

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America,)
)
) Plaintiff,)
)
 v.) Civil Action No. 5239
)
 Libbey-Owens-Ford Glass Company, et al.,)
)
) Defendants.)

AMENDED FINAL JUDGMENT

The Court having retained jurisdiction of this matter pursuant to Section XXXI of the Final Judgment entered herein October 30, 1948; the defendants, American Window Glass Company and Blue Ridge Glass Corporation having been dismissed as parties defendant pursuant to the stipulation and order entered herein February 20, 1958; defendant Rolland Glass Company having become merged into Fourco Glass Company, defendants National Glass Distributors Association and American Securit Company having been dissolved, and defendant Franklin Glass Corporation being no longer engaged in the manufacture of flat glass, plaintiff and the remaining defendants to the Final Judgment herein dated October 30, 1948 having consented to the making and entry of this Amended Final Judgment; and the Court having been fully advised with respect to the matter and seeing no just reason why entry of this Amended Final Judgment should be delayed;

NOW THEREFORE without adjudication or admission of any issue of fact or law herein, and without this Amended Final Judgment constituting evidence or admission in respect of any such issue, and upon a determination of the Court that this Amended Final Judgment should now be entered, and upon consent as aforesaid of all the parties signatory hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Final Judgment entered herein on October 30, 1948, as amended by stipulation and order dated April 22, 1949, is hereby amended to read as follows:

I

A. The Court has jurisdiction of the subject matter herein and of all of the parties signatory hereto.

B. Defendant Franklin Glass Corporation is hereby dismissed as a party defendant hereto.

II

As used in this judgment:

A. "Flat glass" means each and all of the following kinds of glass, namely, sheet glass, plate glass, laminated or safety glass and tempered glass, or any size, quality or thickness thereof, whether substantially flat or bent, but shall not include rough rolled glass, wire glass, microscopic cover glass, non-transparent glass, specialty colored glass, or opaque glass, or other specialty glasses made of special compositions or any glass which is further processed or treated for special purposes or products made or fabricated from flat glass other than by cutting, edging, drilling or bending.

B. "Sheet glass" (sometimes called window glass in the trade) means a clear, transparent unground and unpolished glass with a finish known as fire finished, formed when the glass passes from a molten to a hard state and includes common window glass, thin glass and heavy or crystal sheet glass, or any size, quality or thickness thereof, whether substantially flat or bent.

C. "Plate glass" means a clear transparent glass, the surfaces of which have been rendered substantially parallel by grinding and polishing, or any size, quality or thickness thereof, whether substantially flat or bent.

D. "Laminated" or "safety glass" means a clear transparent glass which is made of two or more pieces of flat glass bonded to plastic material interposed between them, or any size, quality or thickness thereof, whether substantially flat or bent.

E. "Tempered glass" means a clear, transparent flat glass which has been strengthened by being heated to the softening point of the glass and then cooled suddenly, or any size, quality or thickness thereof, whether substantially flat or bent.

F. PPG means PPG Industries, Inc. (formerly known as Pittsburgh Plate Glass Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal office at Pittsburgh, Pennsylvania.

G. LOF means Libbey-Owens-Ford Company (formerly known as Libbey-Owens-Ford Glass Company), a corporation organized and existing under the laws of the State of Ohio, with its principal office at Toledo, Ohio.

H. Fourco means the Fourco Glass Company, a corporation organized and existing under the laws of the State of West Virginia, with its principal office at Clarksburg, West Virginia.

I. The term "domestic flat glass patents" means United States Letters Patent and Applications therefor, all reissues, divisions, continuations or extensions thereof, and patents issued upon said applications, covering any product, process, or apparatus used or usable in the manufacture of flat glass.

J. "United States" means the United States and its territories and possessions.

K. "Subsidiary" of a corporation means a corporation more than 50% of whose stock entitled to vote upon election of directors (other than preferred stock so entitled to vote upon the failure of the corporation to pay certain dividends) is owned, or directly or indirectly controlled, by such other corporation.

L. "Person" means an individual, partnership, firm, association or corporation. For the purpose of this definition, a corporation (including any corporate defendant) and its subsidiaries shall be considered to be one person.

M. "Corporate defendants" as used herein shall mean LOF, PPG, and Fourco, or any of them.

III

The provisions of this judgment applicable to any corporate defendant shall apply to such defendant, its officers, directors, agents, employees, successors, assigns, and all other persons acting under, through or for such defendant, and to all other persons in active concert or participation with any such defendant who shall have received notice of this judgment by personal service or otherwise. This judgment shall not apply to acts or transactions occurring outside the United States which do not substantially affect the domestic or foreign commerce of the United States.

