

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

UNITED STATES OF AMERICA,

Plaintiff

v.

THE OWENSBORO NATIONAL BANK,
M. JACKSON MITCHELL,
RAYMOND A. ALEXANDER, and
EDWARD E. CURTIS,

Defendants

Civil Action No. 2529

Filed: November 18, 1970

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 and this proceeding is instituted against the above named defendants under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violations by the defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act.

2. The corporate defendant, The Owensboro National Bank, has all of its commercial banking offices, transacts business, and is found within the Western District of Kentucky.

II

THE DEFENDANTS

3. The Owensboro National Bank ("ONB") is made a defendant herein. ONB is a banking association organized and existing under the laws of the United States of America, with its principal place of business in Owensboro, Kentucky.

4. M. Jackson Mitchell is made a defendant herein. Mitchell, a resident of Mount Vernon, Illinois, is a director and stockholder of ONB. Mitchell is also a stockholder of Central Bank and Trust Company ("Central") of Owensboro, Kentucky.

5. Raymond A. Alexander is made a defendant herein. Alexander, a resident of Mount Vernon, Illinois, is a director and stockholder of ONB. Alexander is also a stockholder of Central.

6. Edward E. Curtis is made a defendant herein. Curtis, a resident of Texico, Illinois, is a director and stockholder of Central. Curtis is also a stockholder of ONB.

III

TRADE AND COMMERCE

7. Commercial banks fill an essential and unique role in the nation's economy. Their principal functions are the acceptance of deposits for safekeeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the

creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrators of the nation's check payment system. Through the making of loans to individuals and businesses, commercial banks supply a significant part of the credit requirements of the nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other financial services, including personal and corporate trust accounts, the collection of drafts, bills, and other commercial instruments, the acceptance of bills of exchange, the issuance of letters of credit, the sale of foreign exchange, and the renting of safety deposit boxes. This combination of services is unduplicated by other financial institutions.

8. Commercial banks, because of the importance of bank credit to business and other borrowers, their close relationships with many such borrowers, and their holdings of stock in trust accounts, have an important influence on competition in all branches of industry and commerce served by the banking system.

9. Daviess County, located in northwestern Kentucky, with the exception of Owensboro, its county seat and commercial center, is largely agricultural and rural in character. Virtually all of Daviess County's industry and more than 60 percent of its population of about 70,000 are situated within the city of Owensboro and its immediately adjacent urbanized areas (hereinafter referred to as the "Owensboro area"). The commercial banking business in the Owensboro area is extremely concentrated. The only three commercial banks operating in Daviess County have all of their fourteen

banking offices located within the Owensboro area. As of June 30, 1970, these three commercial banks, ONB, Central, and Citizens State Bank, had total assets of \$144,582,654, total loans and discounts of \$78,264,142, total demand deposits of individuals, partnerships, and corporations (IPC demand deposits) of \$56,378,267, and total deposits of \$126,887,637.

10. Defendant ONB, with five banking offices, is the largest of the commercial banks in the Owensboro area. As of June 30, 1970, ONB had total assets of \$70,456,878, total loans and discounts of \$35,643,828, total IPC demand deposits of \$27,462,466, and total deposits of \$62,969,650, representing about 48.7 percent of the total assets, about 45.5 percent of the total loans and discounts, about 48.7 percent of the total IPC demand deposits, and about 49.6 percent of the total deposits held by the three commercial banks in the Owensboro area.

11. Central, with five banking offices, has been and, in some categories, still is the second largest commercial bank in the Owensboro area. As of June 30, 1970, Central had total assets of \$36,957,946, total loans and discounts of \$24,249,671, total IPC demand deposits of \$14,332,275, and total deposits of \$32,001,731, representing about 25.6 percent of total assets, about 31.0 percent of the total loans and discounts, about 25.4 percent of the total IPC demand deposits, and about 25.2 percent of the total deposits held by the three commercial banks in the Owensboro area.

12. As of June 30, 1970, ONB and Central combined accounted for about 74.3 percent of the total assets, about 76.5 percent of the total loans and discounts, about 74.1 percent of the total IPC demand deposits, and about 74.8 percent of the total deposits held by the three commercial banks in the Owensboro area.

13. ONB and Central are each significant competitors in commercial banking in the Owensboro area. The main offices of ONB and Central are located within three blocks of one another in the city of Owensboro and all of their respective branch offices are located within the Owensboro area. Both banks receive the predominant share of their banking business from the Owensboro area and both ONB and Central compete directly with one another and with Citizens State Bank, the only other commercial bank in the Owensboro area, in offering and performing the commercial banking services described in paragraph 7 above.

