

Receipt Number  
566848

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

\_\_\_\_\_  
BURHANS GLASS CO., INC., on behalf of itself :  
and all others similarly situated, :

Plaintiff, :

vs. :

GUARDIAN INDUSTRIES CORP.; PPG :  
INDUSTRIES INC.; PILKINGTON GROUP :  
LIMITED; PILKINGTON NORTH AMERICA :  
INC.; LIBBEY-OWENS-FORD CO; NIPPON :  
SHEET GLASS CO., LIMITED; COMPAGNIE :  
DE SAINT-GOBAIN; SAINT-GOBAIN :  
CORPORATION; ASAHI GLASS COMPANY :  
LIMITED; AGC FLAT GLASS NORTH :  
AMERICA; :

Defendants. :

Case: 2:08-cv-10415  
Judge: Feikens, John  
Referral MJ: Morgan, Virginia M  
Filed: 01-29-2008 At 02:48 PM  
BURHANS GLASS V GUARDIAN (LMW)

CLASS ACTION COMPLAINT

Plaintiff, Burhans Glass Co., Inc., by its attorneys, on behalf of itself and all others similarly situated, brings this action for treble damages and injunctive relief under the antitrust laws of the United States against the above named defendants, complaining and alleging as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and these proceedings are instituted under Sections 4 and 16 of the Act of Congress of October 15, 1914, C. 323, Stats. 731, 737 (15 U.S.C. §§15, 26), to obtain injunctive relief and to recover treble damages and the costs of suit, including a reasonable attorneys' fee, against defendants for the injuries sustained by

plaintiff and the members of the class which it represents by reason of defendants' and their co-conspirators' violations, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Defendants transact business, maintain offices or are found within the Eastern District of Michigan. The interstate commerce described hereinafter is carried on, in part, within the Eastern District of Michigan, and the conspiratorial acts herein alleged were carried on, in part, in the Eastern District of Michigan.

II.

PLAINTIFF

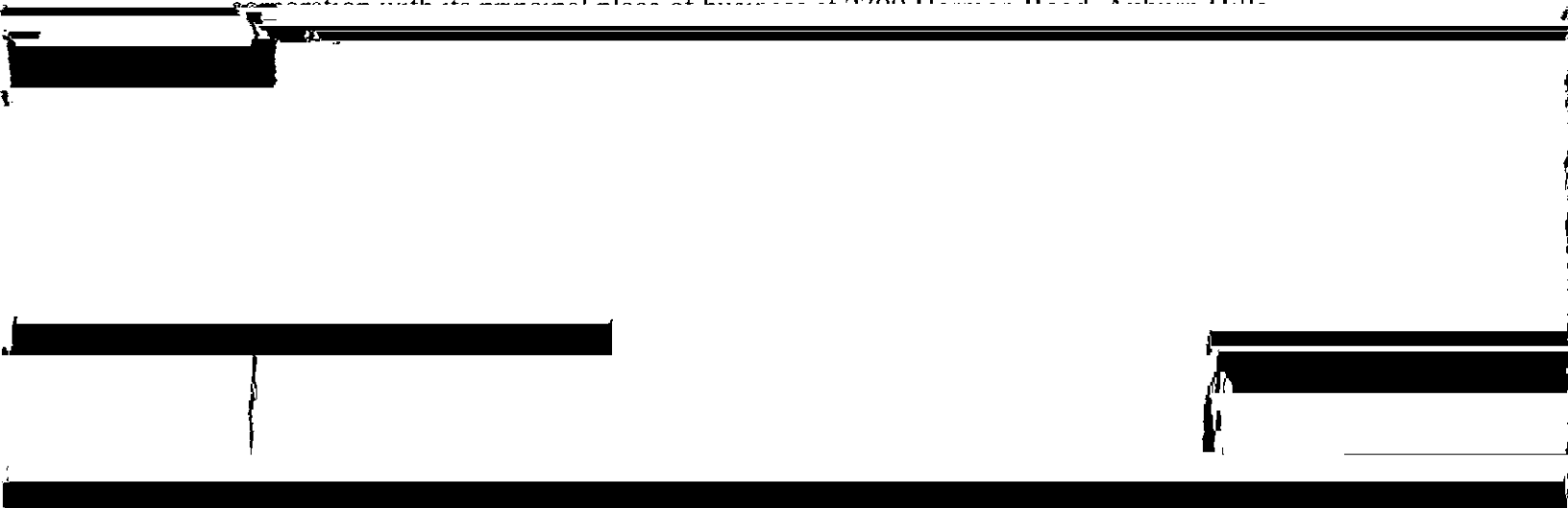
3. Plaintiff Burhans Glass Co., Inc. is a Pennsylvania corporation with its principal place of business at 110 E. Biedler Road, King of Prussia, Pennsylvania 19406. During the Class period, plaintiff purchased construction flat glass directly from one or more of the defendants herein and has been injured by reason of the antitrust violations alleged.

