

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

STATE OF TEXAS,

Plaintiff,

v.

LUBBOCK GLASS & MIRROR CO.,  
and DELBERT SANDERS

Defendants.

Civil Action No.

5-01CV0019-C

**AGREED CONSENT DECREE AND PERMANENT INJUNCTION**

The State of Texas, through the Texas Attorney General, has filed a Complaint for damages and injunctive relief on behalf of the State and certain Texas State agencies, political subdivisions and tax supported institutions, against the Defendants Lubbock Glass and Mirror Co. and Delbert Sanders alleging violations of federal and state antitrust laws.

Plaintiff and Defendants desire to resolve any and all disputes arising from the Complaint. Accordingly, the parties consent to the entry of this Agreed Consent Decree and Permanent Injunction ("Agreed Decree").

NOW, THEREFORE, without trial or adjudication of any issue of law or fact, before the taking of any testimony at trial, and upon the consent of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I.

JURISDICTION

The Court has jurisdiction over the subject matter of this action and the parties hereto. The Complaint raises claims against Defendants under Section 1 of the Sherman Act (15 U.S.C. § 1), Section 4 of the Clayton Act (15 U.S.C. § 15), and Section 16 of the Clayton Act (15 U.S.C. § 26). The Texas Attorney General is authorized to bring an Action under the federal antitrust laws on behalf of the State of Texas and its political subdivisions and tax supported institutions to recover damages under Texas Business & Commerce Code § 15.40. Jurisdiction lies in this Court pursuant to 28 U.S.C. § 15. The Complaint also raises pendent state claims for equitable and other relief under Texas Business & Commerce Code §§ 15.05, .20, .21.

II.

DEFINITIONS

As used in this Agreed Decree:

A. "Architectural Flat Glass" means glass which is used in new and renovation construction projects to make, without limitation, windows, doors and curtain walls. Architectural Flat Glass does not include glass used for containers and does not include automotive glass.

B. "Defendants" means Lubbock Glass and Mirror Co. and Delbert Sanders. Whenever reference is made to any act, deed or transaction of Defendants or Lubbock Glass and Mirror Co., the reference means that the corporation engaged in the 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.

C. "Plaintiff" or "State" means for purposes of this Agreed Decree, the State of Texas in its sovereign capacity; and all state agencies, political subdivisions and tax supported institutions affected by Defendants' illegal conduct who do not opt out of this action.

D. "Relevant Time Period" means January 1, 1991 to the present.

### III.

#### INJUNCTION

Defendant and its current officers, directors, employees and agents, are hereby enjoined from:

A. Discussing with competitors (directly or indirectly) bids to supply Architectural Flat Glass and/or related services.

B. Agreeing with competitors (expressly or implicitly) that Defendant and/or such competitors will submit complementary or otherwise collusive bids to supply Architectural Flat Glass and/or related services.

C. Submitting rigged, collusive or non-competitive bids to supply Architectural Flat Glass and/or related services.

D. Otherwise fixing (directly or indirectly) with competitors the price at which Architectural Flat Glass and/or related services are provided.

### IV.

#### MONETARY PAYMENT

A. Defendant shall pay to the Attorney General the sum of \$125,000 in full and final settlement of Plaintiff's claims as set forth in the Complaint. This payment is in lieu of compensatory damages. Payments hereunder do not constitute payments in lieu of treble damages, fines, penalties, punitive recoveries or forfeitures. A payment of \$50,000 shall be made within 10

business days following entry of this Agreed Decree. A subsequent payment of \$75,000 shall be made within 60 days following the first payment. The Attorney General shall distributed these payments in accordance with the schedule set forth in Attachment A.

B. In addition to the amount specified in paragraph IV.A. above, Defendant shall pay to the Texas Attorney General \$25,000 as reimbursement for costs and fees, including investigative and attorneys fees, reasonably expended in investigation and conclusion of this Agreed Decree on behalf of the State. The payment shall be made within 10 business days following entry of this Agreed Decree.

V.

CONTINUED COOPERATION

In consideration of the limitation of damages represented by this Agreed Decree and the release of claims in paragraph VII. below, Defendants and all officers, directors and employees of the Defendants, agree to fully and truthfully cooperate with the State of Texas in its ongoing investigation related to the claims alleged in the complaint, as well as any litigation or other proceedings arising therefrom. Such cooperation shall include, but not be limited to, providing truthful and complete information and/or testimony concerning participation in and knowledge of the bid rigging violations alleged in the Complaint.

