

File

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

CENTRAL STATE BANK;  
STATE SAVINGS BANK; and  
HARRY C. CALCUTT,

Defendants.

Civil Action No. G82-72CA7

Filed: February 17, 1982

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 to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Act of Congress of July 2, 1890 (15 U.S.C. § 4), as amended, commonly known as the Sherman Act, to prevent and restrain the continuing violation by defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Corporate defendants Central State Bank, Beulah, Michigan ("Central"), and State Savings Bank, Frankfort, Michigan ("State"), transact business and are located in the Western District of Michigan. Individual defendant Harry C. Calcutt ("Calcutt") resides within the Western District of Michigan.

## II.

### DEFINITIONS

3. "Depository institution" means a commercial bank, thrift institution (e.g., savings and loan association) or other organization that is authorized, among other things, to accept demand, time, savings or other deposits, all or in part insured by a governmental agency, and to make loans.

4. "Demand deposits" means money deposited with a depository institution that can be withdrawn upon demand, including but not limited to checking accounts.

5. "Time deposits" means money deposited with a depository institution at an agreed-upon interest rate for a fixed term.

6. "Savings deposits" means money deposited with a depository institution at an agreed-upon interest rate, with no fixed term.

7. "Total deposits" means the sum of all deposits held by a depository institution, including all demand, time and savings deposits made by individuals, partnerships, corporations, states, political subdivisions, and the United States Government, and all other deposits.

8. "IPC demand deposits" means all demand deposits held by a depository institution that are made by individuals, partnerships or corporations.

9. "IPC time and savings deposits" means the sum of all time deposits and savings deposits held by a depository institution that are made by individuals, partnerships or corporations.

10. "Total loans" means the gross total value of all loans made by a depository institution, excluding unearned income.

## III.

### DEFENDANTS

11. Central is a commercial bank organized and existing under the laws of the State of Michigan, with its principal place of business in Beulah, Benzie County, Michigan, where it

operates two offices. As of June 30, 1981, Central had total assets of \$15,911,000, total deposits of \$14,740,000, and total loans of \$10,873,000.

12. State is a commercial bank organized and existing under the laws of the State of Michigan, with its principal place of business in Frankfort, Benzie County, Michigan, where it operates its only office. As of June 30, 1981, State had total assets of \$15,968,000, total deposits of \$13,530,000, and total loans of \$8,477,000.

13. Calcutt, a resident of Traverse City, Michigan, is Chairman of the Board of Directors, a director, and a shareholder of Central. Calcutt is also President, a director, and the majority shareholder of State.

#### IV.

##### CO-CONSPIRATORS

14. Various other persons, organizations, associations, and corporations not made defendants herein have performed acts, made statements, and otherwise participated with the defendants as co-conspirators in the violation herein alleged.

#### V.

##### TRADE AND COMMERCE

15. Depository institutions, such as commercial banks and thrift institutions, are engaged in the business of providing a wide variety of financial products and services to business and individual customers. These products and services include the acceptance of various types of deposits, including demand, time and savings deposits, and the granting of various types of credit, including loans. While both commercial banks and thrift institutions may provide similar services to individual customers, thrift institutions are precluded by law from providing most products and services to commercial entities.

16. Central and State offer many financial services, including demand, time and savings accounts; and consumer, real estate, commercial and other types of loans.



17. Central and State regularly utilize interstate communications, including the mails, telephone, and telegraph, to conduct business with customers and with banks located in states other than Michigan. Customers of Central and State regularly utilize interstate communications, including the mails, telephone, and telegraph, to carry on their business with, apply for, and obtain loans and other services provided by these banks. Both banks cash out-of-state checks and make investments in out-of-state activities. Both banks have correspondent accounts with out-of-state banks. Each of the defendant banks is engaged in and their activities substantially affect interstate commerce.

18. Depository institutions are highly regulated at both the federal and state levels. Among other things, this regulatory scheme imposes restrictions on the formation and geographic expansion of national and state banking associations. As a result, the ability of additional banks to enter a given geographic area is seriously limited. For example, Section 171 of the Michigan Banking Code of 1969 precludes any bank from branching into any city or village in which a state or national bank or branch thereof is then in operation, thus eliminating a significant number of cities or villages into which a bank can branch.

19. Benzie County, bordered by Lake Michigan in the northwest corner of the lower peninsula of Michigan, is relatively rural and sparsely populated. Covering an area of 315 square miles, its total 1980 population was 11,205. Its three largest cities and villages are Frankfort, located on the western edge of Benzie County, with a 1980 population of 1,603; Elberta, located two miles south of Frankfort along Michigan Route 22, with a 1980 population of 556; and Benzonia, located seven miles east of Frankfort along Michigan Route 115, with a 1980 population of 466. The economy of Benzie County is diversified. Given its location on Lake Michigan, it attracts a number of seasonal tourists.

20. In addition to Central and State, Benzie County has two other commercial banks: Honor State Bank, Honor, Michigan ("Honor"), and a branch of Michigan National Bank - Grand Traverse, Benzonia, Michigan ("Michigan National"). Together these four banks operate a total of five banking offices, all of which are located in the northwest portion of the county. As of June 30, 1981, these offices had total deposits of \$52,600,000, IPC demand deposits of \$5,818,000, IPC time and savings deposits of \$42,724,000, and total loans of \$34,855,000.

21. As a result of Michigan's branching law and the location of Central's, State's, Honor's, and Michigan National's bank offices, the cities and villages of Beulah, Frankfort, Honor, and Benzonia are closed to the establishment of a branch by any other bank.

