

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

AZZARELLI CONSTRUCTION CO.;)
LOITZ BROS. CONSTRUCTION CO.,)
INC.)
KANKAKEE PAVING CORPORATION;)
CENTRAL STATES ENGINEERING, INC.;)
JOSEPH I. AZZARELLI;)
JOHN F. AZZARELLI;)
LAWRENCE LOITZ; and)
LAWRENCE C. BOETTCHER,)

Defendants.)

CIVIL ACTION 79-3178

Filed: July 27, 1979

(15 U.S.C. § 1 & 15A.;
31 U.S.C. §§ 231-233)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-name defendants in two counts. As a first claim, the United States of America brings this suit under Section 4A of the Clayton Act (15 U.S.C. § 15(A)) to recover its actual damages (Count One). As a second claim, the United States of America brings this suit under the False Claims Act (31 U.S.C. §§ 231-233) for double the amount of damages sustained, plus forfeitures (Count Two).

COUNT ONE

1. As a first claim, the United States of America brings this suit against the defendants under Section 4(A) of the Clayton Act (15 U.S.C. § 15(A)) to recover damages which it has sustained due to violations by defendants of Section 1 of the Sherman Act, (15 U.S.C. § 1). The claims alleged in this count are asserted as an alternate to those alleged in Count Two to the extent that any transaction complained of may give rise to liability under both counts.

2. Each of the corporate defendants transacts business and is found within the Central District of Illinois.

3. Each of the individual defendants resides and is found within the Central District of Illinois.

4. Many of the acts complained of herein occurred within the Central District of Illinois.

DEFINITIONS

5. As used herein, the term:

- (a) "Highway construction" means the construction, reconstruction, building or rebuilding of public roads within the State of Illinois, including, but not limited to, the building or construction of bridges, grade separation structures, concrete or asphalt paving, and the earth moving and culverting performed in connection therewith;
- (b) "Highway construction contractor" means any business or legal entity engaged, directly or indirectly, in highway construction;
- (c) "F.A.I. Project" means highway construction on the federal aid highways comprising a portion of the public highways partially financed by the federal government in accordance with the terms and conditions of Chapter 1 of Title 23 of the United States Code, Section 101 et. seq., commonly known as the Federal-Aid Highway Act.

III

DEFENDANTS

6. Azzarelli Construction Co., Loitz Bros. Construction Co., Inc., Kankakee Paving Corporation; and Central States Engineering, Inc. are made defendants herein. Each of these corporations is organized and existing under the laws of the state indicated below and has its principal place of business in the city indicated below. Within the period of time covered by this complaint each of these corporations has engaged in the highway construction business in the State of Illinois.

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Azzarelli Construction Co.	Illinois	Kankakee, Illinois
Loitz Bros. Construction Co., Inc.	Illinois	Grant Park, Illinois
Kankakee Paving Corporation	Illinois	Grant Park, Illinois
Central States Engineering, Inc.	Illinois	Joliet, Illinois

7. Joseph I. Azzarelli, John F. Azzarelli, Lawrence Loitz and Lawrence C. Boettcher are made defendants herein. During the period of time covered by this complaint each of these individuals has been associated in the position shown with the business organization named below, and has been engaged in the highway construction business in the capacity indicated.

<u>Individual</u>	<u>Capacity</u>	<u>Business Organization</u>
Joseph I. Azzarelli	President	Azzarelli Construction Co.
John F. Azzarelli	Vice President	Azzarelli Construction Co.
Lawrence Loitz	President	Loitz Bros. Construction Co., Inc. and Kankakee Paving Corporation
Lawrence C. Boettcher	Vice President	Central States Engineering, Inc.