VI.

COMPLIANCE

For purposes of determining and securing compliance with this Agreed Decree, the Attorney General or a duly authorized representative shall be permitted:

A. Reasonable access during normal office hours to any and all relevant and non-privileged records and documents in the possession, custody, or control of Defendants which relate to any of the matters contained herein.

B. Subject to the reasonable convenience of Defendants, to conduct interviews of any of the directors, officers, employees, agents, and any other persons acting on Defendants' behalf, each of whom may have counsel present, relating to any non-privileged matter contained herein.

C. The violation of any of the terms of Paragraph III of this Agreed Decree shall constitute a violation of federal and state antitrust laws for which civil remedies may be sought by the Attorney General pursuant to 15 U.S.C. §§ 1, 4 and 26, and Tex. Bus. & Com. Code §§ 15.05, .20, .21, .40, upon application to this Court.

#### VII.

#### RELEASE AND DISMISSAL WITH PREJUDICE

Entry of this Agreed Decree shall constitute a full release by the Plaintiff against Defendants of all claims alleged in the complaint and all price fixing claims relating to Architectural Flat Glass accruing during the relevant time period that could have been alleged by Plaintiff against Defendants. Upon entry of this Agreed Decree, all such claims shall be deemed dismissed with prejudice.

#### VIII.

#### BENEFIT AND BINDING EFFECT

The terms of this Agreed Decree shall be binding on, and shall inure to the benefit of, the parties and their successors. This Agreed Decree shall not create rights which may be enforced by any other person.

IX.

CONTINUING JURISDICTION

Without affecting the finality of this Agreed Decree, jurisdiction shall be retained by this Court for the purpose of enabling any party hereto to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Agreed Decree, the modification of any of the provisions hereto to the extent such modification is permitted, and the remedy of a violation of any of the provisions contained herein. This Court shall have the authority to specifically enforce the provisions of this Agreed Decree.

X.

TERM

This Agreed Decree shall automatically terminate without any action by either party or the Court on the fifth anniversary date of its entry.

All orders and relief not expressly granted herein are denied.

So ordered this 22nd day of January, 2001. ~~X2000X~~

  
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UNITED STATES DISTRICT COURT

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

ATTORNEYS FOR PLAINTIFF  
THE STATE OF TEXAS

JOHN CORNYN  
Attorney General of Texas

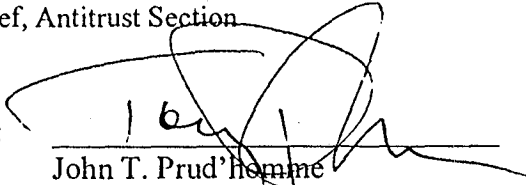
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Deputy Attorney General for Litigation

DAVID A. TALBOT, JR.  
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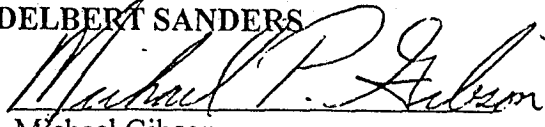
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ATTORNEY FOR DEFENDANTS  
LUBBOCK GLASS AND MIRROR CO  
AND DELBERT SANDERS

By:

  
Michael Gibson  
Texas State Bar No. 7871570  
Attorney for Lubbock Glass & Mirror and  
Delbert Sanders

ATTACHMENT A

Schedule of Damage Recovery Distribution

	Payment 1	Payment 2
Anton ISD	\$ 2,000.00	\$ 3,000.00
Frenship ISD	\$ 1,500.00	\$ 2,250.00
Lubbock ISD	\$16,000.00	\$24,000.00
Lubbock-Cooper ISD	\$ 1,500.00	\$ 2,250.00
Tahoka ISD	\$ 1,000.00	\$ 1,500.00
Wilson ISD	\$ 500.00	\$ 750.00
City of Lubbock	\$ 1,500.00	\$ 2,250.00
Lubbock County	\$ 3,500.00	\$ 5,250.00
Texas Tech	\$19,500.00	\$29,250.00
University Medical Center	\$ 1,000.00	\$ 1,500.00
DPS	\$ 1,000.00	\$ 1,500.00
TxDOT	\$ 1,000.00	\$ 1,500.00
Total	\$50,000.00	\$75,000.00