IV

The corporate defendants are severally and jointly enjoined and restrained from combining or conspiring with, or from entering into, adhering to, renewing, maintaining, or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding or concerted plan of action with any other person engaged in the manufacture of flat glass to:

- A. reduce or restrict the kinds, quantities, qualities or sizes of flat glass manufactured;
- B. allocate or divide production or markets on a quota, past participation or any other basis or to determine, establish or maintain manufacturing or sales quotas for flat glass;

- C. create, allocate or divide manufacturing or sales territories, on an exclusive or other basis, or apportion customers or markets or the manufacture of kinds, qualities or sizes of flat glass;
- D. restrict any purchaser of flat glass in the use or disposition thereof;
- E. determine, fix, maintain or adhere to prices, differentials, discounts or other terms or conditions of sale for flat glass sold to third persons;
- F. designate any single person to initiate a price or discount to be thereafter followed by the remaining manufacturers of flat glass;
- G. form joint sales agencies for the marketing of flat glass in the United States;
- H. classify or list purchasers of flat glass at any industry level;
- I. limit the amount of flat glass which may be sold to any third person;
- J. discriminate against or refuse to sell to jobbers, distributors, dealers or other persons buying flat glass;
- K. sell, or cause to be sold, any kind of flat glass at any industry level at unreasonably low prices for the purposes of destroying a competitor or suppressing competition;
- L. reduce or restrict flat glass imports into or exports from the United States;
- M. collect, compile, compare, disseminate or communicate to any other person engaged in the manufacture, sale or distribution of flat glass in the United States, or to any flat glass trade association or central agency of persons so engaged, any information concerning production, demand, capacity, inventories, sales, shipments, orders, commitments, costs, prices, discounts or other terms or conditions of sale of flat glass, or similar information pertaining to the condition or operation of the flat glass industry, (other than terms and conditions of employment necessarily disclosed in bona fide labor disputes, and other data necessarily disclosed in good faith in

legislative, administrative, or judicial proceedings), for the purpose of accomplishing any of the things enjoined and restrained in Subparagraphs A to L of this Section IV.

V

The corporate defendants are severally and jointly enjoined and restrained from:

A. Controlling or attempting to control the use or disposition of flat glass by any purchaser;

B. Refusing to fill, or discriminating in the filling of, any order covering at least the equivalent of a carload of flat glass from one plant, because said order involves more than one purchaser provided that nothing contained in this subsection shall prevent differentials which make only due allowance for the differences in the cost of handling and shipping resulting therefrom;

C. Refusing to sell or discriminating in the sale of flat glass to any purchaser because the purchaser offers, sells or ships or intends to offer to sell or ship flat glass into any territory, or otherwise restricting or attempting to restrict the territories in which such purchasers of flat glass may offer to sell, sell or ship flat glass;

D. Refusing to sell, restricting the sales of, or discriminating in the sale of flat glass to any purchaser because:

- (1) The purchaser refuses to buy all or the preponderant part of his requirements for a particular kind or specification of flat glass from such defendant; or
- (2) The purchaser has not purchased or will not agree to purchase any other kind of flat glass, or purchases flat glass from any source other than said defendant; or
- (3) The purchaser was not, is not, or will not become a member of any trade organization.

Provided, however, that nothing contained in this judgment shall be deemed to eliminate the general legal right of any defendant to select its own customers in good faith in bona fide transactions.

VI

A. Each of the corporate defendants is severally and jointly enjoined and restrained from disclosing, disseminating or communicating to any other

person engaged in the manufacture, sale or distribution of flat glass in the United States, or to any trade association of or central agency for persons so engaged (any or all of which are hereinafter collectively referred to as the recipient), any information concerning the production, demand, capacity, inventories, sales, shipments, orders or commitments, costs, prices, discounts, or other terms or conditions of sale of flat glass in such manner as to disclose, directly or indirectly:

1. to any recipient competing with said defendant, any such information concerning or relating to said defendant, or

2. to any recipient, any such information concerning or relating to any competitor of the recipient,

other than terms and conditions of employment necessarily disclosed in bona fide labor disputes, and other data necessarily disclosed in good faith in legislative, administrative, or judicial proceedings, unless such information is also concurrently disclosed to the general public.

B. Nothing contained in Subsection IV-M or Subsection VI-A shall be construed to forbid or prevent the dissemination or communication by a single defendant of information to customers or prospective customers in bona fide transactions involving the sale or purchase of flat glass.

VII

The corporate defendants are severally and jointly enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any contract, agreement, understanding, or concerted plan or action with any person engaged in the manufacture of flat glass:

- A. To exchange, in such a way as to exclude third persons, any rights to patents, inventions, processes, or technical information relating to the manufacture of flat glass;
- B. To acquire from, or transfer to any third person in such a way as to exclude him or any other third person, any rights to any patent, invention, process, or technical information relating to the manufacture of flat glass;
- C. To determine or prescribe the terms or conditions upon which licenses or immunities under any patent, invention, or technical information relating to the manufacture of flat glass shall be available to others;
- D. To acquire or grant rights in such a way as to exclude third persons, under patents or processes relating to the manufacture of flat glass not then in existence;
- E. To acquire exclusive rights to domestic patents, processes, inventions or technical information relating to the manufacture of flat glass without simultaneously acquiring the right to sublicense such rights.

