

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHAEL A. COX, Attorney General of  
the State of Michigan, *ex rel* STATE OF  
MICHIGAN,

Plaintiffs,

v

THE HOME CITY ICE COMPANY,

Defendant.

No. 10-1080-CP

HON.

JAMES R. GIDDINGS

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M. Elizabeth Lippitt (P70373)  
Attorney for Plaintiff  
Michigan Department of Attorney General  
Corporate Oversight Division  
P.O. Box 30755  
Lansing MI 48909  
(517) 373-1160

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John B. Pinney (P18919)  
Graydon Head & Ritchey LLP  
Attorneys for Defendant  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati OH 45202  
(513) 621-6464

JAMES BRAYTON  
CLERK OF THE 30TH  
JUDICIAL CIRCUIT COURT  
INGHAM COUNTY CLERK

2010 SEP 10 P 1:12

FILED

**CONSENT JUDGMENT AND ORDER FOR INJUNCTION**

At a Session of said Court held in the  
City of Lansing, State of Michigan,  
this 10 day of September, 2010

PRESENT: Honorable \_\_\_\_\_, Circuit Judge

## I. PREAMBLE

WHEREAS the Plaintiff, Michigan Attorney General Mike Cox, on behalf of the State of Michigan, brought this lawsuit against Defendant, The Home City Ice Company ("Home City"), alleging violations of the Michigan Antitrust Reform Act ("MARA"), MCL 445.771 et seq., for participation in a contract, combination, or conspiracy between 2 or more persons in restraint of, or to monopolize, trade or commerce in the packaged ice market in parts of the State of Michigan;

AND WHEREAS Home City has denied the allegations of participating in a contract, combination, or conspiracy between 2 or more persons in restraint of trade or commerce;

AND WHEREAS the State of Michigan and Home City ("Parties"), through their respective counsel, have consented to the entry of this Consent Judgment without trial or adjudication of any issue of fact herein, and without the Consent Judgment constituting any evidence against, or an admission by, any party with respect to any issue of law or fact herein;

AND WHEREAS Home City has represented to the State of Michigan that the injunctions and payments ordered herein can and will be adhered to and that Home City is unaware of any grounds for asking the Court to modify any of the provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or final adjudication of any issue of fact or law herein, and upon consent of the Parties hereto, it is Hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

## II. PARTIES

A. Defendant Home City Ice Company is a privately-owned company organized under Ohio law; its principal place of business is 6045 Bridgetown Road, Cincinnati, Ohio 45248.

B. The Attorney General is the chief legal officer of Michigan. The Attorney General is authorized to bring this action for alleged violations of state antitrust laws.

### **III. JURISDICTION**

A. The Parties agree that this Court has jurisdiction over Home City pursuant to Sections 711 and 715 of the Revised Judicature Act ("RJA"), MCL § 600.711 and MCL § 600.715, and over the subject matter pursuant to section 605 of the RJA, MCL § 600.605 and section 5 of the MARA, MCL § 445.775.

B. The interpretation and enforcement of this Consent Judgment shall be governed by the laws of the State of Michigan.

### **IV. DEFINITIONS**

A. "Home City" means Home City Ice Company and includes its successors and assigns, and its affiliates, directors, officers, managers, agents and employees.

B. "Packaged Ice Market" means any business activity relating to the ice industry, including the production, delivery, packaging, or sales of ice.

### **V. NOTICE REQUIREMENT**

For a period of five years from the date this Consent Judgment is filed, Home City shall give 30 days advance notice to the Michigan Office of the Attorney General before closing on any acquisition of any company for \$500,000 or more that Home City knows or would have known but for its intentional avoidance of such knowledge participate in the Packaged Ice Market in Michigan. Home City shall also give notice to the Michigan Office of the Attorney

General within seven days after beginning substantive negotiations on any acquisition of such a company in an amount less than \$500,000. Such notice applies to acquisitions of companies regardless whether the company has facilities in Michigan, so long as the company participates in the Packaged Ice Market in Michigan.

