

Syllabus

IN THE MATTER OF

PITTSBURGH PLATE GLASS COMPANY, W. D. SNYDER, KARL HANSEN COMPANY, INC., KARL HANSEN, DAVID BERNHARDT PAINT & GLASS COMPANY, INC., FRED DITTMAN, EDMUND W. ULRICH, JOSEPH B. CRASTO, LLOYD B. CRASTO, JOSEPH B. CRASTO GLASS COMPANY, AND H. FLAUMHAFT

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4304. Complaint, Sept. 6, 1940—Decision, June 14, 1941

Where a corporation, with principal place of business in Memphis, and two other corporations, with principal and only offices in New Orleans, engaged in selling and distributing glass and conducting a glazing contract business in the States comprising the New Orleans trade area, and three individuals, who were, respectively in charge of New Orleans branch of said first-named corporation, and officers in control of the affairs of the other two, and who determined, as herein concerned, the pricing policies of their respective companies; in competition with one another and with other distributors located in said area and elsewhere, except to the extent that competition was lessened and potential competition curtailed by acts and practices below described, and representing, in their aggregate participation in the distribution of plate, window, safety, rough rolled, wire, art, and structural glass, periodically and during times herein involved, an actual and potential preponderance of such business—

Agreed upon and carried out, from about 1932 through 1938 and from time to time, a common understanding and undertaking among themselves to establish and maintain the prices at which the various types of glass were to be and were sold by them to dealers, to the retail trade and to consumers in aforesaid area; and, with intent of making such understanding and undertaking effective and attempting to require compliance therewith by themselves and competitors—

- (a) Held meetings at various times during period in question at which said understanding and undertaking was discussed, adopted and agreed to;
- (b) From time to time issued and adhered to duplicate and uniform price lists for the sale of the various types of glass above set forth;
- (c) Simultaneously, at times, changed the prices at which they sold said glass to purchasers; and
- (d) From time to time took concerted action to maintain the prices agreed upon; and

Where said corporations and individuals, engaged as above set forth, and a fourth individual, with principal and only place of business in New Orleans, likewise engaged in conducting a glazing contracting business, in the New Orleans trade area, a corporation which succeeded to and carried on aforesaid individual's business, and a fifth individual, likewise engaged in glazing contracting, with principal office and only place of business in New Orleans; securing and seeking to secure glazing contracts within area in question, in competition with similar contractors (whose places of business were

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located in said area and elsewhere, and including those who purchase glass for jobs in said area from dealers and distributors located in States other than Louisiana), except to the extent that their competition was lessened and potential competition curtailed by acts and practices below described; and representing a potential preponderance, and at times during periods involved herein an actual preponderance, of business concerned—

Agreed upon and carried out, from the year 1933 through 1936, and from time to time, an agreement, understanding, or undertaking among themselves, with intent of lessening competition in glass contracting within said area; and in pursuance of their agreement, understanding, or undertaking—

- (e) Apportioned the glazing contracting business in said city;
- (f) Established the amount of the bids to be submitted respectively by them for supplying or installing glass in buildings or structures in area in question; and
- (g) Exchanged information and held meetings for establishing and maintaining the amount of their respective bids on particular jobs and to allocate among themselves, as aforesaid, glazing contracts in area in question;

With capacity, tendency, and effect of establishing and maintaining prices at which glass was sold by distributors in aforesaid area, and of unreasonably lessening competition in the glass trade and distribution therein, and in the glazing contracting business in said area, of curtailing price competition among glass distributors therein, and of burdening and interfering therein with the normal and natural flow of trade in commerce in glass, and of injuring their competitors:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public, and had a tendency unduly to hinder and prevent competition in the sale and distribution of glass and the glazing contracting business in commerce, to place in said distributors the power to control prices at which glass was sold in aforesaid area, and to place in said glazing contractors the power to control prices at which glazing contracts were made therein and unduly to restrict and restrain the sale and distribution of glass in said commerce, and constituted unfair methods of competition therein.

Mr. Fletcher G. Cohn and *Mr. Allen C. Phelps* for the Commission.

Mr. Leland Hazard and *Mr. Joseph T. Owens*, of Pittsburgh, Pa., for Pittsburgh Plate Glass Co. and W. D. Snyder.

Mr. Charles J. Rivet, of New Orleans, La., for Karl Hansen Co., Inc. and Karl Hansen.

Legier, McEnerny & Waguespack, of New Orleans, La., for David Bernhardt Paint & Glass Co., Inc., Fred Dittman and Edmund W. Ulrich.

Mr. John D. Nix, Jr., of New Orleans, La., for Joseph B. Crasto, Lloyd B. Crasto, and Joseph B. Crasto Glass Co.

