

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,)
7)
8 v.)
9 ALLIED ASPHALT PAVING COMPANY,)
10 BRIGHTON BUILDING & MAINTENANCE)
11 CO.;)
12 KRUG EXCAVATING CO.;)
13 ARCOLE MIDWEST CORPORATION;)
14 THOMAS J. BOWLER;)
15 GEORGE B. KRUG, SR.;)
16 ERNEST A. BEDERMAN;)
17 DONALD McLEAN; and)
18 ROBERT R. ANDERSON,)
19 Defendants.)

CIVIL ACTION 79-C-2155

Filed: May 25, 1979

(15 U.S.C. § 1 & 15A;
31 U.S.C. § 231-235)

20 COMPLAINT

21 The United States of America, plaintiff, by its attorneys,
22 acting under the direction of the Attorney General of the United
23 States, brings this civil action against the above-named defendants
24 in two counts. As a first claim, the United States of America
25 brings this suit under Section 4A of the Clayton Act (15 U.S.C.
26 § 15(A)) to recover its actual damages (Count One). As a second
27 claim, the United States of America brings this suit under the
28 False Claims Act (31 U.S.C. § 231-235) for double the amount of
damages sustained, plus forfeitures (Count Two).

1 (b) "Airport runway construction contractor" means
2 any business or legal entity engaged, directly
3 or indirectly, in airport runway construction;
4 and

5 (c) "A.D.A.P. Project" means airport runway construc-
6 tion partially financed by the federal government
7 in accordance with the terms and conditions of
8 the Airport Development Aid Program established
9 pursuant to the Airport and Airway Development Act
10 of 1970, Title 49, United States Code, Section 1701
11 et. seq.

12 III

13 DEFENDANTS

14 6. Allied Asphalt Paving Company, Brighton Building &
15 Maintenance Co., Krug Excavating Co., and Arcole Midwest Corpo-
16 ration, are made defendants herein. Each of these corporations
17 is organized and existing under the laws of the state indicated
18 below and has its principal place of business in the city indi-
19 cated below. Within the period of time covered by this complaint
20 each of these corporations has engaged in the highway construction
21 business in the State of Illinois.

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Allied Asphalt Paving Company	Illinois	Hillside, Illinois
Brighton Building & Maintenance Co.	Delaware	Chicago, Illinois
Krug Excavating Co.	Illinois	Chicago, Illinois
Arcole Midwest Corporation	Illinois	Chicago, Illinois

1 7. Thomas J. Bowler, George B. Krug, Sr., Ernest A.
2 Bederman, Donald McLean and Robert R. Anderson are made de-
3 fendants herein. During the period of time covered by this
4 complaint each of these individuals has been associated in the
5 position shown with the business organization named below, and
6 has been engaged in the highway construction business in the
7 capacity indicated.

<u>Individual</u>	<u>Capacity</u>	<u>Business Organization</u>
8 Thomas J. Bowler	President	Brighton Building & Maintenance Co.
9 George B. Krug, Sr.	Secretary	Krug Excavating Co.
10 Ernest A. Bederman	President	Arcole Midwest Corporation
11 Donald McLean	President	Allied Asphalt Paving Company
12 Robert R. Anderson	Vice President	Allied Asphalt Paving Company

13
14
15 8. Whenever in this complaint reference is made to any act,
16 deed, or transaction of any corporate defendant, such allegations
17 shall be deemed to mean that such corporation engaged in such act,
18 deed, or transaction by or through its officers, directors, agents,
19 employees, or representatives while they were actively engaged in
20 the management, direction, control or transaction of its business
21 or affairs.

22 IV

23 CO-CONSPIRATORS

24 9. Various firms and individuals not made defendants herein,
25 participated as co-conspirators with the defendants in the violations
26 alleged herein and performed acts and made statements in furtherance
27 thereof.
28

TRADE AND COMMERCE

10. Chicago O'Hare International Airport, Chicago, Illinois (hereinafter referred to as "O'Hare") is part of a nationwide system of airports through which aircraft 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 through these airports via air transportation.

11. In the development of a nationwide system of airports, the federal government and the City of Chicago, have, within the time period covered by this complaint, cooperated in the financing and construction of such airports within the Chicago city limits. In this connection, there was in existence a program for the development and improvement of airports financed by the City of Chicago and the United States of America and administered by the City of Chicago and the United States of America. This program was undertaken in accordance with the terms and conditions of the Airport and Airway Development Act of 1970, Title 49, United States Code, Sections 1701 et seq., and is commonly known as the Airport Development Aid Program. Under the Airport Development Aid Program the United States of America, through its agency, the Federal Aviation Administration, furnished and furnishes, in combination with the City of Chicago, the funds needed to pay the costs of certain airport runway construction at O'Hare, including the airport runway construction which is the subject of this complaint.