## **VI. INJUNCTIVE RELIEF**

The Parties agree that Home City, in accordance with the terms of this Consent Judgment, without agreeing that any such conduct has taken place, will not participate in, and shall cease any alleged participation in communications, agreements, contracts, combinations, or conspiracies to allocate territory or customers, or to fix, set, or adjust prices in the Packaged Ice Market in Michigan now or in the future, except where such agreements comply with all applicable laws (*e.g.*, an ancillary restraint to a legitimate collaboration or joint venture that satisfies the legal requirements of the Michigan Antitrust and Reform Act).

## **VII. PAYMENT**

A. Home City shall pay to the State of Michigan the sum of THREE HUNDRED AND NINETY THOUSAND DOLLARS AND 00/100 (\$390,000.00), according to the following payment schedule:

1. \$25,000 within 7 calendar days of the approval and entry of this Consent Judgment by the Court;
2. \$175,000.00 on December 31, 2010; and
2. \$190,000.00 on December 31, 2011.

B. In the event of a default or delay in payment, interest at the rate of twenty (20) percent per annum shall accrue thereon from the date of the default or delay to the date of payment.

#### **VIII. ENFORCEMENT**

A. In the event that Home City fails to comply with any of the provisions set forth within this Consent Judgment, Home City must pay, in addition to the above payments, a fine of forty thousand dollars (\$40,000.00) for each legal violation.

B. Home City shall pay all costs associated with any action necessary to enforce the terms of this Consent Judgment, if it is found to have violated this Consent Judgment, including reasonable attorneys' fees.

#### **IX. BANKRUPTCY**

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The obligations of Home City under this Consent Judgment shall not be altered, limited, stayed or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Home City, or by any defense Home City may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. Any stay of enforcement or of acceleration of the time for payment of any of the obligations against Home City or any other person shall have no effect upon Home City's liability under this Consent Judgment or the time for payment by Home City hereunder.

## **X. PARTIES BOUND**

This Consent Judgment is binding upon the Parties, their successors and assigns, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by person service or otherwise.

## **XI. RESOLUTION OF CLAIMS**

- A. Upon execution of this Consent Judgment, the Attorney General shall terminate only those investigations, inquiries, claims and/or proceedings relating to Home City and the Packaged Ice Market as such term is defined in the Complaint. The Attorney General shall not reinstate terminated actions except upon a violation of this Consent Judgment. The Attorney General represents that, at the time of execution of this Consent Judgment, there are no ongoing investigations relating to Home City and the Packaged Ice Market nor is he aware of any investigations contemplated.
- B. By executing this Consent Judgment, the Attorney General releases any and all rights or claims as set forth in the Complaint.
- C. This Consent Judgment is not intended to have any affect whatsoever on the legal rights or remedies of any nature to any third party.
- D. Neither this Consent Judgment, nor any act performed or document executed pursuant to or in furtherance of this Consent Judgment, is now or may be deemed in the future to be an admission of or evidence of liability or any wrongdoing by Home City with respect to the subject matter of the investigation, except in any action by the Attorney General to enforce or for breach of this Consent Judgment.

**XII. RETENTION OF JURISDICTION**

The Court shall exercise continuing jurisdiction over the implementation of the obligations in this Consent Judgment. The Consent Judgment shall terminate five years from the filing date.

**XIII. SEVERABILITY**

The invalidity or unenforceability of any one or more provisions of this Consent Judgment will not affect the validity or enforceability of any other provision.

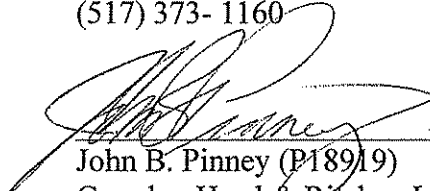
Respectfully submitted,

Michael A. Cox  
Attorney General



M. Elizabeth Lippitt (P70373)  
Attorney for Plaintiff

Michigan Department of Attorney General  
Corporate Oversight Division  
525 West Ottawa  
Lansing MI 48933  
(517) 373- 1160



John B. Pinney (P18919)  
Graydon Head & Ritchey LLP  
Attorneys for Defendant  
1900 Fifth Third Center  
511 Walnut Street  
Cincinnati OH 45202  
(513) 621-6464

Dated:

This Consent Judgment is hereby entered:

JAMES R. GIDDINGS  
The Honorable  
Ingham County Circuit Court Judge

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