14. Customers of ONB and Central have regularly utilized 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. ONB and Central have regularly utilized interstate communications, including the mails, telephone, and telegraph, to conduct business with customers and with other banks located in states other than Kentucky. ONB and Central are each engaged in interstate commerce.

IV

OFFENSES ALLEGED

15. Beginning in or about August 1970, the exact date being to the plaintiff unknown, and continuing thereafter up to and including the date of the filing of this complaint, the defendants have engaged in an unlawful 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), and have unlawfully combined and conspired to monopolize the above described interstate trade and commerce in violation of Section 2 of the Sherman Act, as amended (15 U.S.C. § 2).

16. Beginning on or about September 21, 1970, and continuing thereafter up to and including the date of the filing of this complaint, the individual defendants, Mitchell, Alexander, and Curtis, have been and are now monopolizing the above described interstate trade and commerce in violation of Section 2 of the Sherman Act, as amended (15 U.S.C. § 2).

17. Pursuant to the aforesaid unlawful combinations and conspiracies and in effectuation of the aforesaid monopoly, the defendants have done the following things, among others:

- (a) Prior to July 1970, the defendants Mitchell, Alexander, and Curtis, jointly acquired the controlling stock interest, approximately 54.2 percent of the shares outstanding, in Central, an interest which these individuals presently retain.
- (b) Prior to July 1970, the individual defendants were appointed directors of Central. On October 1, 1970, Mitchell and Alexander resigned as directors of Central, but Curtis remains as its Vice Chairman of the Board.
- (c) In or about August 1970, Mitchell, on behalf of himself and the other individual defendants, made an offer to the Board of Directors of ONB to acquire controlling stock interest in ONB.
- (d) On or about September 21, 1970, as a result of the joint efforts of the individual

defendants and defendant ONB, Mitchell, Alexander, and Curtis acquired a controlling stock interest, approximately 63 percent of the shares outstanding, in ONB.

- (e) On October 5, 1970, defendants Mitchell and Alexander became directors of ONB.

18. The offenses alleged in this complaint are continuing and will continue unless the relief hereinafter prayed for is granted.

V

EFFECTS

19. The effects of the offenses alleged in this complaint are, among others, the following:

- (a) Actual and potential competition between ONB and Central has been and will continue to be substantially lessened and unreasonably restrained;
- (b) Actual and potential competition generally in commercial banking in the Owensboro area has been and will be unreasonably restrained;
- (c) A monopoly of commercial banking in the Owensboro area has been achieved by the individual defendants through their control of ONB and Central; and
- (d) Concentration in commercial banking in the Owensboro area has been and will be substantially increased.

PRAYER

WHEREFORE, the plaintiff prays:

1. That a preliminary injunction issue, pending adjudication of the merits of this complaint, preventing and restraining the corporate defendant from permitting the participation of the individual defendants, and the individual defendants from participating, in the operation and direction of the defendant ONB, through the direct or indirect use of the ONB stock owned by the individual defendants.

2. That pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring M. Jackson Mitchell, Raymond A. Alexander, and Edward E. Curtis to be brought before the Court in these proceedings and directing the Marshal of the Eastern District of Illinois to serve summons upon them.


3. That the aforesaid combinations, conspiracies, and monopoly be adjudged and decreed to be unlawful in violation of both Sections 1 and 2 of the Sherman Act.

4. That the individual defendants be required to divest all of the ONB stock owned or held by them.

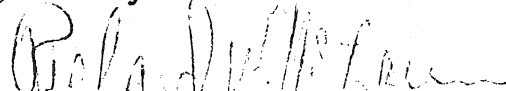
5. That an injunction issue restraining each individual defendant, under terms and conditions which the Court may direct, from directly or indirectly acquiring any stock or assets of any commercial bank in the Owensboro area, so long as such defendant controls any stock of a competing bank.

6. That plaintiff have such other and further relief as the Court may deem just and proper.

7. That plaintiff recover the costs of this suit.



JOHN N. MITCHELL
Attorney General



RICHARD W. McLAREN
Assistant Attorney General



BADDIA J. RASHID

JOHN A. WEEDON

WILLIAM A. LeFAIVER

Attorneys, Department of Justice
Antitrust Division
727 New Federal Building
Cleveland, Ohio 44199
Telephone: 216-522-4070

CARL L. STEINHOUSE

Attorneys, Department of Justice

United States Attorney