III.

DEFENDANTS

4. Defendant Guardian Industries Corp. ("Guardian") is a Delaware

corporation with its principal place of business at 2200 Lancaster Road, Auburn Hills, Michigan 48306.



the Class period, PPG manufactured and sold construction flat glass to customers in the United States.

6. Defendant Pilkington Group Limited (“Pilkington Group Limited”) is a UK corporation with its principal place of business at Prescott Road, St. Helens, Merseyside, WA10 3TT, United Kingdom. During the Class period, Pilkington Group Limited, directly or through its subsidiaries or affiliates, manufactured and sold construction flat glass to customers in the United States.

7. Defendant Pilkington North America Inc. (“Pilkington North America”), a subsidiary of the Pilkington Group Limited, is incorporated in Delaware with its principal place of business at 811 Madison Avenue, Toledo, Ohio 43604-5684. During the Class period, Pilkington North America, directly or through its subsidiaries or affiliates, manufactured and sold construction flat glass to customers in the United States.

8. Defendant Libbey-Owens-Ford Co. (“LOF”) is a Delaware corporation with its principal place of business at 811 Madison Avenue, Toledo, Ohio 43604-5684. During the Class period, LOF, directly or through its subsidiaries or affiliates, manufactured and sold construction flat glass to customers in the United States.

9. Defendant Nippon Sheet Glass Co., Limited (“NSG”) is incorporated in Japan with its principal place of business at 2-1-7 Kaigan, Minato-ku, Tokyo, 105-8552, Japan. During the Class period, NSG, directly or through its subsidiaries or affiliates, manufactured and sold construction flat glass to customers in the United States.

10. Defendant Compagnie de Saint-Gobain (“Saint-Gobain”) is a French corporation, with its principal place of business at La Défense, Les Miroirs 18, avenue d’Alsace 92400 Courbevoie, France. During the Class period, Saint Gobain, directly or

through its subsidiaries or affiliates, manufactured and sold construction flat glass to customers in the United States.

11. Defendant Saint-Gobain Corporation (“Saint-Gobain Corp.”) is a U.S. holding company incorporated in Pennsylvania with its principal place of business located at 750 East Swedesford Road, P.O. Box 860, Valley Forge, Pennsylvania 19482-0101. During the Class period, Saint Gobain Corp., directly or through its subsidiaries or affiliates, manufactured and sold construction flat glass to customers in the United States.

12. Defendant Asahi Glass Company Limited (“Asahi”) is incorporated under the laws of Japan with its principal place of business at 1-12-1, Yurakucho, Chiyoda-ku, Tokyo 100-8405, Japan. During the Class period, Asahi, directly or through its subsidiaries or affiliates, manufactured and sold construction flat glass to customers in the United States.

13. Defendant AGC Flat Glass North America is incorporated in Delaware with its principal place of business at 11175 Cicero Drive, Alpharetta, Georgia 30022-1166. Previously known as AFG Industries Inc., AGC Flat Glass North America is a subsidiary of Asahi. During the Class period, AGC Flat Glass North America, directly or through its subsidiaries or affiliates, manufactured and sold construction flat glass to customers in the United States.

#### IV

#### CO-CONSPIRATORS

14. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof.

V.

DEFINITIONS

15. As used herein, the term “construction flat glass” means glass produced through the float glass method where molten glass (a combination of sand, limestone, soda ash, dolomite, iron oxide and salt cake) is placed in a molten tin bath wherein it flows freely until it forms a flat ribbon under the influence of gravity and surface tension. Approximately 50% of the flat glass produced by this method is used in construction applications. Construction flat glass is a commodity product that is subject to standardization by various trade and industry associations.

16. As used herein, the term “Class period” shall mean the time period from October 1, 2000 through the date of the filing of this suit.

VI.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action under Rule 23, and particularly subsection (b) (3), of the Federal Rules of Civil Procedure, on behalf of itself and a class (the “Class”) consisting of all persons, excluding governmental entities, defendants, and subsidiaries and affiliates of defendants, who purchased directly, from one or more of the defendants

and/or their co-conspirators, construction flat glass, during the period in suit and such





(a) to fix, raise, maintain and stabilize the price of construction flat glass throughout the United States; and

(b) to fix, raise, maintain and stabilize the terms and conditions of sale of construction flat glass in the United States.

A. Defendants' Actions in the United States

27. At least as early as September 2000, after attending meetings of the Flat Glass Manufacturing Division of Glass Association of North America ("GANA"), defendants, within a few weeks of one another, agreed to announce energy surcharges on the construction of flat glass manufactured by them. These initial surcharges were based on "higher costs" of natural gas, which was a component used in the manufacture of construction flat glass.

