

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

<b>UNITED STATES OF AMERICA</b>	)	<b>Criminal No. 5:03-CR-0088C</b>
	)	
<b>v.</b>	)	<b>Filed: 08/27/03</b>
	)	
<b>WINDSHIELD SALES &amp; SERVICE, INC.;</b>	)	<b>Violation:</b>
<b>WINDSHIELD SALES &amp; SERVICE OF</b>	)	
<b>DALLAS, INC.; AND MESQUITE AUTO</b>	)	
<b>GLASS, INC.</b>	)	
	)	<b>15 U.S.C. § 1</b>
<b>Defendants.</b>	)	

**PLEA AGREEMENT**

The United States of America and the defendants, Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc., hereby enter into the following plea agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (Fed. R. Crim. P.).

**RIGHTS OF DEFENDANTS**

1. The defendants understand their rights:
  - (a) to be represented by an attorney;
  - (b) to be charged by Indictment;
  - (c) to plead not guilty to any criminal charge brought against them;
  - (d) to have a trial by jury, at which they would be presumed not guilty of the charges and the United States would have to prove them guilty beyond a reasonable doubt;

(e) to confront and cross-examine witnesses against them and to subpoena witnesses in their defense at trial;

(f) to appeal their conviction if they are found guilty at trial; and

(g) to appeal the imposition of sentence against them.

**AGREEMENT TO PLEAD GUILTY  
AND WAIVE CERTAIN RIGHTS**

2. The defendants waive their rights set out in Paragraph 1(b)-(f) above. The defendants also waive the right to appeal the imposition of sentence against them, so long as the sentence imposed is consistent with the recommendation in Paragraph 6 of this Plea Agreement. Pursuant to Rule 7(b), Fed. R. Crim. P., the defendants will waive indictment and plead guilty pursuant to Fed. R. Crim. P. 11(c)(1)(C) to a two-count Information, charging Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc. in Count One with conspiring 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 from February 1998, and continuing thereafter until May 1998; and charging Windshield Sales & Service, Inc. in Count Two with conspiring to suppress and restrain competition by agreeing to raise and maintain prices for automotive replacement glass sold by defendant Windshield Sales & Service, Inc. and coconspirators from places of business located in Lubbock, Texas from March 1998, and continuing thereafter until May 1998, all in unreasonable restraint of interstate trade and commerce, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

### **POSSIBLE MAXIMUM SENTENCE**

3. The defendants understand that the maximum penalty that may be imposed against them for a violation of the Sherman Antitrust Act is a fine in an amount equal to the greatest of: (a) \$10,000,000 (15 U.S.C. §1); (b) twice the gross pecuniary gain derived from the crime (18 U.S.C. 3571 (c) and (d); or (c) twice the gross pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571 (c) and (d ); and a mandatory special assessment of \$400.00.

4. The defendants, Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc.; understand that, since the offense to which the corporations are pleading guilty occurred after November 1, 1987, the Court will impose sentence pursuant to provisions of the Federal Sentencing Commission Guidelines.

5. The defendants further understand that, pursuant to United States Sentencing Guidelines (U.S.S.G.) §8B1.1.(a)(2), the Court may order each of them to pay restitution to the victims of the offense.

### **SENTENCING AGREEMENT**

6. Pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., the United States and Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc., agree that the appropriate disposition of the case is, and agree jointly to recommend that the Court impose a sentence requiring Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc., jointly and severally, to pay a fine to the United States in the amount of

\$250,000 to be paid in the following manner: before the fifteenth (15<sup>th</sup>) day after the date of judgment, defendants will pay \$125,000; within 180 days after the payment of the first installment, defendants will pay \$125,000 plus any interest accruing under 18 U.S.C. § 3612(f)(1)-(2).

7. Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc., understand that the Court will order each of them to pay a \$400.00 special assessment per count pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. §8E1.1 in addition to any fine imposed.

8. In light of the availability of civil causes of action which potentially provide for a recovery of a multiple of actual damages, it is the view of all parties to this agreement that the complication and prolongation of the sentencing process that would result from an attempt to fashion a proper restitution order outweigh the need to provide restitution to any victims in connection with this criminal proceeding (see 18 U.S.C. §3663(a)(1)(B)(ii)). Therefore, the United States agrees that it will not seek a restitution order with respect to the offenses charged in the Information.

9. The United States and Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc., understand that the Court retains complete discretion to accept or reject the agreed-upon recommendation provided for in this Plea Agreement. If the Court does not accept the recommended sentence, this Plea Agreement will be void and Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc., will be free to withdraw the guilty pleas (Fed. R. Crim. P. 11(c)(5)) and (d). If Windshield Sales &

Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc., do withdraw the pleas of guilty, this Plea Agreement, the guilty pleas, and any statements made in connection with or in furtherance of the pleas or this Plea Agreement, or in the course of discussions leading to the plea or the Plea Agreement, shall not be admissible against Windshield Sales & Service, Inc.; Windshield Sales & Service of Dallas, Inc.; and Mesquite Auto Glass, Inc., in any criminal or civil proceeding (Fed. R. Crim. Evid. 410).

