

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

TEXAS ATTORNEY GENERAL
MAY 18 AM 3:11
CIVIL DIVISION

TEXAS ATTORNEY GENERAL
MAY - 5 AM 11:35
CONSUMER

STATE OF TEXAS,

Plaintiff,

v.

CRAFTON GLASS, INC.,

Defendant.

Civil Action No.

5 - 000 - 0153 - 0

MAY 18

RECEIVED
BY _____

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 Defendant Crafton Glass, Inc., alleging violations of federal and state antitrust laws.

Plaintiff and Defendant 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:

JURISDICTION

The Court has jurisdiction over the subject matter of this action and the parties hereto. The Complaint raises claims against Crafton 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. "Defendant" or "Crafton" means Crafton Glass, Inc. It does not include the officers or directors of Crafton Glass, Inc. However, whenever reference is made to any act, deed or transaction of Defendant or Crafton, 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; the State agency of Texas Tech University; and the political subdivisions and tax supported institutions of the city of Lubbock, Lubbock Independent School District, Dunbar Independent School District, and Roosevelt Independent School District.

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 \$70,000 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,

finances, penalties, punitive recoveries or forfeitures. The payment shall be made within 10 business days following entry of this Agreed Decree. The Attorney General shall distributed this payment 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 \$30,000 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, Defendant and all officers, directors and employees of the Defendant, 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 Defendant which relate to any of the matters contained herein.

B. Subject to the reasonable convenience of Defendant, to conduct interviews of any of the directors, officers, employees, agents, and any other persons acting on Defendant's 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 Defendant and any officers, directors or employees of Defendant 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 Defendant. 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 16th day of May, 2000.


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

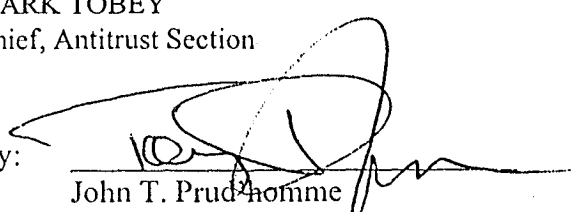
ANDY TAYLOR
First Assistant Attorney General

LINDA S. EADS
Deputy Attorney General for Litigation

DAVID A. TALBOT, JR.
Chief, Consumer Protection Division

MARK TOBEY
Chief, Antitrust Section

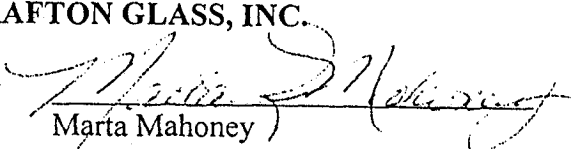
By:


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Assistant Attorney General
Antitrust Section
Consumer Protection Division
Texas State Bar No. 24000322

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**ATTORNEY FOR DEFENDANT
CRAFTON GLASS, INC.**

By:


Marta Mahoney
Texas State Bar No. 17244600
Attorney for Crafton Glass, Inc.

ATTACHMENT A

Schedule of Damage Recovery Distribution

Texas Tech University: \$53,144

Lubbock Independent School District: \$8,309

Roosevelt Independent School District: \$2,191

City of Lubbock: \$6,356