1 12. During the period of time covered by this complaint,
2 there were in-existence regulations of the Federal Aviation
3 Administration governing the participation of state and local
4 government entities, including the City of Chicago, in the Airport
5 Development Aid Program. Those regulations provided in part:

- 6 (a) Unless the Administrator approves another method
7 for use on a particular airport development pro-
8 ject, each contract for construction work on a
9 project in the amount of more than \$2,500 must be
10 awarded on the basis of public advertising and
11 open competitive bidding under the local law appli-
12 cable to the letting of public contracts [14 Code
13 of Federal Regulations Part 152.53(a)]; and
- 14 (b) All procurement transactions regardless of whether
15 negotiated or advertised and without regard to
16 dollar value shall be conducted in a manner so as
17 to provide maximum open and free competition [14
18 Code of Federal Regulations Part 152, Appendix M
19 paragraph 3(b)].

20 13. During the period of time covered by this complaint
21 the applicable local law which governed the awarding by the City
22 of Chicago of A.D.A.P. projects at O'Hare was the State of
23 Illinois' "Municipal purchasing act for cities of 500,000 or
24 more population." [Ill. Rev. Stat. Chapter 24 §§ 8-10-1 through
25 8-10-24]. That statute provides in part:

- 26 (a) Except as otherwise herein provided, all
27 purchase orders or contracts of whatever
28 nature, for labor, services or work, the
purchase, lease, or sale of personal property,
materials, equipment or supplies, involving
amounts in excess of \$5,000, made by or on
behalf of any such municipality, shall be let
by free and open competitive bidding after ad-
vertisement, to the lowest responsible bidder . . .
[Ill. Rev. Stat. Chapter 24 § 8-10-3]; and
- (b) Any agreement or collusion among bidders or
prospective bidders in restraint of freedom
of competition by agreement to bid a fixed
price, or otherwise, shall render the bids
of such bidders void. Each bidder shall
accompany his bid with a sworn statement,

1 or otherwise swear or affirm, that he has not
2 been a party to any such agreement. Any dis-
3 closure in advance of the opening of bids, of
4 the terms of the bids submitted in response to
5 an advertisement, made or permitted by the pur-
6 chasing agent shall render the proceedings void
7 and shall require re-advertisement and re-award
8 [Ill. Rev. Stat. Chapter 24 § 8-10-8].

9 14. During the period of time covered by this complaint,
10 the City of Chicago, pursuant to the Airport Development Aid
11 Program, invited contractors to submit sealed competitive bids
12 on A.D.A.P. projects at O'Hare. The City of Chicago awarded
13 those contracts to the lowest responsible bidders following
14 the opening of the sealed bids by its Purchasing Department.

15 15. During the period of time covered by this complaint,
16 the City of Chicago required each bidder on A.D.A.P. projects
17 to execute an affidavit providing in part:

18 Further, the undersigned being duly sworn deposes
19 and says on oath that said undersigned has not entered
20 into any agreement with any other bidder or prospective
21 bidder or with any other person, firm or corporation
22 relating to the price named in said proposal or any other
23 proposal, nor any agreement or arrangement under which any
24 person, firm or corporation is to refrain from bidding,
25 nor any agreement or arrangement for any act or omission
26 in restraint of free competition among bidders and has
27 not disclosed to any person, firm or corporation the
28 terms of said bid or the price named herein.

16. During the period of time covered by this complaint,
there was a substantial, continuous and uninterrupted flow of
cement, asphalt and other essential materials from suppliers
outside the State of Illinois to the job sites within the State
for use by airport runway construction contractors on A.D.A.P.
projects at O'Hare, including the project which is the subject
of this complaint.

1 17. During the period of time covered by this complaint,
2 highway and airport runway construction contractors whose prin-
3 cipal places of business were outside the State of Illinois re-
4 quested bidding proposals for A.D.A.P. projects at O'Hare.

5 18. The activities of the defendants, as described above,
6 are within the flow of commerce and have a substantial effect on
7 interstate commerce.