28. Each defendant adopted the identical method for making the surcharge calculation. After setting a \$300 per truckload surcharge to take effect on October 16, 2000, defendants all utilized an index keyed to the quarterly average of the NYMEX 3-day average monthly contract settlement futures price for natural gas.

29. By January 1, 2001, defendants raised the energy surcharge to \$500 per truckload of raw glass. This surcharge was applied identically by all defendants regardless of the size or weight of the glass being shipped or picked up at the plant.

30. At some point in 2001, as a result of a decrease in natural gas prices, the energy surcharge was no longer being imposed. After attending meetings of GANA, all defendants re-implemented energy surcharges, effective in June 2002, despite continued low natural gas pricing. During the 2002-2003 time period, defendants also implemented price increases and a series of plant and line closures to cut back on excess capacity that



existed in the construction flat glass industry at that time. Despite these closures, capacity utilization was in the low to mid 80% range throughout the entire Class period.

31. As the economy improved in 2004, defendants imposed successfully at least two price increases for construction flat glass. Part of this success was attributable to the shutdowns of plants and lines that were designed to, and did, reduce inventory.

32. By the beginning of 2005, as a result of the earlier closures, capacity utilization had risen to 90%. However, as a result of falling natural gas prices, in March 2005 defendants were forced to lower their energy surcharges by \$100 to \$800 per truckload. However, to recoup this income, defendants met through GANA and, within one month of this reduction, announced the imposition of a \$100 diesel fuel surcharge which was to be adjustable based on the twelve week average price of diesel fuel published by the Department of Energy.

B. Defendants Actions in Europe

36. During the Class period, defendants participated jointly in meetings

about Europe during which they discussed and agreed to the level and timing of

[REDACTED]

stabilize flat glass prices through a series of hotel and restaurant meetings, during which they discussed and agreed to the level and timing of price increases, target prices, minimum prices and/or exchanged sensitive commercial information.

41. For the purpose of formulating and effectuating the aforesaid combination

and conspiracy, the defendants and their co-conspirators did those things that are

hereinbefore alleged, they combined and conspired to do.

#### IX.

#### EFFECTS

42. The aforesaid combination and conspiracy has had the following effects, among others:

(a) price competition in the sale of construction flat glass has been suppressed, restrained and eliminated;

(b) prices for construction flat glass have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels; and

As a result, plaintiff and each member of the Class it represents has been injured and damaged in an amount presently undetermined.

XI.

FRAUDULENT CONCEALMENT

44. The conduct hereinbefore described was accomplished by defendants and

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

the discovery of such conduct. Plaintiff had no knowledge of such conduct until

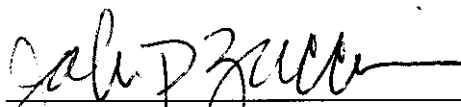
(c) each of the defendants, successors, assignees, subsidiaries and transferees, and their respective officers, directors, agents and employees, and all other persons acting

in concert therewith, be permanently enjoined and

[REDACTED]

restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding or concert of action, or adopting or following any practice, plan, program, or design, having a similar purpose or effect in restraining competition; and

(d) such other and further relief as may appear necessary and appropriate.

 1/29/08  
Elwood S. Simon  
John P. Zuccarini  
ELWOOD S. SIMON & ASSOCIATES

Steve W. Berman  
Anthony D. Shapiro  
HAGENS BERMAN SOBOL SHAPIRO, LLP  
1301 Fifth Avenue  
Suite 2900  
Seattle, WA 98101

Martin I. Grossman  
2121 Green Brier Drive  
[REDACTED]

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Ira Neil Richards  
TRUJILLO, RODRIGUEZ & RICHARDS, LLC  
1717 Arch Street  
Suite 3838  
Philadelphia, PA 19103

Attorneys for Plaintiff

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET** County in which this action arose

WAYNE/OAKLAND

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

BURHANS GLASS CO., INC

(b) County of Residence of First Listed Plaintiff PENNSYLVANIA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
ELWOOD S. SIMON  
355 S. OLD WOODWARD AVE, SUITE 250  
BIRMINGHAM, MT 48209 (248)646-9730

**DEFENDANTS**

GUARDIAN INDUSTRIES CORP, et al

County of Residence of First Listed Defendant OAKLAND  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Case: 2:08-cv-10415  
Judge: Feikens, John  
Referral MJ: Morgan, Virginia M

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**BURHANS GLASS V GUARDIAN (LMW)**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP**

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of this State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | incorporated or principal place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

[REDACTED]

**PURSUANT TO LOCAL RULE 83.11**

1. Is this a case that has been previously dismissed?

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

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