Mr. Herman L. Midlo, of New Orleans, La., for H. Flaumhaft.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal

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Trade Commission having reason to believe that the respondents herein named have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Charge I

PARAGRAPH 1. The words and terms set out in this paragraph have the following meanings as used in this complaint:

"Glass" means plate window, automobile, safety, art, and structural glass;

"Respondent distributors" refers to respondents Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., and David Bernhardt Paint & Glass Co., Inc.;

"Respondent glazing contractors" refers to respondents Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., David Bernhardt Paint & Glass Co., Inc., Joseph B. Crasto, Joseph B. Crasto Glass Co., and H. Flaumhaft;

"Glazing contracting business" means the business of contracting to sell and install glass in buildings and structures and also of selling glass therefor and installing the same therein;

"New Orleans trade area" means the area including, surrounding and adjacent to the city of New Orleans, La., in which glass is sold or delivered or supplied and installed in buildings or structures by respondent distributors and respondent glazing contractors, and includes many cities and localities in the States of Louisiana, Alabama, Mississippi, and Texas.

PAR. 2. Respondent, Pittsburgh Plate Glass Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 534 Madison Avenue, Memphis, Tenn. This respondent is engaged in the business of selling and distributing glass and of conducting a glazing contracting business in many different States of the United States, including the States in the New Orleans trade area. It maintains and operates warehouses or jobbing branches located in several different States of the United States. Among said warehouses and jobbing branches so maintained and operated by this respondent is the New Orleans jobbing or distributing branch which sells and distributes glass in the New Orleans trade area and conducts its glazing contracting business in said area. Respondent's New Orleans branch is managed by respondent W. D. Snyder, who is an employee and the representative and agent

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of respondent Pittsburgh Plate Glass Co., in the New Orleans trade area. The office and principal place of business of said New Orleans jobbing branch is 1500 Poydras Street, New Orleans, La.

PAR. 3. Respondent Karl Hansen Co., Inc., is a corporation organized and existing under the laws of the State of Louisiana with its principal office at 1600 Poydras Street, New Orleans, La.

Respondent Karl Hansen is the principal stockholder and the president of said Karl Hansen Co., Inc. Respondent Karl Hansen Co., Inc., is engaged in selling and distributing glass and in the glazing contracting business in the New Orleans trade area. Said respondent is under the direction and management of respondent Karl Hansen.

PAR. 4. Respondent David Bernhardt Paint & Glass Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Louisiana with its principal office at 317-323 Camp Street, New Orleans, La. This respondent is engaged in selling and distributing glass in the New Orleans trade area and in the glazing contracting business in said area.

Respondent Fred Dittmann is the secretary-treasurer of respondent, David Bernhardt Paint & Glass Co., Inc., and in active management of its business and policies.

Respondent Edmund W. Ulrich is the manager of the Glazing Contracting Division of respondent David Bernhardt Paint & Glass Co., Inc., and in charge of its glazing contracting business.

PAR. 5. Respondent Joseph B. Crasto was until June 7, 1940, in the business of selling glass in the New Orleans trade area and in the glazing contracting business in said area, under the name and style of the Joseph B. Crasto Glass Co., with his office and principal place of business located at 2001 Adams Street, New Orleans, La. On June 7, 1940, the said Joseph B. Crasto was succeeded in the aforementioned business by Joseph B. Crasto Glass Co., a corporation which was organized on that date, and is now existing under the laws of the State of Louisiana, and having its principal place of business also at 2001 Adams Street, New Orleans, La.

Respondent Lloyd B. Crasto is acting manager and architect of the Joseph B. Crasto Glass Co. and participates in its management and in formulating its policies.

PAR. 6. Respondent H. Flaumhaft is engaged in the glass and glazing contracting business in the New Orleans trade area, with his principal office and place of business located at 321 Dryades Street, New Orleans, La.

PAR. 7. Respondent distributors and respondent glazing contractors, in the course and conduct of their respective businesses, purchase

or obtain glass from the various manufacturers thereof, and cause said glass, so purchased or obtained, to be transported from the States of origin thereof, being States of the United States other than the State of Louisiana, to, into and through various States of the United States and into the State of Louisiana. Said respondent distributors resell and distribute said glass to dealers, glazing contractors, processors, and consumers or users thereof located in the various States of the New Orleans trade area; and the respondent glazing contractors contract for the supply and installation of such glass in buildings and structures and supply and install same in said structures in the New Orleans trade area. Said glass is ordinarily purchased or obtained from the manufacturer thereof by said respondent distributors with the intention, and for the purpose, of reselling and distributing the same to purchasers thereof, located in the States comprising the New Orleans trade area. Said respondent distributors, upon sales of glass being made to purchasers, deliver and transport, or cause to be delivered and transported, said glass, so shipped into the State of Louisiana, to the purchasers thereof located in the States comprising the New Orleans trade area. All of said respondent distributors and glazing contractors are, and have been since prior to 1932, engaged in commerce between and among some of the several States of the United States in the manner hereinbefore described.