8. Whenever in this complaint reference is made to any act, deed, or transaction of any corporate defendant, such allegations shall be deemed to mean that such corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

IV

CO-CONSPIRATORS

9. Various firms and individuals not made defendants herein, participated as co-conspirators with the defendants in the violations alleged herein and performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

10. Federal-Aid Routes 18 and 26 are part of a nationwide network of interconnecting highways over which motor vehicles move in a continuous and uninterrupted stream of interstate commerce from and through one State to another. A substantial amount of the nation's goods move in interstate commerce over these highways via truck transportation.

11. In the development of a nationwide network of inter-connecting highways, including Federal-Aid Routes 18 and 26, the federal government and the State of Illinois have, to the date of this complaint, cooperated in the financing and construction of such highways in the State of Illinois. In this connection, within the period of time covered by this complaint, there was in existence a program for the development and improvement of highways financed by the State of Illinois and the United States of America and administered by the State of Illinois and the United States of America. This program was undertaken in accordance with the terms and conditions of Chapter 1 of Title 23 of the United States Code, Sections 101 et seq., commonly known as the Federal-Aid Highway Act. Under this program the United States of America, through its agency the Federal Highway Administration, furnished and furnishes, in combination with the State of Illinois, through its Department of Transportation, the funds needed to pay the costs of certain highway construction within the State of Illinois, including the highway construction which is the subject of this complaint.

12. During the period of time covered by this complaint, Section 112 of Title 23 of the United States Code governed the letting of contracts by State highway departments, including the Illinois Department of Transportation, for Federal-Aid projects. That section provided in part:

(a) in all cases where the construction is to be performed by the State highway department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary [of Transportation]. The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

(b) Construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding. . . .

(c) The Secretary shall require as a condition precedent to his approval of each contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, a sworn statement, executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

(d) No contract awarded by competitive bidding pursuant to subsection (b) of this section, and subject to the provisions of this section, shall be entered into by any State highway department or local subdivision of the State without compliance with the provisions of this section, and without the prior concurrence of the Secretary in the award thereof. [23 U.S.C. § 112(a), (b), (c) and (d)]

13. During the period of time covered by this complaint, there was in effect a State of Illinois law entitled "The Illinois Purchasing Act," Ill. Rev. Stat. Chapter 127 §§ 132.1 through 132.13, which governed the awarding of F.A.I. projects by the Illinois Department of Transportation. That statute provided in part:

(a) It is the purpose of this Act and is hereby declared to be the policy of the State that the principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by or for any State Agency. [Ill. Rev. Stat. Chapter 127 § 132.2]

14. During the period of time covered by this complaint, the Illinois Department of Transportation invited highway construction contractors to submit sealed competitive bids on highway construction projects including F.A.I. projects. Such invitations are known as highway lettings and occur approximately ten times per year in Springfield, Illinois. The State of Illinois awards contracts to the lowest responsible bidders following the opening of the sealed bids by its Department of Transportation.

15. During the period of time covered by this complaint, the State of Illinois required each bidder on F.A.I. projects to execute an affidavit providing in part:

That

(Insert name of Individual, Co-partnership or Corporation submitting bid)

its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal.

16. During the period of time covered by this complaint, there was a substantial, continuous and uninterrupted flow of steel, cement and other essential materials from suppliers outside of the State of Illinois to the job sites within the State for use by highway contractors in the construction of F.A.I. projects, including the job sites of the projects which are the subject of this complaint.

17. The activities of the defendants are within the flow of commerce and have a substantial effect on interstate commerce.

VI

VIOLATION ALLEGED

18. Beginning sometime in or about July, 1975, and continuing thereafter, the exact dates being to the plaintiff unknown, in the Central District of Illinois, and elsewhere, the defendants herein, and others known and unknown to the plaintiff, entered into and engaged in a combination and conspiracy, the essential terms of which were to suppress and eliminate competition for the construction of at least one specific portion of a public federal-aid highway project in the State of Illinois let by the State of Illinois on July 29, 1975 in unreasonable restraint of the above described interstate trade and commerce, in violation of Title 15, United States Code, Section 1, commonly known as the Sherman Act.

