HAUSMANN agreed or understood that, if he were the low bidder, he would subcontract to DEBRUN the oil spreading work for certain townships in Fayette County, including all or most of the townships mentioned in paragraph 6, *supra*, and compensate DEBRUN the full payment for which HAUSMANN had contracted.

11. The purpose or effect of this agreement was (a) to fix, control or maintain the price to be charged for the oil and the spreading of the oil on county and township roads, and (b) to allocate or divide customers for the work to be done.

12. The defendants reached agreement with respect to each of the following items in the bid letting, for which they submitted bids as indicated:

<u>Product</u>	<u>Hausmann Bid Price</u>	<u>Debrun Bid Price</u>
County Bids		
Bituminous Materials E-2, E-3	.639/gal	.645/gal
Bituminous Materials Seal Coat	.609/gal	.615/gal
Township Bids		
Bituminous Materials E-2, E-3	.639/gal	.645/gal
Bituminous Materials SC-800, 3000	.639/gal	.645/gal
Bituminous Materials Seal Coat	.609/gal	.615/gal

13. HAUSMANN was in fact low bidder on each of these items, and, accordingly, subcontracted the designated townships to DEBRUN.

14. The agreement reached with respect to each of the bids set forth in paragraph 12, *supra*, constitutes a violation of subsections 3(1)a and 3(1)c of the Act.

Wherefore, the plaintiff prays that this Court

(a) pursuant to section 7(4) of the Act, enter judgment in favor of the plaintiff and against each of the defendants in the amount of \$50,000 for each bid submitted by the defendants in violation of the Act, as listed in paragraph 12, *supra*;

(b) permanently enjoin the defendants from any further violations of the Act; and

(c) grant such further relief as may be necessary or appropriate.

Count VI (1995)

1-8. As paragraphs 1 through 8 of Count VI, the plaintiff restates and incorporates the allegations of paragraphs 1 through 8 of the General Allegations as if set forth herein.

9. The defendants submitted bids for road oil spreading work to be performed on county and township roads in connection with a bid letting held in Fayette County on or about April 6, 1995.

10. Shortly prior to the bid letting, DEBRUN agreed with HAUSMANN to disclose, and then in fact did disclose, his proposed bid prices to HAUSMANN so as to permit HAUSMANN to underbid DEBRUN. In return, HAUSMANN agreed or understood that, if he were the low bidder, he would subcontract to DEBRUN the oil spreading work for certain townships in Fayette County, including all or most of the townships mentioned in paragraph 6, *supra*, and compensate DEBRUN the full payment for which HAUSMANN had contracted.

11. The purpose or effect of this agreement was (a) to fix, control or maintain the price to be charged for the oil and the spreading of the oil on county and township roads, and (b) to allocate or divide customers for the work to be done.

12. The defendants reached the agreement with respect to each of the following items in the bid letting, for which they submitted bids as indicated:

<u>Product</u>	<u>Hausmann Bid Price</u>	<u>Debrun Bid Price</u>
County Bids		
Bituminous Material E-2, E-3	.689/gal	.715/gal
Bituminous Material AC-2.5	179/ton	182/ton
Bituminous Material HFE-150	.659/gal	.67/gal

Township Bids

Bituminous Material E-2, E-3	.689/gal	.715/gal
Bituminous Material SC-800, 3000	.719/gal	.725/gal
Bituminous Material HFE-150	.659/gal	.67/gal

13. HAUSMANN was in fact low bidder on each of these items, and, accordingly, subcontracted the designated townships to DEBRUN.

14. The agreement reached with respect to each of the bids set forth in paragraph 12, *supra*, constitutes a violation of subsections 3(1)a and 3(1)c of the Act.

Wherefore, the plaintiff prays that this Court

(a) pursuant to section 7(4) of the Act, enter judgment in favor of the plaintiff and against each of the defendants in the amount of \$50,000 for each bid submitted by the defendants in violation of the Act, as listed in paragraph 12, *supra*;

(b) permanently enjoin the defendants from any further violations of the Act; and

(c) grant such further relief as may be necessary or appropriate.

Count VII (1996)

1-8. As paragraphs 1 through 8 of Count VII, the plaintiff restates and incorporates the allegations of paragraphs 1 through 8 of the General Allegations as if set forth herein.

9. The defendants submitted bids for road oil spreading work to be performed on county and township roads in connection with a bid letting held in Fayette County on or about April 16, 1996.

10. Shortly prior to the bid letting, DEBRUN agreed with HAUSMANN to disclose, and then in fact did disclose, his proposed bid prices to HAUSMANN so as to permit HAUSMANN to underbid DEBRUN. In return, HAUSMANN agreed or understood that, if he were the low

bidder, he would subcontract to DEBRUN the oil spreading work for certain townships in Fayette County, including all or most of the townships mentioned in paragraph 6, *supra*, and compensate DEBRUN the full payment for which HAUSMANN had contracted.

11. The purpose or effect of this agreement was (a) to fix, control or maintain the price to be charged for the oil and the spreading of the oil on county and township roads, and (b) to allocate or divide customers for the work to be done.

12. The defendants reached agreement with respect to each of the following items in the bid letting, for which they submitted bids as indicated:

<u>Product</u>	<u>Hausmann Bid Price</u>	<u>Debrun Bid Price</u>
County Bids		
Bituminous Material E-3	.6735/gal	.71/gal
Bituminous Material AC 2.5	167.50/ton	180/ton
Bituminous Material RS-2	.6335/gal	.68/gal
Bituminous Material HFE 150	.6335/gal	.68/gal
Township Bids		
Bituminous Material E-3	.6735/gal	.71/gal
Bituminous Material SC 800, 3000	.7135/gal	.75/gal
Bituminous Material HFE 150	.6335/gal	.68/gal

13. Even though DEBRUN bid in his own name, his bids were submitted on behalf of Louis Marsch, Inc., to whom he had sold most or all of his business equipment in March of 1996. Inasmuch as HAUSMANN was low bidder on each of these items, he honored his commitments to DEBRUN by agreeing to subcontract to Louis Marsch, Inc., some or all of the townships that had been designated for DEBRUN. The agreement to subcontract was thereafter assumed by Stacy Stewart, who purchased the business assets of HAUSMANN in July of 1996.

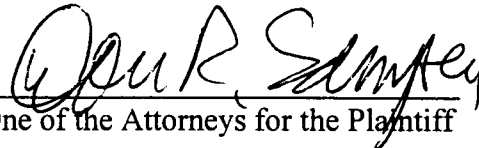
14. The agreement reached with respect to each of the bids set forth in paragraph 12, *supra*, constitutes a violation of subsections 3(1)a and 3(1)c of the Act.

Wherefore, the plaintiff prays that this Court

(a) pursuant to section 7(4) of the Act, enter judgment in favor of the plaintiff and against each of the defendants in the amount of \$50,000 for each bid submitted by the defendants in violation of the Act, as listed in paragraph 12, *supra*;

(b) permanently enjoin the defendants from any further violations of the Act; and

(c) grant such further relief as may be necessary or appropriate.


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