PAR. 8. Respondent distributors are in competition with one another and with other glass distributors, whose places of business are located in States of the New Orleans trade area and elsewhere, in seeking to sell, and in the sale and distribution of, glass in the New Orleans trade area, except insofar as said competition has been hindered, lessened, restrained or restricted or potential competition among them or with others forestalled, by the unfair practices and methods hereinafter set forth.

PAR. 9. Respondent glazing contractors are in competition with one another and with other glazing contractors whose places of business are located in States of the New Orleans trade area and elsewhere, in the glazing contracting business in the New Orleans trade area, except insofar as said competition has been hindered, lessened, restrained, or restricted or potential competition among them or with others forestalled, by the unfair practices and methods hereinafter set forth.

Those competitors of respondent glazing contractors who do not sell or distribute glass, in the course and conduct of their businesses, in many instances, purchase glass for those jobs in the New Orleans trade area for which they have glazing contracts, from dealers and

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distributors who are located outside the State of Louisiana, which dealers and distributors as part of such purchases, ship such glass or cause the same to be shipped, into the State of Louisiana.

PAR. 10. Respondent distributors, together with respondents W. D. Snyder, Karl Hansen, Fred Dittmann, and Edmund W. Ulrich, since about 1932, have agreed and combined together, and have united in and pursued a common and concerted course of action and undertaking, among themselves and with others, to adopt, carry out, enforce and maintain in said New Orleans trade area certain monopolistic policies and trade practices, hereafter described, which said respondents agreed to, and did, adhere to, among themselves, and which they have attempted to and have, by coercion and compulsion, imposed upon other actual or potential glass distributors in said trade area, who were not permitted or did not desire to join such combination and course of action.

PAR. 11. The said monopolistic policies and trade practices referred to in the preceding paragraph, which were so formulated, adopted and put into effect, were the following:

1. A policy and practice of fixing and maintaining the prices at, and conditions under, which glass was sold by distributors to dealers in various types of glass, to the retail trade and to consumers in the New Orleans trade area;

2. A policy and practice of apportioning among said respondent distributors, the business of selling and distributing glass in the New Orleans trade area;

3. A policy and practice of preventing glass distributors and dealers competing with respondent distributors from buying glass at the manufacturers' quoted prices and of compelling them to purchase glass from respondent distributors at prices above such manufacturers' quoted prices;

4. A policy and practice of listing certain dealers purchasers as "Special Buyers" and granting to such purchasers price concessions not granted to competitors of said purchasers;

5. A general policy and practice of reducing or eliminating competition in the glass business in the New Orleans trade area and of tending to create and maintain a monopoly in such business in said area.

PAR. 12. For the purpose of making such prices and practices effective and of requiring compliance therewith by all competing distributors and dealers in glass in the New Orleans trade area and imposing the same on the purchasing public located therein, respondent distributors, acting in furtherance of, and in pursuance to, the general plan and policy above described, have done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed and made effective the policies, practices and methods described in the preceding paragraph;

2. Held meetings at which said policies, practices and methods were discussed, adopted and agreed to;

3. Sought and obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies and pricing methods hereinabove described;

4. Exchanged information with reference to their respective businesses and activities to be used in furtherance of the policies and methods referred to;

5. Issued and adhered to duplicate and uniform price lists for the sale of various types of glass;

6. Simultaneously changed the prices at which they sold glass to the purchasers thereof;

7. Supervised and investigated the practices and policies of competing distributors, and acted concertedly to maintain said prices agreed upon, to control markets and to coercively require recalcitrant distributors and dealers to recognize and conform to such practices and methods.

PAR. 13. The capacity, tendency, and effect of said agreement, combination, policies, and methods, and the acts and practices of said respondent distributors in pursuance thereof are and have been:

1. To tend to monopolize in the said respondent distributors the business of selling and distributing glass in the New Orleans trade area;

2. To tend to monopolize in respondent distributors the opportunity to purchase or obtain glass from the manufacturers thereof at the manufacturers' list prices;

3. To fix and maintain the prices at, and the conditions under, which glass is sold by distributors in the New Orleans trade area;

4. To prevent glass distributors located in States outside of those included in the New Orleans trade area from selling glass in said trade area;

5. To unreasonably lessen, eliminate, restrict, stifle, hamper, and suppress competition in the glass trade and distribution in the New Orleans trade area, and to deprive the purchasing and consuming public of the advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said trade and industry, and to otherwise operate as a restraint upon, obstruction to, and detriment to the freedom of fair and legitimate competition in such trade and industry;

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6. To suppress, eliminate, and discriminate against small distributors who are or have been engaged in, or desire to engage in, selling glass in the New Orleans trade area;

7. To obstruct and prevent establishment of new distributors of glass in said area;

8. To suppress and eliminate price competition among distributors in the sale of glass in said trade area;

9. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in glass into, through and from the various States of the United States included in the New Orleans trade area; and to injure the competitors of individual respondent distributors by unfairly diverting business and trade from them, depriving them thereof and otherwise oppressing them;

10. To prejudice and injure glass distributors who do not conform to respondents' program or methods or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein alleged.

