

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

<b>UNITED STATES OF AMERICA</b>	)	<b>Criminal No.</b>
	)	
<b>v.</b>	)	<b>Filed:</b>
	)	
<b>JAMES D. KUHN AND</b>	)	<b>Violations:</b>
<b>ELDON FLYN SIMMONS,</b>	)	<b>15 U.S.C. § 1</b>
	)	
<b>Defendants.</b>	)	

**INDICTMENT**

**COUNT ONE  
15 U.S.C. § 1**

The Grand Jury charges:

**I.**

**DESCRIPTION OF THE OFFENSE**

1. James D. Kuhn and Eldon Flynn Simmons are hereby indicted and made defendants on the charge stated below.
2. Beginning at least as early as January 1998, and continuing thereafter until at least May 1998, the exact dates being unknown to the Grand Jury, the defendants and coconspirators entered into a combination and conspiracy to suppress and restrain competition by agreeing to raise and maintain prices for automotive replacement glass sold by the defendants and coconspirators from places of business

located in the central North Texas area, in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

## **II.**

### **DEFENDANTS AND COCONSPIRATORS**

3. During the period covered by this Count, James D. Kuhn was an owner, officer and director of Windshield Sales and Services, Inc., d/b/a Auto Glass Center, and a supervisor for Auto Glass Center's operations in the Dallas, Texas area, which was engaged in the business of selling and installing automotive replacement glass in the central North Texas area.

4. During the period covered by this Count, Eldon Flyn Simmons was an owner, officer and director of Windshield Sales and Services, Inc., d/b/a Auto Glass Center, which was engaged in the business of selling and installing automotive replacement glass in the central North Texas area.

5. Various corporations and individuals, not made defendants in this Count, participated as coconspirators in the offense charged and performed acts and made statements in furtherance thereof.

### **III.**

#### **THE CONSPIRACY**

6. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and coconspirators, the substantial terms of which were to raise and maintain prices for automotive replacement glass sold by retail glass stores in the central North Texas area.

7. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and coconspirators did those things that they combined and conspired to do, including, among other things:

- (a) discussing a discount floor for automotive replacement glass, and a plan to refrain from soliciting certain of each other's customers by offering lower prices for automotive replacement glass sold to such customers in the central North Texas area;
- (b) agreeing to establish a discount floor for automotive replacement glass, and agreeing to refrain from soliciting certain of each other's customers by offering lower prices for automotive replacement glass sold to such customers in the central North Texas area;
- (c) establishing a discount floor for automotive replacement glass, and monitoring and enforcing compliance with the agreement to refrain from soliciting certain of each other's customers by offering lower prices for automotive replacement glass sold to such customers in the central North Texas area.

**IV.**

**INTERSTATE TRADE AND COMMERCE**

8. During the period covered by this Count, coconspirator corporations purchased substantial quantities of automotive replacement glass which had been produced in states other than Texas and transported to Texas in a continuous and uninterrupted flow of interstate commerce. Coconspirator corporations resold this automotive replacement glass to retail customers for the replacement of windshields, side glasses, back glasses and other types of automotive glass in pick-up trucks, passenger vehicles, and other vehicles.

9. During the period covered by this Count, the business activities of the coconspirator corporations that are the subject of this Count were within the flow of, and substantially affected, interstate trade and commerce.

**V.**

**JURISDICTION AND VENUE**

10. The combination and conspiracy charged in this Count was formed and carried out, in part, within the Northern District of Texas within the five years preceding the filing of this Indictment.

**ALL IN VIOLATION OF TITLE 15 U.S.C. § 1.**

**COUNT TWO**  
**15 U.S.C. §1**

The Grand Jury charges:

## **VI.**

### **DESCRIPTION OF THE OFFENSE**

11. James D. Kuhn and Eldon Flynn Simmons are hereby indicted and made defendants on the charge stated below.

12. Beginning at least as early as March 1998, and continuing thereafter until at least May 1998, the exact dates being unknown to the Grand Jury, the defendants and coconspirators entered into a combination and conspiracy to suppress and restrain competition by agreeing to raise and maintain prices for automotive replacement glass sold by the defendants and coconspirators from places of business located in Lubbock, Texas, in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

## **VII.**

### **DEFENDANTS AND COCONSPIRATORS**

13. During the period covered by this Count, James D. Kuhn was an owner, officer and director of Windshield Sales and Services, Inc. d/b/a Auto Glass Center, and a supervisor for Auto Glass Center operations, including Avenue H Auto Glass Co. of Lubbock, Texas, which was engaged in the business of selling and installing automotive replacement glass in the Lubbock, Texas area.

14. During the period covered by this Count, Eldon Flynn Simmons was an owner, officer and director of Windshield Sales and Services, Inc. d/b/a Auto Glass Center, including Avenue H Auto Glass Co. of Lubbock, Texas, which was engaged in

the business of selling and installing automotive replacement glass in the Lubbock, Texas area.

15. Various corporations and individuals, not made defendants in this Count, participated as coconspirators in the offense charged, and performed acts and made statements in furtherance thereof.

### **VIII.**

#### **THE CONSPIRACY**

16. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and coconspirators, the substantial terms of which were to raise and maintain prices for automotive replacement glass sold by retail glass stores in Lubbock, Texas.

17. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and coconspirators did those things that they combined and conspired to do, including, among other things:

- (a) discussing installation labor rates on automotive replacement glass, prices for certain high sales volume windshields, and the discount floor for other windshields sold to customers in Lubbock, Texas;
- (b) agreeing to increase installation labor rates on automotive replacement glass, agreeing on prices for certain high sales volume

windshields, and agreeing to establish a discount floor for other windshields sold to customers in Lubbock, Texas;

- (c) increasing installation labor rates on automotive replacement glass, setting prices for certain high sales volume windshields, and establishing the discount floor for other windshields sold to customers in Lubbock, Texas.

## **IX.**

### **INTERSTATE TRADE AND COMMERCE**

18. During the period covered by this Count, coconspirator corporations purchased substantial quantities of automotive replacement glass which had been produced in states other than Texas and transported to Texas in a continuous and uninterrupted flow of interstate commerce. Coconspirator corporations resold this automotive replacement glass to retail customers for the replacement of windshields, side glasses, back glasses and other types of automotive glass in pick-up trucks, passenger vehicles, and other vehicles.

19. During the period covered by this Count, the business activities of the coconspirator corporations that are the subject of this Count were within the flow of, and substantially affected, interstate trade and commerce.

**X.**

**JURISDICTION AND VENUE**

20. The combination and conspiracy charged in this Count was formed and carried out, in part, within the Northern District of Texas within the five years preceding the filing of this Indictment.

**ALL IN VIOLATION OF TITLE 15 U.S.C. § 1.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

A TRUE BILL

\_\_\_\_\_  
FOREPERSON

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