### **DEFENDANTS' COOPERATION**

10. The defendants agree that they will fully and truthfully cooperate with the United States in the conduct of any federal grand jury investigation of the automotive replacement glass industry, and any litigation or other proceedings arising or resulting therefrom to which the United States is a party. Each defendant shall use its best efforts to secure the full and truthful cooperation of all of its current and former directors, officers and employees who may have knowledge that would be of assistance to any federal investigation involving the automotive replacement glass industry.

### **GOVERNMENT'S AGREEMENT**

11. Subject to the defendants' full and continuing cooperation, as described above, the United States agrees not to bring further criminal charges against the defendants or their officers, directors, or employees under the federal antitrust statutes (15 U.S.C. § 1, et seq.), the mail or wire fraud statutes (18 U.S.C. §§ 1341, 1343), the federal conspiracy statute (18 U.S.C. § 371), the false claims statutes (18 U.S.C. §§ 286-287), the false statement statute (18 U.S.C. § 1001), the Racketeer

Influenced and Corrupt Organizations Act (18 U.S.C. § 1962), or any other criminal statute that prohibits any act also prohibited by any of the aforesaid statutes, for any act or offense committed prior to the execution of this agreement, which was undertaken in furtherance of any conspiracy, combination, or scheme to fix prices involving the automotive replacement glass industry. The protections granted in this paragraph shall not apply to Eldon Flyn Simmons and James D. Kuhn. The agreement contained in this paragraph not to bring the aforementioned criminal charges against officers, directors, or employees of the defendants only applies to acts or offenses committed while such person was employed by one or more of the defendants. The non-prosecution terms of this paragraph do not apply to civil matters of any kind, any violation of the federal tax or security laws, or any crime of violence.

12. In the event that any officer, director, or employee of any of the defendants fails to provide full and truthful cooperation to the government in its investigation and prosecution of antitrust violations in the automotive replacement glass industry, any agreement not to prosecute such person granted in this Plea Agreement shall be void as to such person and that person shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and the substantive offenses arising from this investigation.

#### **REPRESENTATION BY COUNSEL**

13. Each defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. Each defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised

it of the nature of the charge(s), any possible defenses to the charge(s), and the nature and range of possible sentences.

### **VOLUNTARY PLEA**

14. The pleas of guilty are freely and voluntarily made and not the result of force or threats or of promises or representations apart from those set forth in this Plea Agreement. There have been no representations or promises from anyone as to what sentence this Court will impose.

### **VIOLATION OF PLEA AGREEMENT**

15. Defendants agree that, should one or more fail to provide full and truthful cooperation to the government in its investigation and prosecution of antitrust violations in the automotive replacement glass industry or otherwise violate any other provision of this Plea Agreement, the United States, in its sole discretion, may void any of its obligations under the Plea Agreement as to that/those defendant(s) and that/those defendant(s) shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and the substantive offenses arising from this investigation. The prosecution of such defendant(s) may be based upon any information provided by that defendant during the course of its cooperation, and this information and any leads derived from this information may be used as evidence against it. Should this Plea Agreement become void, such defendant(s) agree(s) that it/they will waive any defense to any charge which it/they might otherwise have under any statute of limitations or the Speedy Trial Act from the date of the execution of this Plea Agreement.

**ENTIRETY OF AGREEMENT**

16. The United States and the defendants agree that, other than the foregoing, the United States has made no promises to, or agreements with, the defendants, and that this Plea Agreement constitutes the entire agreement between the United States and the defendants, concerning the disposition of the criminal charges in this case.

DATED:

Respectfully submitted,

**WINDSHIELD SALES & SERVICE, INC. U.S. DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION**

BY: \_\_\_\_\_/s/\_\_\_\_\_  
Secretary

BY: \_\_\_\_\_/s/\_\_\_\_\_  
Mary Coleen T. Sewell  
William M. Martin

**WINDSHIELD SALES & SERVICE  
OF DALLAS, INC.**

BY: \_\_\_\_\_/s/\_\_\_\_\_  
Secretary

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(214) 880-9401

**MESQUITE AUTO GLASS, INC.**

BY: \_\_\_\_\_/s/\_\_\_\_\_  
Secretary

BY: \_\_\_\_\_/s/\_\_\_\_\_  
Terence J. Hart, Esq.  
Counsel for:  
Windshield Sales & Service, Inc.;  
Windshield Sales & Service of Dallas, Inc.;  
Mesquite Auto Glass, Inc.