Charge II

PARAGRAPH 1. The allegations of paragraphs 1 to 9, inclusive, hereinabove set forth in Charge I above, to the extent that they aver matters and things pertinent to the allegations hereafter made in this charge, are hereby incorporated herein as though fully set forth.

PAR. 2. Respondent glazing contractors, together with respondents W. D. Snyder, Karl Hansen, Fred Dittmann, and Edmund W. Ulrich, since about 1935 have agreed and combined together and have united in and pursued a common and concerted course of action and undertaking, among themselves and with others, to adopt, carry out, enforce, and maintain in said New Orleans trade area, certain monopolistic practices hereafter described, which said respondents have agreed to, and did adhere to, among themselves, and which they have attempted to, and have, by coercion and compulsion imposed upon other actual or potential glazing contractors, located both in said New Orleans trade area and elsewhere, who were not permitted to, or did not desire to, join such agreement and combination.

PAR. 3. The said monopolistic policies and trade practices referred to in the preceding paragraph which were so formulated, adopted, and put into effect were the following:

1. A policy and practice of precluding glazing contractors competing with respondent glazing contractors or desiring to compete with them, from bidding on contracts for the supply and installation of glass in buildings and structures being erected or repaired in said trade area;

2. A policy and practice of precluding such competing glazing contractors from supplying and installing glass in buildings and structures being erected or repaired in said trade area;

3. A policy and practice of apportioning among themselves the glazing contracting business in New Orleans;

4. A policy and practice of fixing the amounts of the bids submitted by them for supplying and installing glass in buildings and structures in the New Orleans trade area;

5. A policy and practice of agreeing upon the unit costs of labor, materials and other items to be used in the computation of bids to be submitted for supplying and installing glass in buildings and structures in the New Orleans trade area.

PAR. 4. For the purpose of making such policies and practices effective and of requiring compliance therewith by all glazing contractors, both in and outside the New Orleans trade area, and imposing the same on glass distributors, and contractors and builders of structures in said trade area, respondent glazing contractors, acting in furtherance of, and in pursuance to, the general plan and policy above described, have done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed and made effective the policies, practices, and methods described in the preceding paragraph;

2. Held meetings at which said policies, practices, and methods were discussed, adopted, and agreed to;

3. Sought, and obtained promises and assurances of cooperation from one another in establishing and making effective the practices, policies, and methods above described;

4. Exchanged information with reference to their respective businesses and activities to be used in furtherance of the policies, practices, and methods referred to;

5. Supervised and investigated the practices and policies of competing glazing contractors and acted concertedly to compel such glazing contractors to recognize and concede to respondent glazing contractors the alleged right to use the unfair policies, practices, and methods above set forth.

PAR. 5. The capacity, tendency, and effect of said agreement, combination, policies, and methods with respect to glazing contractors and the glazing contracting business, are, and have been, similar to those of the agreement, combination, policies, and methods set forth with reference to respondent distributors and the sale and distribution of glass in paragraph 13 of Charge I hereof, the pertinent allegations of which are hereby incorporated herein by reference, as though fully set forth.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 6th day of September 1940, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. All of said respondents have duly filed their answers in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respective respondents, and W. T. Kelley, Chief Counsel of the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument, the filing of briefs, or the filing of a report upon the evidence by a trial examiner for the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The words and terms set out in this paragraph have the following meaning as used in these findings as to the facts:

"Glass" means plate, window, safety, rough rolled, wire, art, and structural glass (but the term "glass" shall not include any service involved in the installation of automobile glass);

"Respondent distributors" refers to respondents, Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., and David Bernhardt Paint & Glass Co., Inc.;

"Respondent glazing contractors" refers to respondents, Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., David Bernhardt Paint & Glass Co., Inc., Joseph B. Crasto, Joseph B. Crasto Glass Co., and H. Flaumbaft;

"Glazing contracting business" means the business of contracting to sell and install glass in building and structures and also of selling glass therefor and installing the same therein;

"New Orleans trade area" means the area including, surrounding, and adjacent to the city of New Orleans, La., in which glass is sold or delivered or supplied and installed in the buildings or structures by respondent distributors and respondent glazing contractors, and includes many cities and localities in the southern sections of the States of Louisiana and Mississippi.

PAR. 2. Respondent Pittsburgh Plate Glass Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 534 Madison Avenue, Memphis, Tenn. This respondent is engaged in the business of selling and distributing glass and of conducting a glazing contract business in the States comprising the New Orleans trade area. Respondent's New Orleans branch is managed by respondent W. D. Snyder who is an employee, representative, and agent of respondent Pittsburgh Plate Glass Co. in the New Orleans trade area, and as such directs the business policies and activities of said respondent in said area. The office and principal place of business of said New Orleans jobbing branch is 1500 Poydras Street, New Orleans, La.

