

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

Plaintiff, vs.

v.

PILKINGTON plc; and
PILKINGTON HOLDINGS Inc.

Defendants.

Civil Action No. 94-345

5/25/94

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its Complaint on May , 1994, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and before the taking of any testimony in this action, and without this Final Judgment constituting any evidence against or an admission by any defendant to any such issue;

And defendants having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Therefore, before the taking of any testimony and without trial or adjudication of any such issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under Sections 1, 2 and 6a of the Sherman Antitrust Act, 15 U.S.C. §§ 1, 2, 6a.

II.

DEFINITIONS

As used in this Final Judgment:

A. "AGREEMENT" means any contract, agreement or understanding, whether oral or written, or any term or provision thereof.

B. "CONFIDENTIALITY" means the non-disclosure of information under an agreement, undertaking or obligation arising under applicable law to maintain its secrecy and/or limit its use.

C. "FEES" means money paid to the defendants for the right to use FLOAT TECHNOLOGY, including, but not limited to, royalties, lump sum payments and line fees.

D. "FINAL AWARD" means the Final Award dated August, 1992 in the arbitration proceedings between PPG Industries, Inc. and PILKINGTON.

E. "FLAT GLASS" means glass formed in a flat shape and glass formed flat and then bent or curved.

F. "FLOAT GLASS" means FLAT GLASS manufactured by floating molten glass on the surface of a bath of molten metal.

G. "FLOAT TECHNOLOGY" means float process technology in existence on or before the date of the STIPULATION that is appropriate and useful for the design, construction, and/or operation of a float bath used in making FLOAT GLASS.

H. "FOREIGN LICENSEE" means any LICENSEE that is not a U.S. LICENSEE.

I. "LICENSEE" means any person, company, or entity that has entered into a LICENSE AGREEMENT with PILKINGTON.

J. "LICENSE AGREEMENT" means any AGREEMENT, whether or not denominated as such, in being as of the date of the STIPULATION, that provided or provides for, or acknowledges or recognizes, the licensing of, or the right to use, FLOAT TECHNOLOGY for the manufacture of FLOAT GLASS, including, without limitation, any AGREEMENT (i) for sublicensing or (ii) for settling any dispute regarding rights to FLOAT TECHNOLOGY.

K. "LIMITATIONS" means: (1) any limitation, or restriction of territories, fields, markets, or customers for the design and construction, or supervision of construction, of FLOAT GLASS plants, or the manufacture of FLOAT GLASS; and/or (2) any restriction or limitation, or purported restriction or limitation of the use of FLOAT TECHNOLOGY, whether the result of an affirmative prohibition or a limited authorization.

L. "NON-LICENSEE" means any person, company, or entity which has not entered into a LICENSE AGREEMENT with PILKINGTON.

M. "NORTH AMERICA" means the United States of America, Canada and the Republic of Mexico.

N. "PILKINGTON" means Defendant Pilkington plc.

O. "STIPULATION" means the stipulation entered into by the parties to this action dated May __, 1994.

P. "SUBJECT FLOAT TECHNOLOGY" means FLOAT TECHNOLOGY that in relation to any given LICENSEE was disclosed to that LICENSEE under its LICENSE AGREEMENT other than FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE while PILKINGTON owned 50% or more of that U.S. LICENSEE.

Q. "U.S. LICENSEE" means any LICENSEE that was or is incorporated in the United States or had or has its principal place of business in the United States, but shall not include any subsidiaries, affiliates or parents of any such LICENSEE nor any person while it is a subsidiary, affiliate or parent of any defendant. For purposes of this definition, an "affiliate" is an entity in which a person has an equity interest, directly or indirectly, of 50% or less; a "subsidiary" is an entity in which a person has an equity interest, directly or indirectly, of more than 50%; a "parent" is an entity that has, directly or indirectly, more than 50% of the equity interest of another entity.

R. "U.S. NON-LICENSEE" means any NON-LICENSEE that is domiciled or incorporated in the United States and that has its principal place of business in the United States.

III.

APPLICABILITY

This Final Judgment applies to defendants and to each of their officers, directors, agents, employees, subsidiaries, successors and assigns; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

INJUNCTION

Defendants are enjoined and prohibited as follows:

A. U.S. LICENSEES

1. Except as provided in subparagraph A.4. hereof, no defendant shall enter into, maintain, enforce or claim any right under any AGREEMENT to the extent such AGREEMENT requires, or purports to require, any U.S. LICENSEE to pay FEES, observe LIMITATIONS, or maintain CONFIDENTIALITY (subject to subparagraph A.3.) with respect to the use or sublicensing of any SUBJECT FLOAT TECHNOLOGY.

2. Except as provided in subparagraph A.4. hereof, no defendant shall assert against any U.S. LICENSEE any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY, subject to subparagraph A.3.) that it may have or claim with respect to any:

(a) SUBJECT FLOAT TECHNOLOGY; or

(b) FLOAT TECHNOLOGY not disclosed directly to that U.S. LICENSEE but otherwise in the possession of that U.S. LICENSEE unless for each item or combination of items thereof

(i) it has a good faith argument that such item, or combination of items, is a trade secret under applicable law, and

(ii) it has a good faith argument that it has been acquired in breach of CONFIDENTIALITY or otherwise unlawfully.