VIII

Defendants are enjoined and restrained from acquiring, by purchase, merger, or otherwise, directly or indirectly, any assets of or any financial or other interest in, or control over, any person engaged within the United States in the manufacture, distribution, sale or installation of flat glass except upon sixty (60) days prior notice to the plaintiff.

IX

Each corporate defendant is enjoined and restrained from causing, authorizing or knowingly permitting any of its officers, directors, or employees to serve as an officer, director or employee of any other person engaged in the manufacture of flat glass in the United States.

X

Each of the defendants LOF and PPG is ordered and directed within thirty days after entry of this amended final judgment to dedicate to the public the unexpired domestic flat glass patents owned or controlled by it which were issued or applied for on or before October 30, 1953.

XI

The corporate defendants are severally and jointly enjoined and restrained from entering into, adhering to, maintaining, furthering, or renewing, directly or indirectly, any contract, agreement, understanding or arrangement which provides for:

- (1) a license or immunity under any patent; or
- (2) the rendering available or receipt of any invention, formula, process or any technical information

relating to the manufacture of flat glass, upon the condition or requirement that the other party thereto shall:

- (a) request or accept a license or immunity under any other patent owned or controlled by any defendant;
- (b) render available or disclose on an exclusive basis, any invention, formula, process, or technical information;
- (c) reduce or restrict the manufacture of any kind of flat glass;

- (d) determine, fix, maintain or adhere to prices or price ranges, or other terms and conditions of sale;
- (e) maintain or adhere to any restrictions upon exportation from, or import into, the United States;
- (f) maintain or adhere to any restrictions upon the customers, markets or territories in which flat glass may be sold or distributed in the United States.

XII

A. Each of the corporate defendants is enjoined and restrained from initiating, forming, creating, establishing, participating in, or adhering to any patent licensing or exploitation company, involving, directly or indirectly, flat glass, with any other domestic manufacturer of flat glass, or acquiring or holding, directly or indirectly, any stock or other financial interest, or any control over any such company.

B. Each of the corporate defendants is enjoined and restrained from initiating, forming, creating, establishing, participating in, or adhering to any research or development company, involving, directly or indirectly, flat glass, with any other domestic manufacturer of flat glass, or acquiring or holding, directly or indirectly, any stock or other financial interest, or any control over any such company.

XIII

The corporate defendants (including any person engaged in warehousing or other flat glass sales, installation or distribution activities now or hereafter owned or controlled by any of them) are severally and jointly perpetually enjoined and restrained from creating, adhering to, contributing money to, supporting, controlling, attempting to control, or exerting any pressure upon any flat glass trade association or similar flat glass organization in the United States which has as members distributors or dealers of flat glass not engaged in the manufacture thereof.

XIV

A. The corporate defendants and each of them are severally and jointly enjoined and restrained from entering into, adhering to, renewing, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, or concerted plan of action with any person (including any trade association or group, but not including any bona fide agent) engaged, outside the United States, either in the manufacture of flat glass, or in patent licensing or exploitation or other research and development relating to flat glass:

- (1) to restrict or prevent the manufacture, processing, distribution or sale of flat glass for export to the United States, or the export of flat glass from the United States, or the import of flat glass into the United States;
- (2) wherein any such other party covenants or promises to refrain from shipping flat glass to the United States, or wherein any defendant pays or offers to pay commissions or any other sums or benefits in connection with such covenant or promise to refrain from shipping.

B. Nothing in this judgment shall prevent a defendant from accepting a license containing provisions in Subsection A of this Section, upon the independent and unilateral insistence of a foreign licensor and upon sixty (60) days' written notice to the Attorney General.

XV

The corporate defendants are severally and jointly enjoined and restrained from:

- (1) Selling flat glass in the United States on condition that it be resold only in the United States;
- (2) Refusing to sell flat glass to, or threatening to withhold supplies of flat glass in the United States from any purchaser because he is engaging in or desiring to engage in the exportation of flat glass from the United States;
- (3) Discriminating in regularly offered terms and conditions of sale as to any purchaser of flat glass because he engages in the United States in its export or import trade, provided that nothing herein contained shall prohibit sales at prices lower than those for comparable flat glass sold within the United States, made in good faith to meet the lower prices of competitors outside the United States.

XVI

For the purpose of securing compliance with this judgment, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or an Assistant Attorney General and on reasonable notice to any defendant corporation or

association made to its principal office be permitted subject to any legally recognized privilege (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney General, and upon reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this judgment as from time to time may be requested. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment, or as otherwise required by law.

XVII

Jurisdiction is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment or for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

XVIII

This Amended Final Judgment shall expire ten years from the date of its entry.

Dated: February 8, 1973

/s/ Frank L. Kloeb

United States District Judge