PAR. 3. Respondent Karl Hansen Co., Inc., is a corporation organized and existing under the laws of the State of Louisiana, with its principal and only office being located at 1600 Poydras Street, New Orleans, La.

Respondent Karl Hansen Co., Inc., is engaged in selling and distributing glass and in the glazing contracting business in the New Orleans trade area, and is under the direction and management of respondent Karl Hansen.

Respondent Karl Hansen is the principal stockholder and president of said Karl Hansen Co., Inc., and as such, directs the management and business policies of said respondent company.

PAR. 4. Respondent David Bernhardt Paint & Glass Co., Inc., is a corporation organized and existing under the laws of the State of Louisiana with its principal and only office being located at 317-323 Camp Street, New Orleans, La. It is engaged in selling and distributing glass in the New Orleans trade area and in the glazing contracting business in said area.

Respondent Fred Dittman is the secretary-treasurer of respondent David Bernhardt Paint & Glass Co., Inc., and directs the management and business policies of said respondent David Bernhardt Paint & Glass Co., Inc.

Respondent Edmund W. Ulrich is the manager of the Glazing Contracting Division of respondent David Bernhardt Paint & Glass Co.,

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Inc., and has active charge of the glazing contracting business of said respondent.

PAR. 5. Respondent Joseph B. Crasto was, until June 7, 1940, engaged in the business of selling glass in the New Orleans trade area and in conducting the glazing contracting business in said area under the name and style of the Joseph B. Crasto Co., with his principal and only office being located at 2001 Adams Street, New Orleans, La. On June 7, 1940, said respondent Joseph B. Crasto was succeeded in the aforementioned business by Joseph B. Crasto Glass Co., a corporation, organized on that date, under the laws of the State of Louisiana, and having its principal and only place of business also at 2001 Adams Street, New Orleans, La.

Said respondent Joseph B. Crasto Glass Co., a corporation took over the business and assets of said Joseph B. Crasto and adopted, approved, and ratified the acts and practices, as hereinafter found, of said respondent Joseph B. Crasto.

Respondent Lloyd Crasto, who is referred to in the complaint as Lloyd B. Crasto, is the active manager of respondent Joseph B. Crasto Glass Co., a corporation, and participates in its management and in the formulating of its business policies.

PAR. 6. Respondent H. Flaumhaft, an individual, is engaged in the glass and glazing contracting businesses in the New Orleans trade area with his principal and only office and place of business being located at 321 Dryades Street, New Orleans, La.

PAR. 7. Respondent distributors and respondent glazing contractors, in the course and conduct of their respective businesses, purchase or obtain glass from the various manufacturers thereof, and cause said glass, so purchased or obtained, to be transported from the States of origin thereof, being States of the United States other than the State of Louisiana, to, into and through various States of the United States and into the State of Louisiana.

Said respondent distributors resell and distribute said glass to dealers, glazing contractors, processors, and consumers or users thereof located in the States of the New Orleans trade area; and the respondent glazing contractors contract for the supply and installation of such glass in buildings and structures in the said New Orleans trade area. Such glass is ordinarily purchased or obtained from a manufacturer thereof by said respondent distributors with the intention, and for the purpose, of reselling and distributing the same to purchasers thereof located in the States comprising the New Orleans trade area. Said respondent distributors, upon sales of glass being made to such purchasers, deliver, and transport, or cause to be

delivered and transported to said purchasers, said glass so shipped into the State of Louisiana.

All of said respondent distributors and glazing contractors are, and have been, with the exception of respondent Joseph B. Crasto Glass Co., a corporation, since prior to 1932, engaged in commerce between and among the States of the New Orleans trade area in the manner hereinbefore described. Respondent, Joseph B. Crasto Glass Co., a corporation, has been engaged in such commerce since its organization in June 1940.

PAR. 8. Respondent distributors all sell and seek to sell glass within the New Orleans trade area to the purchasers thereof as do other glass distributors whose places of business are situated in States of the New Orleans trade area and elsewhere.

PAR. 9. Respondent distributors have been, and are, in competition with one another and with other glass distributors whose places of business are located in the States of the New Orleans trade area and elsewhere, in seeking to sell, and in the sale and distribution of glass in said area, except, to the extent as hereinafter found, said competition has been lessened and potential competition among them or with others has been curtailed, by the acts and practices hereinafter found.

PAR. 10. Respondent glazing contractors all secure, and seek to secure, glazing contracts within the New Orleans trade area as do other glazing contractors whose places of business are located in the States of the New Orleans trade area and elsewhere.

PAR. 11. Those competitors of respondent glazing contractors who do not sell or distribute glass in the course and conduct of their respective businesses, in many instances, purchase glass for those jobs in the New Orleans trade area for which they have glazing contracts, from dealers and distributors who are located in States outside of the State of Louisiana, which dealers and distributors as part of such purchases, ship such glass, or cause same to be shipped, from those other States of the United States, into the State of Louisiana.