22. Benzie County also has two credit unions, the Ann Arbor Employees Federal Credit Union, located in Elberta and open only to employees of the Ann Arbor Railroad System; and the Frankfort Community Federal Credit Union, located in Frankfort and open to residents of Benzie County. As of June 30, 1981, these credit unions together had total savings deposits of \$1,748,000 and total loans of \$1,308,000.

23. Benzie County has no savings and loan associations presently in operation. As of the date of the filing of this complaint, there are no pending applications by any savings and loan associations to establish a branch in Benzie County, nor any pending applications to establish any new savings and loan associations in Benzie County.

24. As of June 30, 1981, Central, State, and Honor, the top three depository institutions in Benzie County, together had total deposits of \$45,855,000, IPC demand deposits of \$5,450,000, IPC time and savings deposits of \$36,699,000, and total loans of \$29,842,000, representing 84.4% of the total deposits, 93.7% of the IPC demand deposits, 82.5% of the IPC time and savings deposits, and 82.5% of the total loans held by depository institutions in Benzie County.



25. Central, with both its main office and one branch office in Beulah, is the second largest depository institution in Benzie County in terms of total deposits. As of June 30, 1981, Central had total deposits of \$14,740,000, IPC demand deposits of \$1,692,000, IPC time and savings deposits of \$12,194,000, and total loans of \$10,873,000, representing 27.1% of the total deposits, 29.1% of the IPC demand deposits, 27.4% of the IPC time and savings deposits, and 30.1% of the total loans held by depository institutions in Benzie County.

26. State, with its only banking office in Frankfort, Michigan, is the third largest depository institution in Benzie County in terms of total deposits. State's office is located approximately seven miles west of Central's two offices. As of June 30, 1981, State had total deposits of \$13,530,000, IPC demand deposits of \$1,944,000, IPC time and savings deposits of \$10,161,000, and total loans of \$8,477,000, representing 24.9% of the total deposits, 33.4% of the IPC demand deposits, 22.9% of the IPC time and savings deposits, and 23.4% of the total loans held by depository institutions in Benzie County.

27. As of June 30, 1981, Central and State together had total deposits of \$28,270,000, IPC demand deposits of \$3,636,000, IPC time and savings deposits of \$22,355,000, and total loans of \$19,350,000, representing 52.0% of the total deposits, 62.5% of the IPC demand deposits, 50.3% of the IPC time and savings deposits, and 53.5% of the total loans held by depository institutions in Benzie County.

## VI.

### VIOLATION ALLEGED

28. Defendants and other co-conspirators have engaged in an unlawful contract, combination and conspiracy in unreasonable restraint of the above-described interstate trade and commerce in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1).

29. The above-described violation consists of an agreement, combination and concert of action, the purpose or effect of which has been to eliminate competition between Central and State, accomplished through Calcutt's control over both entities.

30. In furtherance of the above-described violation, defendants and other co-conspirators have done the following acts, among others:

- (a) On or about February 3, 1976, a co-conspirator voluntarily and knowingly executed an irrevocable proxy to Calcutt, giving Calcutt the power to vote not only those shares in Central which the co-conspirator then owned, the exact amount being unknown to plaintiff, but also any shares which the co-conspirator might acquire in the future. Between 1976 and 1978 numerous blocks of stock in Central were acquired by the co-conspirator and then transferred to Calcutt or other co-conspirators.
- (b) On or about October 26, 1978, State, having received notice of an application which Central had filed with the Michigan Financial Institutions Bureau to open a branch in Elberta, and acting under the direction of Calcutt, protested with the Michigan Financial Institutions Bureau, objecting to the establishment of the branch. The Michigan Financial Institutions Bureau scheduled a hearing on the matter.
- (c) On or about January 29, 1979, Calcutt, acting on his own behalf, acquired sufficient additional shares of stock in Central to give him and other co-conspirators absolute control over Central.
- (d) On or about February 13, 1979, Calcutt was formally elected Secretary of Central's Board of Directors by Central. Calcutt continued to hold his position as President, a director and the majority shareholder of State.

(e) Following Calcutt's acquisition of control over Central and his election as Secretary of Central's Board of Directors, Central effectuated various changes. For example, on or about March 2, 1979, Central's attorneys notified the Michigan Financial Institutions Bureau of a possible delay in Central's pursuit of its Elberta branch application due to the change in management. On or about June 13, 1979, Central, acting through its Board of Directors, voted to abandon that branch application. On or about June 26, 1979, the application was dismissed.

31. The violation alleged in this complaint is continuing and will continue unless the relief hereinafter prayed for is granted.

## VII.

### EFFECTS

32. The effects of the violation alleged in this complaint include, among others, the following:

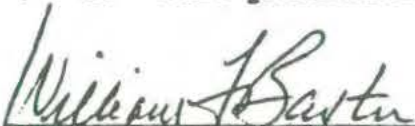
- (a) Actual and potential competition between Central and State has been and will continue to be unreasonably restrained and eliminated;
- (b) Actual and potential competition generally among depository institutions providing demand, time, savings or other deposit accounts, and consumer, real estate, commercial or other types of loans in Benzie County has been and will continue to be unreasonably restrained; and
- (c) The number of competitive alternatives for financial services in Benzie County has been and will continue to be substantially decreased.



PRAYER


WHEREFORE, plaintiff prays:


1. That the aforesaid contract, combination and conspiracy in unreasonable restraint of trade be adjudged and decreed to be unlawful in violation of Section 1 of the Sherman Act.
2. That Calcutt, and all persons acting for or on behalf of Calcutt, be required to divest any direct or indirect interest in either Central or State.
3. That plaintiff have such other and further relief as the Court may deem just and proper.
4. That plaintiff recover the costs of this suit.

  
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