

Michael E. Haglund, OSB No. 772030
email: mhaglund@hk-law.com
Michael K. Kelley, OSB No. 853782
Email: kelley@hk-law.com
HAGLUND KELLEY, LLP
200 SW Market Street, Suite 1777
Portland, Oregon 97201
Phone: (503) 225-0777
Facsimile: (503) 225-1257

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

(Medford Division)

THERMO PRESSED LAMINATES, INC.,
an Oregon corporation,

Plaintiff,

v.

ARCLIN USA, LLC, a Delaware limited
liability company and **ARCLIN SURFACES,**
LLC, a Delaware limited liability company,

Defendants.

Case No.

COMPLAINT
Antitrust Action (28 U.S.C. § 1331)
DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is an action under federal and state antitrust laws, specifically Section 2(a) of the Robinson-Patman Act and Oregon's Anti-Price Discrimination Act, which prohibit the sale of goods of like grade and quality to different purchasers at different prices. Plaintiff is the owner and operator of a manufacturing plant in Klamath Falls, Oregon that produces thermo-fused melamine and laminated panels for resale throughout the United States. For more than 13 years dating back to January 1, 2000, plaintiff has purchased a commodity item, saturated melamine

paper in various colors and patterns from defendants, which are thermally fused to particle board, medium density fiberboard and plywood to produce panels utilized in a wide variety of applications.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the federal antitrust claim in this action pursuant to 28 U.S.C. §§ 1331 and 1337. Venue in this district is proper under 28 U.S.C. § 1391, because defendants transact business within this district and a substantial part of the events giving rise to plaintiff's claims occurred within this district.

PARTIES

3. Plaintiff Thermo Pressed Laminates, Inc. is an Oregon corporation with its principal place of business in Klamath Falls, Oregon.

4. Defendant Arclin USA, LLC, is a Delaware limited liability company that is headquartered in Atlanta, Georgia and engaged in the business of producing various surfaces for wood-based panels including saturated melamine paper that is impregnated with resins and other chemicals purchased by plaintiff and its competitors. Defendant Arclin Surfaces, LLC, is a Delaware limited liability company that, upon information and belief, is owned by co-defendant Arclin USA, LLC and is the entity that produces the saturated melamine paper purchased by plaintiff and its competitors.

5. Defendants are successors-in-interest to the following companies that filed a Chapter 11 bankruptcy proceeding in Delaware in 2009: Arclin US Holdings Inc.; Arclin U.S.A. Inc.; Arclin Surfaces Inc.; Arclin Chemicals Holding Inc.; Arclin Industries U.S.A. Inc.; Arclin Fort Smith Inc.; and Marmorandum LLC. Defendants are also the successors-in-interest to the

following companies that filed a petition to restructure their business and financial affairs under Canada's Companies' Creditors Arrangement Act in the Ontario Superior Court of Justice contemporaneous with the filing of the Chapter 11 proceeding in Delaware: Arclin Canada Ltd./Arclin Canada Ltd.; Arclin Holdings I L.P.; Arclin Holdings II L.P.; Arclin Holdings III Inc.; Arclin Holdings IV Inc.; and Arclin Management Holdings Inc. In an order dated December 8, 2009, the U.S. Bankruptcy Court in Delaware approved a plan of reorganization for defendants' predecessors-in-interest listed in this paragraph and specifically authorized defendants to succeed to all of the predecessor companies' assets and any liabilities that at the time were unknown as a result of fraud on the part of the predecessor companies. This is such a claim arising out of fraudulently concealed price discrimination by defendants and their predecessors-in-interest from 2000 to the present.

6. Defendants are also successors-in-interest to a predecessor company, Dynea North America, which was purchased in 2007 by the Ontario Teachers' Pension Plan, which subsequently reorganized Dynea North America into the predecessor companies described in paragraph 5.

7. Throughout the period of January 1, 2000 to the present, defendants or their predecessors-in-interest have held dominant market shares in the U.S. market for saturated melamine paper. In July 2012, defendants acquired Coveright Services, which put defendants in a monopoly market power position in the market for saturated melamine paper throughout the entirety of the United States, Canada and Mexico.

///

///

FIRST CLAIM FOR RELIEF
(Price Discrimination under Section 2(a)
of the Robinson-Patman Act)

8. Plaintiff realleges paragraph 1-7.

9. For a period of more than 13 years dating back to January 1, 2000, defendants or their predecessors-in-interest regularly sold saturated melamine paper to plaintiff and its competitors in the United States, who also use this commodity to manufacture thermo-fused melamine and laminated panels. A majority of these sales crossed state lines.

10. Each of the sales made by defendants and their predecessors-in-interest during this period was for use by manufacturers of thermo-pressed melamine and laminated panels in the United States.

11. The saturated melamine paper sold by defendants to plaintiff and its competitors is a commodity delivered to each customer on pallets that were physical items of like grade and quality.

12. Throughout the period described above, defendants engaged in illegal discriminatory conduct – that is charging different prices to different purchasers for the same commodity. At all materials times, plaintiff was charged higher prices than those charged to all or most of its competitors. Plaintiff was and continues to be discriminated against by defendants in terms of the pricing for defendants' saturated melamine paper, which is sold in various colors and patterns and shipped by product in palletized units. Specifically, plaintiff was charged and continues to be charged higher prices for defendants' saturated melamine paper than the prices charged to all or most of its competitors. In addition, plaintiff has been and continues to be

denied the availability of 1% discounts made available to other customers for payment within 14 days of an invoice.