PAR. 12. Respondent glazing contractors are in competition with one another and with other glazing contractors whose places of business are located in the States of the New Orleans trade area and elsewhere, in seeking to secure, and in securing, glazing contracts in said area, except, to the extent as hereinafter found, said competition has been lessened and potential competition among them or with others has been curtailed, by the acts and practices hereinafter found.

PAR. 13. The aggregate of the participation of the respondent distributors in the distribution of plate, window, safety, rough, rolled, wire, art, and structural glass, respectively, and, of the respondent

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glazing contractors in the glazing contracting business, in the New Orleans trade area, represents periodically a potential preponderance of such businesses respectively in said area; and said respondents did, in fact, at times during the periods hereafter mentioned enjoy such preponderance of such businesses respectively.

PAR. 14. From 1932 to August or September 1938, the respondent distributors held meetings among themselves, at which respondent Pittsburgh Plate Glass Co. was represented by respondent W. D. Snyder, respondent Karl Hansen Co., Inc., by respondent Karl Hansen, and respondent David Bernhardt Paint & Glass Co. by respondent Fred Dittmann, at which the said respondent distributors discussed the prices at which each would sell glass in the New Orleans trade area, and the discounts each would offer for the sale of glass in the various States in the New Orleans trade area. Following certain of their meetings, respondent distributors in 1938 sent letters at approximately the same time to the various purchasers of glass in the New Orleans trade area announcing identical prices and the same discounts. During the year 1938, respondent Pittsburgh Plate Glass Co. mailed schedules of price changes to other respondents and to the trade in general in advance of the date that such schedules of prices of respondent Pittsburgh Plate Glass Co. were to become effective. During said period, each respondent, in many instances, adopted as its or his individual price schedule, the new prices on the date same were to become effective, with the belief that the other respondents would do likewise. Each respondent distributor made efforts to ascertain whether the other respondents had followed such prices.

PAR. 15. The pricing policies of respondent Pittsburgh Plate Glass Co. are determined by respondent W. D. Snyder, its manager, those of respondent Karl Hansen Co., Inc., by respondent Karl Hansen and those of David Bernhardt Paint & Glass Co., Inc., by respondent Fred Dittmann.

PAR. 16. Respondent distributors, together with respondents, W. D. Snyder, Karl Hansen, and Fred Dittmann, from about the year 1932 through 1938, have, from time to time, agreed upon, and carried out, a common understanding and undertaking among themselves to establish and maintain the prices at which glass was to be sold, and was sold, by the said respondent distributors to dealers of the various types of glass, to the retail trade and to the consumers of glass in the New Orleans trade area.

PAR. 17. For the purpose, during the aforementioned period, of making such understanding and undertaking effective and of attempting to require compliance therewith by respondent distribu-

tors and competitive distributors and dealers of glass in the said New Orleans trade area, respondent distributors and respondents, W. D. Snyder, Karl Hansen, and Fred Dittmann, acting in furtherance thereof and in pursuance thereto, at various times during said period, held meetings at which said understanding and undertaking were discussed, adopted and agreed to; from time to time issued, and adhered to, duplicate and uniform price lists for the sale of the various types of glass hereinbefore defined; simultaneously, at times, changed the prices at which said respondent distributors sold such glass to the purchasers thereof; and, from time to time took concerted action to maintain the prices agreed upon.

PAR. 18. Respondent glazing contractors, held prearranged meetings from 1933 through 1936. Respondent Pittsburgh Plate Glass Co. was represented at such meetings by respondent W. D. Snyder; respondent Karl Hansen Co., Inc., by respondent Karl Hansen; respondent David Bernhardt Paint & Glass Co., Inc., by respondent Edmund W. Ulrich; respondent Joseph B. Crasto by himself or by respondent Lloyd Crasto, and respondent H. Flaumhaft by himself. These meetings were held intermittently. At such meetings held during the years 1935 and 1936, glazing contracts for work to be done in the New Orleans trade area were allocated among respondent glazing contractors, by said respondent glazing contractors. Meetings were also held by said respondent glazing contractors, represented by the aforementioned individual respondents during the year 1938 and the early part of 1939. The meetings were held for the purpose of discussing and comparing the bids to be submitted by the respective respondent glazing contractors on particular jobs in the New Orleans trade area. The meetings were discontinued during the year 1939 and have not been resumed.

PAR. 19. Respondent glazing contractors, together with respondents, W. D. Snyder, Karl Hansen, Edmund W. Ulrich, Joseph B. Crasto, and Lloyd Crasto, from the year 1933 through 1936, agreed upon and carried out from time to time a common understanding to apportion among respondent glazing contractors the glazing contracting business in New Orleans, and to establish the amount of the bids to be submitted respectively by said respondents on glazing contracting jobs in the New Orleans trade area.