8 VI

9 VIOLATION ALLEGED

10 19. Beginning sometime in or about May, 1975, and con-
11 tinuing thereafter, the exact dates being to the plaintiff un-
12 known, in part within the Northern District of Illinois, Eastern
13 Division, the defendants herein and others known and unknown to
14 the plaintiff, entered into and engaged in a combination and
15 conspiracy to suppress and eliminate competition in the construc-
16 tion of an A.D.A.P. project on O'Hare runway 9L-27R, let by the
17 City of Chicago on May 29, 1975, known as D.P.W. Project No.
18 C-5-005, PW-1300, A.D.A.P. Project No. 8-17-0022-06, State Pro-
19 ject No. 75A-26-638, Specifications and Contract Documents No.
20 80.85-75-22, in unreasonable restraint of the above described
21 interstate trade and commerce, in violation of Title 15, United
22 States Code, Section 1, commonly known as the Sherman Act.

23 20. The aforesaid combination and conspiracy consisted of
24 an agreement, understanding and concert of action among the de-
25 fendants and co-conspirators, the substantial terms of which
26 were:

1 (a) To allocate to a joint venture of Arcole Midwest
2 Corporation and Allied Asphalt Paving Company the
3 above referenced A.D.A.P. project; and

4 (b) To submit a collusive, noncompetitive, and rigged
5 bid to the City of Chicago in connection with the
6 above referenced A.D.A.P. project.

7 21. For the purpose of forming and effectuating the afore-
8 said combination and conspiracy, the defendants and co-conspirators
9 have done those things which, as hereinbefore charged, they have
10 combined and conspired to do, including among other things:

11 (a) Discussing the submission of the prospective bids
12 on the above referenced A.D.A.P. project;

13 (b) Designating the successful low bidder on the above
14 referenced A.D.A.P. project;

15 (c) Submitting a bid on the above referenced A.D.A.P.
16 project containing false, fictitious and fraudu-
17 lent statements and entries; and

18 (d) Providing for the payment of consideration of
19 value to certain defendants or co-conspirators
20 which were not designated as low bidder on the
21 above referenced A.D.A.P. project.

22 VII

23 EFFECTS

24 22. The aforesaid combination and conspiracy charged herein
25 has had the following effects, among others:
26
27
28

1 (a) The price of the above referenced A.D.A.P. project
2 has been fixed, maintained, and established at an
3 artificial and non-competitive level;

4 (b) Competition for the above referenced A.D.A.P.
5 project has been restrained, suppressed and
6 eliminated;

7 (c) The City of Chicago has been denied the right to
8 receive sealed competitive bids on the above
9 referenced A.D.A.P. project; and

10 (d) The City of Chicago and the United States govern-
11 ment have been denied the benefits of free and open
12 competition for the above referenced A.D.A.P. pro-
13 ject.

14 23. As a result of the illegal combination and conspiracy
15 alleged herein, and the defendants' acts in furtherance thereof,
16 the United States of America has been compelled to provide sub-
17 stantially greater funds for airport runway construction than
18 would have been the case but for the illegal conduct complained
19 of herein and has been injured and financially damaged by de-
20 fendants in an amount which is presently undetermined.

21 PRAYER

22 WHEREFORE, the United States of America:

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

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

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

8 COUNT TWO

9 24. As a second claim the United States of America brings
10 this suit under Sections 3490-3492, and 5438 of the Revised
11 Statutes (1878) as amended; (31 U.S.C. §§ 231-235 as amended)
12 commonly known as the False Claims Act. The claims alleged in
13 this count are asserted as an alternative to those alleged in
14 Count One to the extent that any transaction complained of may
15 give rise to liability under both Counts.

16 25. The allegations contained in paragraphs 2 through 22
17 are here realleged with the same force and effect as though set
18 forth in full detail.

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

23 27. The acts alleged in this complaint to have been done by
24 each of the corporate defendants were authorized, ordered or done
25 by the officers, agents, employees or representatives of each
26
27
28

1 corporate defendant while actively engaged in the management,
2 direction, or control of its affairs.

3 28. Pursuant to the terms and conditions of the Airport
4 Development Aid Program established pursuant to the Airport and
5 Airway Development Act of 1970, Title 49, United States Code,
6 Sections 1701 et seq., the City of Chicago with the concurrence
7 of the Federal Aviation Administration devised and designed an
8 A.D.A.P. project involving airport runway construction on O'Hare
9 runway 9L-27R, let by the City of Chicago on May 29, 1975, known
10 as D.P.W. Project No. C-5-005, PW-1300, A.D.A.P. Project No.
11 8-17-0022-06, State Project No. 75A-26-638, Specifications and
12 Contract Documents No. 80.85-75-22.