19. The aforesaid combination and conspiracy consisted of an agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which were:

- (a) To allocate to Loitz Bros. Construction Co., Inc. and Kankakee Paving Corporation one non-federal aid project, Contract 30422, Item 25 and one federal aid project, Contract 30100, Item 27 let by the State of Illinois on July 29, 1975;
- (b) To allocate to Azzarelli Construction Co. one federal aid project let by the State of Illinois on July 29, 1975, Contract 30520, Item 26; and
- (c) To submit collusive, noncompetitive, and rigged bids to the State of Illinois in connection with the above referenced public highway projects.

20. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done those things which, as hereinbefore charged, they have combined and conspired to do, including:

- (a) Discussing the submission of prospective bids on three projects let by the State of Illinois on July 29, 1975; Contract 30422, Item 25, Contract 30520, Item 26, and Contract 30100, Item 27;
- (b) Designating the successful low bidder on the above referenced public highway projects;
- (c) Submitting intentionally high, or complementary bids on the above referenced federal aid project Contract 30100, Item 27 on which another defendant had been designated as the successful low bidder;
- (d) Submitting bid proposals on the three above referenced public highway projects containing false, fictitious and fraudulent statements and entries;
- (e) Discussing the payment of consideration of value to defendant Central States Engineering, Inc. which was not designated as low bidder on Contract 30100, Item 27, and
- (f) Discussing a public highway project which had been let by the State of Illinois earlier in 1975 which project had been allocated to Azzarelli Construction Co. by Loitz Bros. Construction Co., Inc.

VII

EFFECTS

21. The aforesaid combination and conspiracy charged herein has had the following effects, among others:

- (a) Prices of the public highway projects referred to in paragraph 19 of COUNT ONE of this complaint have been fixed, maintained, and established at artificial and non-competitive levels;
- (b) Competition in the construction of the three above referenced public highway projects has been restrained, suppressed, and eliminated;
- (c) The State of Illinois has been denied the right to receive sealed competitive bids for the three above referenced public highway projects; and

(d) The State of Illinois and the United States government have been denied the benefits of free and open competition for the three above referenced public highway projects.

22. As a result of the illegal combination and conspiracy alleged herein, and the defendants' acts in furtherance thereof, the United States of America has been compelled to pay substantially higher prices for highway construction than would have been the case but for the illegal conduct complained of herein and has been injured and financially damaged by defendants in an amount which is presently undetermined.

PRAYER

WHEREFORE, the United States of America:

1. Prays that the herein alleged combination and conspiracy among defendants be adjudged and decreed to be in unreasonable restraint of interstate commerce and in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Demands judgment against defendants for the damages suffered by it due to defendants' violation of the antitrust laws, as provided for in Section 4(A) of the Clayton Act (15 U.S.C. § 15 A) together with such interest thereon as is permitted by law, and the cost of this suit.

3. Prays that it recovers such other amounts and has such other and further relief as the Court shall deem just.

COUNT TWO

23. As a second claim the United States of America brings this suit under Sections 3490, 3491, 3492 and 5438 of the revised statutes (31 U.S.C. §§ 231-233) commonly known as the False Claims Act. The claims alleged in this count are asserted as an alternative to those alleged in Count One to the extent that any transaction complained of may give rise to liability under both counts.

24. The allegations contained in paragraphs 2 through 21 are here recalled with the same force and effect as though set forth in full detail.

25. The defendants at all times mentioned in this complaint were not and are not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States.

26. The acts alleged in this complaint to have been done by each of the corporate defendants were authorized, ordered or done by the officers, agents, employees or representatives of each corporate defendant while actively engaged in the management, direction, or control of its affairs.

27. Pursuant to the terms and conditions of Chapter 1 of Title 23 of the United States Code, Sections 101 et seq., commonly known as the Federal-Aid Highway Act, the State of Illinois with the concurrence of the Federal Highway Administration devised and designed two F.A.I. projects involving highway construction on Federal-Aid Routes 18 and 26 which contracts are: Contract 30520, Item 26, and Contract 30100, Item 27.