3. Defendants may assert against U.S. LICENSEES a claim of breach of CONFIDENTIALITY in respect of SUBJECT FLOAT TECHNOLOGY, but only if the claim is made as to that which is a trade secret under applicable law and is either:

(a) based upon a U.S. LICENSEE'S failure to make lawful and commercially reasonable efforts to preserve the CONFIDENTIALITY of SUBJECT FLOAT TECHNOLOGY; or

(b) based upon a U.S. LICENSEE'S failure to include in any AGREEMENT transferring FLOAT

TECHNOLOGY a lawful and commercially reasonable provision requiring the transferee to maintain the CONFIDENTIALITY of the transferred FLOAT TECHNOLOGY.

4. The provisions of subparagraphs A.1. and A.2. hereof shall not preclude in any way defendants from pursuing fully any claims for an account of profits, damages or any other monetary relief based on conduct occurring before the date of the STIPULATION in any proceedings instituted before that date.

B. U.S. NON-LICENSEES

1. No defendant shall enter into or enforce any AGREEMENT with any employee, contractor, supplier, consultant, or the like who is a U.S. NON-LICENSEE that contains any obligation of CONFIDENTIALITY to or for the benefit directly or indirectly of PILKINGTON with respect to FLOAT TECHNOLOGY, or any covenant to refrain from competing or engaging in any line of business relative to FLOAT TECHNOLOGY, that is of longer duration or greater scope than permitted under applicable law, provided that plaintiff agrees that defendants shall not be in contempt of this Final Judgment if they enter into or seek to enforce any such AGREEMENT based on a good faith argument that such AGREEMENT is permitted by applicable law.

2. No defendant shall assert against U.S. NON-LICENSEES (other than in respect of AGREEMENTS referred to in

subparagraph B.1. above) any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY) that it may have or claim with respect to any FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE, unless for each item or combination of items thereof:

(a) defendant has a good faith argument that such item, or combination of items, is a trade secret under applicable law;

(b) defendant has a good faith argument that such item, or combination of items, has been acquired in breach of CONFIDENTIALITY or otherwise unlawfully;

(c) defendant has, within fourteen (14) days after any such assertion:

(i) made a showing in writing to the Department of Justice, Antitrust Division in support of the arguments described in subparagraphs 2(a) and 2(b), above;

(ii) identified, enumerated, and described such item or combination of items (in sufficient detail and with sufficient clarity to distinguish them from information not a trade secret under applicable law) on a list submitted to the Antitrust Division and to the U.S. NON-LICENSEE against whom such right is asserted; and

(d) such U.S. NON-LICENSEE is unwilling to make lawful and commercially reasonable efforts to maintain the CONFIDENTIALITY of any such item or combination of items for which it has received actual notice of a defendant's claim of proprietary rights therein pursuant to subparagraph 2(c)(ii), above, and for which a defendant has made the requisite showing pursuant to subparagraph 2(c)(i), above.

C. AGREEMENTS With FOREIGN LICENSEES

No defendant shall enter into, maintain, enforce or claim any right under any AGREEMENT to the extent such AGREEMENT contains any LIMITATIONS on a FOREIGN LICENSEE regarding its use or sublicensing of any FLOAT TECHNOLOGY that would have the effect of prohibiting or limiting the manufacture of FLOAT GLASS in NORTH AMERICA, provided that defendants may charge commercially reasonable and non--discriminatory FEES for the use or sublicensing of FLOAT TECHNOLOGY other than that disclosed by PILKINGTON to a U.S. LICENSEE; and provided further that a defendant may enforce CONFIDENTIALITY against any FOREIGN LICENSEE for use of FLOAT TECHNOLOGY, but, with respect to FLOAT TECHNOLOGY disclosed by PILKINGTON to a U.S. LICENSEE, only to the extent that the defendant has a good faith argument that the items or combination of items of such FLOAT TECHNOLOGY involved are trade secrets under applicable law.

D. Exports to the United States

No defendant shall, with the intent of restraining or limiting the amount of exports of FLOAT GLASS to the United States:

1. assert any proprietary FLOAT TECHNOLOGY know-how rights with respect to SUBJECT FLOAT TECHNOLOGY or
2. enter into, maintain, enforce or claim any right under any AGREEMENT with any LICENSEE.

E. Price of FLOAT TECHNOLOGY

No defendant shall enter into, maintain or enforce any AGREEMENT that fixes, maintains or stabilizes the price to be charged for the use of any FLOAT TECHNOLOGY in the United States.