13 29. For the purpose of letting the aforesaid project for
14 airport runway construction, the City of Chicago, pursuant to
15 federal law, advertised and called for competitive bids from
16 persons including the defendants herein to be submitted at its
17 May 29, 1975 letting.

18 30. Pursuant to said combination and conspiracy, and as a
19 result of the acts done in furtherance thereof, Allied Asphalt
20 Paving Company and Arcole Midwest Corporation, as a joint venture
21 were awarded by the City of Chicago, with the concurrence of the
22 Federal Aviation Administration, the above referenced A.D.A.P.
23 project, on the basis of bids and quotations which defendants
24 submitted and/or cause to be submitted and which those defendants
25 which submitted bids falsely and fraudulently represented to be
26 bona fide, independent, competitive, and not the product of any
27
28

1 collusion or agreement between the bidders, and the prices of
2 which bids they further falsely and fraudulently represented to
3 be normal, reasonable and competitive whereas in fact known to
4 the defendants but unknown to the City of Chicago or the plain-
5 tiff, the said bids were a sham and collusive and not the result
6 of open competition, and prices therefore were unreasonable, non-
7 competitive and falsely inflated.

8 31. Pursuant to said combination and conspiracy and in
9 order to obtain approval by the Federal Aviation Administration
10 of the award of said contracts, certain defendants falsely and
11 fraudulently executed and delivered certain affidavits the sub-
12 stance of which is set forth in paragraph 15 of this complaint
13 which affidavits were false, fraudulent, and fictitious as cer-
14 tain defendants well knew and made for the purpose and with the
15 intent of cheating and defrauding the plaintiff.

16 32. With respect to the above referenced A.D.A.P. project
17 the defendants presented and/or caused to be presented to the
18 City of Chicago for payment or approval by it numerous claims for
19 payment, knowing that such claims to be false, fictitious, or
20 fraudulent, in that such claims were based on a contract which
21 had been falsely or fraudulently procured by reason of the afore-
22 said bidding practices and that the amounts claimed were falsely
23 or fraudulently inflated and excessive and that such claims would
24 cause the City of Chicago to submit claims to the Federal Govern-
25 ment for partial reimbursement.

1 33. As a result of the presentment to the City of Chicago
2 of the aforesaid false or fraudulent claims, the City of Chicago
3 has paid the false or fraudulent claims to certain of the defend-
4 ants.

5 34. Based upon the payment by the City of Chicago of the
6 aforesaid false or fraudulent claims, the City of Chicago has
7 applied for and received partial reimbursement by the Federal
8 Government in accordance with the terms and conditions of the
9 Airport Development Aid Program established pursuant to the
10 Airport and Airway Development Act of 1970, Title 49, United
11 States Code, Section 1701 et seq.

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

20 36. As a result of the illegal combination and conspiracy
21 and the defendants' acts in furtherance thereof, plaintiff has
22 been compelled to pay substantially greater funds for the airport
23 runway construction on the above referenced A.D.A.P. project than
24 would have been the case but for the illegal conduct complained
25 of herein, and has been financially damaged by defendants, in an
26 amount which is presently undetermined.

PRAYER

WHEREFORE, the United States of America:

1. Prays 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.

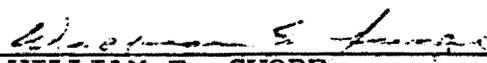
2. Demands that the Court enter judgment against defendants in favor of the United States for two thousand dollars (\$2,000) for each false, fictitious, or fraudulent claim against the United States of America, and, in addition, for double the amount of damages plaintiff has sustained, and for such other forfeitures as are allowable by law, as provided in Sections 3490, 3491, 3492, and 5438 of the revised statutes (31 U.S.C. §§ 231-235) together with interest thereon and the cost of this suit.

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



JOHN H. SHENEFIELD
Assistant Attorney General

MARK S. PROSPERI



WILLIAM E. SWOPE

ALLYN A. BROOKS

JOHN E. SARBAUGH

STEVEN M. KOWAL

JOHN L. BURLEY

ALAN N. GROSSMAN

Attorneys, Department of Justice

Attorneys, Department of Justice

Room 2634 Everett M. Dirksen Bldg.
Chicago, Illinois 60604
(312) 353-6893

Acting United States Attorney