

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,

No.

Plaintiff,

HON.

v

THE HOME CITY ICE COMPANY,

Defendant.

M. Elizabeth Lippitt (P70373)
Attorney for Plaintiff
Assistant Attorney General
Michigan Department of Attorney General
Corporate Oversight Division
525 West Ottawa Street
Lansing, MI 48933
(517) 373-1160

COMPLAINT

The State of Michigan, by its Attorney General Michael A. Cox, alleges as follows:

INTRODUCTION

1. This action arises from an agreement, beginning January 1, 2001, and continuing until July 17, 2007 (the "relevant period"), among Home City and other packaged ice producers ("co-conspirators") not to compete with each other in parts of the State of Michigan. In furtherance of their cartel, Home City and co-conspirators agreed to, and did in fact allocate territories and customers, acquire competitors, refuse to compete, and otherwise commit a

variety of unlawful and anticompetitive acts. The cartel affected ice sold in plastic bags or large blocks (“packaged ice”) in parts of the State of Michigan.

PARTIES

2. Plaintiff is Michael A. Cox, Attorney General of the State of Michigan, in his official capacity on behalf of the State of Michigan and its State Agencies, pursuant to authority granted in Section 7 of the Michigan Antitrust Reform Act ("MARA"), MCL 445.777.
3. Defendant, The Home City Ice Company (“Home City”), is an Ohio corporation with its principal place of business in Cincinnati, Ohio.

JURISDICTION AND VENUE

4. Home City is, and was at all relevant times, engaged in trade and commerce, within the meaning of MARA, MCL § 445.771 *et seq.*, in the State of Michigan.
5. 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.
6. Venue is proper in this Court pursuant to Sections 605 and 1631 of the RJA, MCL § 600.605 MCL § 600.1631, and Section 5 of MARA, MCL § 445.775.
7. This action for penalties, injunctive relief, and costs and attorney’s fees is brought by the Attorney General in the name of the State of Michigan and its State Agencies and is therefore properly brought in the Ingham County Circuit Court; MCL § 445.777.
8. Pursuant to MCL 445.777 and MCL 445.778, the Attorney General is authorized to seek and obtain penalties, costs and attorney’s fees, injunctive relief, and other equitable relief to restrain Defendant’s violations of MARA.

DEFENDANT'S COURSE OF ACTION

A. Anti-Competitive Conduct

9. During the relevant period, Home City was a producer and seller of Packaged Ice in the State of Michigan.
10. During the relevant period, Home City, through its officers and employees, participated in a conspiracy among packaged ice producers, the primary purpose of which was to allocate customers and territories of packaged ice sold in parts of State of Michigan.
11. In furtherance of the conspiratorial activity, Home City, through its officers and employees, engaged in discussions and attended meetings with representatives of other packaged ice producers. During these discussions and meetings, agreements were reached to allocate customers and territories of packaged ice to be sold in parts of the State of Michigan.

B. Market Structure

12. The Michigan market for the purchase of packaged ice and services is a distinct and separate relevant market.
13. Packaged ice is commonly sold in supermarkets, convenience stores, beverage stores, drug stores, gas stations, and other retail outlets. Packaged ice is used primarily to cool beverages and food.
14. Packaged ice is a commodity product, made of frozen water. In a competitive market, competition is frequently based upon price among competing ice manufacturers.
15. An ice plant, equipment, and trucks needed to manufacture and distribute large quantities of packaged ice can require millions of dollars in investment. Further, Home City typically installs refrigeration units at its customers' locations for dispensing ice to retail consumers. This creates an "installed base," because to change suppliers requires removing and replacing these units.

C. Injury to Plaintiff

16. Home City's anti-competitive conduct has had the following effects:

- a. price competition has been restrained, suppressed, or eliminated with respect to Packaged Ice in some areas;
- b. purchasers of Packaged Ice, including the State of Michigan and its State Agencies, have been deprived of free and open competition in parts of the Packaged Ice market.

17. As a result of the contract, combination or conspiracy, Plaintiff has sustained injury to its State Agencies.

VIOLATION OF LAW

**COUNT I
VIOLATION OF SECTION 2 OF THE
MICHIGAN ANTITRUST REFORM ACT**

18. Plaintiffs incorporate by reference the allegations above and adopt same as though fully set forth herein.

19. Home City entered into and engaged in contracts, combinations, or conspiracies in an unreasonable restraint of trade in violation of Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

20. The acts done by Home City as part of, and in furtherance of, the contract, combination, or conspiracy were authorized, ordered, or done by at least one of its agents, employees, or representatives while actively engaged in the management of Home City's affairs.

21. The contract, combination, or conspiracy has had the following effects:

- a. Plaintiff has in some instances been deprived of the benefits of free, open, and unrestricted competition in the market for Packaged Ice; and
- b. Competition in parts of the Packaged Ice market has been unlawfully restrained, suppressed, or eliminated.

22. As a direct and proximate result of Home City's unlawful conduct, Plaintiff has been damaged as alleged herein.
23. Home City has engaged in a per se unlawful conspiracy by agreeing to allocate markets in the State of Michigan.
24. Home City's conduct has substantially and adversely affected trade and commerce within the Michigan Packaged Ice market.
25. Home City, by and through its anticompetitive actions as outlined herein, has violated MARA, MCL 445.772.
26. As a direct and proximate result of Home City's violations of MARA, the State of Michigan and its State Agencies suffered harm in an undetermined amount.

PRAYER FOR RELIEF

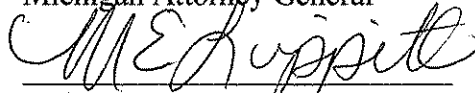
WHEREFORE, the Plaintiff prays that this honorable Court enter an Order:

- A. Issuing a permanent injunction prohibiting Home City, its agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from allocating packaged ice territories and customers among competitors in the State of Michigan;
- B. Adjudging that Home City has violated Section 2 of the Michigan Antitrust Reform Act;
- C. Ordering Home City to pay all costs for the prosecution and investigation of this action, as provided by MCL 445.778;
- D. Ordering Home City to pay civil penalties of \$50,000 for each and every violation of MCL 445.772; and

E. Granting such other and further relief as the Court deems equitable and proper.

Respectfully Submitted,

MICHAEL A. COX
Michigan Attorney General



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Dated:

9-8-10