PAR. 20. For the purpose, during the aforementioned period, of making the understanding or undertaking, hereinbefore found in paragraph 19, effective, of attempting to require compliance therewith by respondent glazing contractors, respondent glazing contractors and respondents, W. D. Snyder, Karl Hansen, Edmund W. Ulrich, Joseph B. Crasto, and Lloyd Crasto, acting in furtherance of, and in

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pursuance to, said understanding and undertaking did, at various times during said period, formulate, adopt, follow and carry out, said understanding and undertaking; held meetings at which said understanding and undertaking were discussed, adopted and agreed to; and exchanged information with reference to the amounts of their respective bids to be submitted by them respectively on particular jobs in the New Orleans trade area.

PAR. 21. The capacity, tendency, and effect of the acts and practices of all the respondents, as hereinbefore described, were to establish and maintain prices at which glass was sold by distributors in the New Orleans trade area, to unreasonably lessen competition in the glass trade and distribution in the New Orleans trade area, to unreasonably lessen competition in the glazing contracting business in said area, to curtail price competition among distributors in the sale of glass in said area, to burden and interfere with the normal and natural flow of trade in commerce in glass in said area, and to injure the competitors of respondent distributors and respondent glazing contractors in said area.

CONCLUSION

The acts and practices of the respondents as hereinabove found are all to the prejudice of the public; have a tendency to unduly hinder and prevent competition, in the sale and distribution of glass and the glazing contracting business in commerce as "commerce" is defined by the Federal Trade Commission Act; to place in respondent distributors the power to control the prices at which glass is sold in the New Orleans trade area; to place in respondent glazing contractors the power to control the prices at which glazing contracts are made in said area; to unduly restrict and restrain the sale and distribution of glass in said commerce; and constitute unfair methods of competition in commerce within the meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein, findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and con-

clusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Pittsburgh Plate Glass Co., a Tennessee corporation, Karl Hansen Co., Inc., a corporation, and David Bernhardt Paint & Glass Co., Inc., a corporation, and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents, and the respondents, W. D. Snyder, individually and as manager of the New Orleans branch of the respondent Pittsburgh Plate Glass Co., Karl Hansen, individually and as president of the Karl Hansen Co., Inc., and Fred Dittmann, individually and as secretary-treasurer of the respondent, David Bernhardt Paint & Glass Co., Inc., directly, indirectly, or through any corporate or other device, in connection with the sale or distribution in commerce, as "commerce" is defined by the Federal Trade Commission Act, of plate, window, safety, rough rolled, wire, art, and structural glass, do forthwith cease and desist from entering into or carrying out any agreement, understanding or undertaking among themselves or between or among any two or more of them, or between or among any one or more of them and any competing corporation, corporations, person or persons, for the purpose, or with the effect, of restricting or restraining competition in the sale or distribution of such glass in said commerce and also;

1. From establishing or maintaining, or attempting to establish or maintain, pursuant to such an agreement, understanding or undertaking, the prices at which such glass is offered for sale, or sold, to dealers of the various types of glass, to the retail trade or to consumers, in the New Orleans trade area.

2. From holding meetings, pursuant to such an agreement, understanding, or undertaking, for the purpose, intent, or which have the effect, of establishing or maintaining, or attempting to establish or maintain, the prices at which such glass is sold or offered for sale in said area.

3. From exchanging information, pursuant to such an agreement, understanding or undertaking, with reference to their respective businesses and activities, where the purpose, intent, or effect of same is to establish or maintain the prices at which glass is sold, or offered for sale in said area.

4. From adhering to, or attempting to adhere to, pursuant to such an agreement, understanding, or undertaking, duplicate or uniform price lists for the sale of any of such types of glass within the said area.

5. From changing simultaneously, pursuant to such an agreement, understanding, or undertaking, the prices at which they sell, or offer to sell, such glass to purchasers thereof within the said area.

It is further ordered, That respondents Pittsburgh Plate Glass Co., a Tennessee corporation, Karl Hansen Co., Inc., a corporation, David Bernhardt Paint & Glass Co., Inc., a corporation, Joseph B. Crasto Glass Co., a corporation, and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents and respondents, W. D. Snyder, individually and as manager of the New Orleans branch of the Pittsburgh Plate Glass Co., Karl Hansen, individually and as president of the Karl Hansen Co., Inc., Edward W. Ulrich, individually and as manager of the Glazing Contracting Division of the respondent, David Bernhardt Paint & Glass Co., Inc., Joseph B. Crasto, individually or trading as Joseph B. Crasto Glass Co., Lloyd Crasto, individually and as architect of Joseph B. Crasto Glass Co., a corporation, and H. Flaumhaft, directly, indirectly or through any corporate or any other device in connection with the sale or distribution in commerce as "commerce" is defined by the Federal Trade Commission Act, of plate, window, safety, rough rolled, wire, art, and structural glass, or in connection with the entering into or the making of any glazing contracts within the New Orleans trade area, do forthwith cease and desist, from entering into, or carrying out, any agreement, understanding, or undertaking among themselves, or between or among any two or more of them, or between or among any one or more of them, and any other corporation or corporations which compete with respondents, Pittsburgh Plate Glass Co., Karl Hansen Co., Inc., David Bernhardt Paint & Glass Co., Inc., Joseph B. Crasto Glass Co., or with any competing person or persons, for the purpose, or with the effect, of lessening or curtailing competition in the entering into, or the making, of such contracts, within said area, and also:

1. From apportioning, or attempting to apportion, among themselves, pursuant to such an agreement, understanding or undertaking, the glazing contracting business in New Orleans, La.;

2. From establishing, or attempting to establish, pursuant to such an agreement, understanding or undertaking, the amount of the bids to be submitted respectively by them for supplying, installing or for supplying and installing, glass in buildings or structures in the New Orleans trade area;

3. From holding meetings, pursuant to such an agreement, understanding, or undertaking, for the purpose, intent, or which have the effect, of establishing, or maintaining, the amount of the respec-

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tive bids which respondent glazing contractors are to submit, or have submitted, on particular jobs in said area;

4. From holding meetings, pursuant to such an agreement, understanding, or undertaking for the purpose, intent, or which have the effect, of allocating among respondent glazing contractors, glazing contracts for jobs within the said area;

5. From exchanging information, pursuant to such an agreement, understanding or undertaking, with reference to their respective businesses and activities, where the purpose, intent, or effect, of same is to establish or attempt to establish the amount of the bids to be submitted respectively by respondent glazing contractors for jobs within said area.

It is further ordered, That the respondents, Pittsburgh Plate Glass Co., W. D. Snyder, Karl Hansen Co., Inc., Karl Hansen, David Bernhardt Paint & Glass Co., Fred Dittmann, Edmund W. Ulrich, Joseph E. Crasto, Lloyd Crasto, Joseph B. Crasto Glass Co., H. Flaumhaft, and each of them, shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
**THE FIRESTONE TIRE & RUBBER COMPANY, AND FIRE-
STONE TIRE & RUBBER COMPANY**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3983. Complaint, Jan. 2, 1940—Decision, June 18, 1941

Where a corporation long engaged in the manufacture, among other things, of automobile tires, and in interstate sale and distribution thereof through its own stores and through independent dealers, both of whom it supplied with price lists respectively designating and suggesting retail selling prices, and both of whom sold a substantial quantity of its tires at such prices, and also a substantial number at lesser prices to meet competition and by special sales;

In advertising its "Champion," "High Speed," "Convoy," and "Sentinel" tire (replaced in May 1939, by its "Standard" tire)—relatively priced in that order, the latter three at approximately 90 percent, 75 percent, and 65 percent of the "Champion" price subsequent to November 1, 1938—by advertising copy which it prepared and disseminated to its dealers, and by advertisements during nation-wide sales periods in a large number of newspapers, which were also inserted in whole or in part in numerous newspapers throughout the United States by a large number of independent dealers and company-owned stores—

- (a) Represented, as typical, that its "Convoy" tire was offered at savings of 25 percent off the regular current retail selling price, through advertising "SAVE 25% with the New FIRESTONE CONVOY TIRE New High Quality at a New Low Price *Priced to Save you Money*," followed by list of sizes with prices, including as example, "6.00-16 \$11.80";

Facts being that while said tires were being offered at a saving of 25 percent off the current retail list price of the higher-priced "High Speed" tire, list price of said 6.00-16 "Convoy" tire was itself \$11.80, so that no saving whatsoever was involved by advertised sales price;

- (b) Represented that it was offering its "Standard" tire for sale at savings of up to 50 percent, and that the designated savings in dollars were based upon the regular current selling prices thereof, through advertisement "BUY DURING Firestone BARGAIN DAYS For July 4th Save Up to 50% On Famous Firestone Standard Tires Amazing Savings," followed by list of sizes and prices including, as example, "*Size 6.00-16 Former Price \$14.35 Sale Price \$7.98 You Save \$6.37 Including Your Old Tire*";

Facts being that while, at time in question, such tires were being offered at 50 percent off the retail list prices of "Standard" tires in effect prior to November 1, 1938, when production ceased until June 1939, and at 50 percent off the current list price of the higher-priced "High Speed" tire, they provided a dollar saving of only \$2.37 and a percentage saving of only 22.89 percent off current list price of "Standard" tire; the advertised price did not take into account the customary trade-in allowance of 10 percent, allowing for which, dollar saving was only \$1.34 per tire, and percentage saving only 14.38 percent, and savings, if computed upon the regular current retail selling price, rather than list, were even less;