28. For the purpose of letting the aforesaid projects for highway construction, the State of Illinois, pursuant to federal law, advertised and called for competitive bids from persons including the defendants herein to be submitted at its July 29, 1975 letting.

29. Pursuant to said combination and conspiracy, and as a result of the acts done in furtherance thereof, Azzarelli Construction Co. was awarded by the State of Illinois with the concurrence of the Federal Highway Administration one F.A.I. project, Contract 30420, Item 26, and Loitz Bros. Construction Co., Inc., and Kankakee Paving Corporation were awarded by the State of Illinois with the concurrence of the Federal Highway Administration one F.A.I. project, Contract 30100, Item 27, on the basis of bids and quotations which defendants submitted and which defendants falsely and fraudulently represented to be bona fide, independent, competitive, and not the product of any collusion or agreement between the bidders, and the prices of which bids they further falsely and fraudulently represented to be normal, reasonable and competitive whereas in fact known to the defendants but unknown to the State of Illinois or the plaintiff, the said bids were a sham and

collusive and not the result of open competition, and prices therefore were unreasonable, arbitrary, and noncompetitive.

30. Pursuant to said combination and conspiracy, the defendants falsely and fraudulently executed and delivered certain affidavits the substance of which is set forth in paragraph 15 of this complaint which affidavits were false, fraudulent, and fictitious and made for the purpose and with the intent of cheating and defrauding the plaintiff.

31. With respect to the two F.A.I. projects referred to in paragraph 27 of this complaint, the defendants presented and/or caused to be presented to the State of Illinois for payment or approval by it numerous claims for payment, knowing such claims to be false, fictitious, or fraudulent, in that such claims were based on a contract which had been falsely or fraudulently procured by reason of the aforesaid bidding practices and that such claims would cause the State of Illinois to submit claims to the Federal Government for partial reimbursement.

32. As a result of the presentment to the State of Illinois of the aforesaid false or fraudulent claims, the State of Illinois has paid the false or fraudulent claims to certain of the defendants.

33. Based upon the payment by the State of Illinois of the aforesaid false or fraudulent claims, the State of Illinois has applied for and received partial reimbursement by the Federal Government in accordance with the terms and conditions of Chapter 1 of Title 23 of the United States Code, Section 101 et seq., commonly known as the Federal-Aid Highway Act.

34. The foregoing considered, the defendants have agreed, combined, or conspired to defraud the Government or a department or officer thereof by submitting or causing to be submitted false, fictitious or fraudulent claims upon or against the United States or through the use of false documents, knowing the same to contain false or fictitious statements or entries for the purpose of obtaining or aiding to obtain the payment, allowance, or approval for payment of a claim upon or against the United States.

35. As a result of the illegal combination and conspiracy and the defendants' acts in furtherance thereof, plaintiff has been compelled to pay substantially higher prices for the highway construction on the F.A.I. projects referred to in paragraph 27 of this complaint than would have been the case but for the illegal conduct complained of herein, and has been financially damaged by defendants, in an amount which is presently undetermined.

PRAYER

WHEREFORE, the United States of America prays:

1. That the Court adjudge and decree that the defendants, and each of them, have presented and/or caused to be presented to plaintiff for payment or approval by it, numerous claims, knowing such claims to be false, fictitious or fraudulent.

2. That the Court demand judgment against defendants for two thousand dollars (\$2,000) for each false, fictitious, or fraudulent claim against the United States of America, and, in addition, for double the amount of damages plaintiff has sustained, and for such other forfeitures as are allowable by law, as provided in Sections 3490, 3491, 3492 and 5438 of the revised statutes (31 U.S.C. §§ 231-233) together with interest thereon and the cost of this suit.

3. That plaintiff recover such other amounts and have such other and further relief as the Court shall deem just.



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