F. Representations

With respect to all FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE, no defendant shall represent to any person anywhere in the world that the person will or may incur liability to any defendant as a result of that person using, or contracting for the use of, or financing, facilitating, or promoting another person's use of such FLOAT TECHNOLOGY insofar as the same is acquired directly from any U.S. LICENSEE or any U.S. NON-LICENSEE provided that nothing shall limit or restrict any defendant from representing, claiming or enforcing any right to which either defendant may now or hereafter be

entitled other than as is expressly enjoined by this Final Judgment.

G. Public Domain

1. Within sixty (60) days of the entry of this Final Judgment, PILKINGTON shall identify the FLOAT TECHNOLOGY found to be public knowledge in the FINAL AWARD to the Department of Justice, Antitrust Division; to all U.S. LICENSEES; and to all U.S. NON-LICENSEES who shall request the same in writing.

2. In the event that SUBJECT FLOAT TECHNOLOGY is (a) formally acknowledged in writing by PILKINGTON to be in the public domain, or (b) is determined to be in the public domain in a final award in any arbitration proceedings to which PILKINGTON is a party or (c) is held to be in the public domain in any proceedings to which PILKINGTON is a party conducted in a court of competent jurisdiction and provided that any such determination or holding is an essential relevant part of a final non-appealable decision or judgment binding upon PILKINGTON, then within sixty (60) days of such acknowledgment, award or judgment PILKINGTON shall send notice thereof identifying such public domain FLOAT TECHNOLOGY to the Department of Justice, Antitrust Division; to all U.S. LICENSEES; and to all U.S. NON-LICENSEES who previously made a request pursuant to subparagraph G.1. above.

H. Patents

Nothing in this Paragraph IV shall be construed to apply to any lawful use of any patent or any patent right to which defendants may now or hereafter be entitled.

I. Construction

Nothing in this Paragraph IV shall be considered by implication either to permit or to prohibit any agreements, conduct or practices not expressly covered by this Final Judgment. Nothing in this Paragraph IV shall be construed as permission to engage in conduct that is not lawful, or as legalizing otherwise unlawful conduct nor as a determination that any conduct affected or subject to this Paragraph IV is unlawful. The legality or illegality of any conduct not expressly covered by this Final Judgment is left unaffected by the entry of this Final Judgment.

J. Records

During the term of this Final Judgment defendants shall maintain a file in the United States at the offices of defendant Pilkington Holdings Inc. containing the documents created or received after the date of this Final Judgment and identified further in this paragraph and during the term of this Final Judgment shall produce the same to the Department of Justice, Antitrust Division within sixty (60) days of a written request

given to defendants at the principal office of Pilkington Holdings Inc., subject to any lawful privilege:

1. A copy of each LICENSE AGREEMENT entered into or amended;
2. A copy of each complaint (or its equivalent) filed in any proceeding, and each other document in which defendants asserted against any U.S. LICENSEE or U.S. NON-LICENSEE any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY);
3. A copy of each document constituting or containing a determination in any proceeding, or any acknowledgement by defendants that any item or combination of items of FLOAT TECHNOLOGY is, or has become, publicly known.
4. A copy of each document constituting or containing: (a) any request for the communication of FLOAT TECHNOLOGY or a grant of rights to FLOAT TECHNOLOGY for the manufacture of FLOAT GLASS or sublicensing from any U.S. LICENSEE or U.S. NON-LICENSEE, and (b) defendant's response to any such request.

V.

NOTIFICATION

Within sixty (60) days after the entry of this Final Judgment, defendants shall either: (a) deliver by certified or

registered mail to each person to whom it has granted a LICENSE, or with whom it has entered into any confidentiality agreement pertaining to FLOAT GLASS, including without limitation equipment fabricators, suppliers, and employees a copy of this Final Judgment and the accompanying Competitive Impact Statement; or (b) cause to be published in one or more journals a copy of this Final Judgment or a summary of this Final Judgment, which journals and summary shall be agreed upon by plaintiff and defendants, and defendants shall promptly certify in writing to plaintiff the fact of their compliance with this provision.

VI.

REPORTING

A. To determine or secure compliance with this Final Judgment, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to defendants at their principal office, subject to any lawful privilege, be permitted:

1. Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment. PILKINGTON may

elect, with respect to any such materials as may be located outside the United States of America at the time it receives such notice, to provide such access at a location within the United States that is reasonably acceptable to the duly authorized representative in lieu of providing access at the situs of the materials.

2. Subject to the reasonable convenience of defendants and without restraint or interference from it, to interview officers, employees, or agents of defendants, who may have counsel present, regarding any matters contained in the Final Judgment. PILKINGTON may elect to make available for such interviews those of its officers, employees, or agents whose regular work station is outside the United States of America at a location within the United States that is reasonably acceptable to the duly authorized representative.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to defendants at their principal office, subject to any lawful privilege, defendant shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

C. No information or documents obtained by the means provided by this Section VI shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the

course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c) (7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material "Subject to claim of protection under Rule 26(c) (7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VII.

FURTHER ELEMENTS OF JUDGMENT

A. This Final Judgment shall expire on the tenth anniversary of its entry.

B. Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII.

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Entered: _____

UNITED STATES DISTRICT JUDGE