13. Defendants' price discrimination has resulted in significant harm to competition. Throughout the more than 13 years of price discrimination, plaintiff was unable to compete effectively for sales to customers against those of its competitors who were the beneficiaries of lower pricing on the same products from defendants.

14. Plaintiff did not discover this price discrimination by defendants until April 2013 when defendants inadvertently forwarded to plaintiff an invoice actually intended for one of plaintiff's competitors. That invoice showed that plaintiff was being charged prices approximately 10% higher than those on the invoice to its competitor and that this competitor was being provided both with a 1% discount for paying invoices within 14 days and a credit of \$9.00 per pallet returned to defendants' manufacturing plant.

15. Throughout the more than 13-year period of price discrimination, plaintiff periodically inquired of defendants' and its predecessors' sales representatives whether there was any potential for better pricing. In each case, defendants' sales representative stated that the price sheet provided to plaintiff was the same for all of defendants' customers. This price sheet lists defendants' pricing for more than 75 different solid color and wood grain saturated melamine paper products.

///

///

///

///

16. During this lengthy period of price discrimination, defendants fraudulently concealed their price discrimination by producing price sheets that were represented to disfavored customers like plaintiff as the same prices charged to all customers when in fact that representation was false. A copy of the price sheet provided to plaintiff before discovery of defendants' price discrimination is attached as Exhibit A.

17. Following receipt of the Arclin invoice intended by defendants for one of plaintiff's competitors, plaintiff met twice, on April 25 and May 15, 2013, with defendants' sales representative to protest the discriminatory pricing and in an attempt to obtain fair and equal pricing. In those meetings, defendant's sales representative admitted that defendants' pricing on saturated melamine paper was largely "ad hoc" and that it varied significantly by customer, depending upon the volume purchased. This representative also admitted that defendants' price sheets were individualized by customer and that "the big guys get preferential pricing."

18. In the April 25 and May 15, 2013 meetings, plaintiff requested that defendants supply a list of the volume discounts provided to other customers, but defendant refused (and continues to refuse) to provide that information. Plaintiff also sought pricing equal to that of its other competitors. Defendants' response was to reduce the pricing to plaintiff, but only for the specific products shown on the inadvertently forwarded invoice. In fact, defendants refused either to provide information about the pricing provided to other customers on other products or to modify plaintiff's entire price sheet to eliminate the ongoing price discrimination on other products within its saturated melamine paper line. A copy of the most recently issued price sheet from defendants showing with highlighting those products on which the prices were reduced to that of one competitor is attached as Exhibit B.

19. Saturated melamine paper is a significant cost in the production of the thermally fused melamine and laminated panels produced by plaintiff and its competitors. During the period of January 1, 2000 through June 30, 2013, plaintiff purchased \$15.0 million of saturated melamine paper from defendants and their predecessors-in-interest.

20. As a result of defendants' discriminatory pricing in violation of the Robinson-Patman Act, and assuming a 10% price differential during the period between January 1, 2000 and June 30, 2013, plaintiff has suffered damages in the form of lost profits of approximately \$1.5 million, which under the Robinson-Patman Act are trebled to \$4.5 million. In addition, as a result of the loss of multiple customers and market share over this period, plaintiff suffered additional lost profits in an amount to be determined at trial.

21. As a result of defendants' ongoing price discrimination, plaintiff has lost a significant number of customers to competitors receiving more favorable pricing from defendants. This has forced plaintiff to substantially reduce the scale of its operations, lay off over half of what had been a 32-person workforce and reduce wages and benefits for the 15 employees who remain.

22. Because defendants have refused to stop their ongoing price discrimination and equalize the pricing of their commodity saturated melamine paper products consistent with the terms of the Robinson-Patman Act, plaintiff continues to suffer ongoing price discrimination and lost profits from July 1, 2013 in an amount which will be proven at trial.

23. Defendants should be preliminarily and permanently enjoined from engaging in continued price discrimination against plaintiff in violation of the Robinson-Patman Act.

24. Plaintiff is also entitled to an award of its reasonable attorney's fees and investigative costs in connection with prosecuting this claim.

SECOND CLAIM FOR RELIEF
(Violation of ORS 646.040,
Oregon's Anti-Price Discrimination Law)

25. Plaintiff realleges paragraph 1-24.

26. Defendants' price discrimination against plaintiff violates Oregon's Anti-Price Discrimination Law, ORS 646.010-646.180.

27. As a result of defendants' illegal price discrimination, and assuming that the maximum pricing differential between defendants' pricing to plaintiff and that provided to the competitor of plaintiff most favored by defendants was 10% during the period of January 1, 2000 through June 30, 2013, plaintiff suffered \$1.5 million in damages from the price differential alone, which is conclusively presumed under ORS 646.160. These damages, which are trebled under ORS 646.150(1), total to \$4.5 million.

28. Because defendants have refused to stop their ongoing price discrimination and equalize the pricing of their commodity saturated melamine paper products consistent with the terms of Oregon's Anti-Price Discrimination Law, plaintiff continues to suffer ongoing price discrimination and lost profits from July 1, 2013 in an amount which will be proven at trial.

29. Defendants should be preliminarily and permanently enjoined from engaging in continued price discrimination against plaintiff in violation of ORS 646.040.

///

///

///

30. Pursuant to ORS 646.140(1), plaintiff is also entitled to an award of its reasonable attorney's fees and investigative costs in connection with prosecuting this claim.

WHEREFORE, plaintiff prays for the following:

1. On its First Claim for Relief, for preliminary and permanent injunctions against any further price discrimination by defendants and for damages of \$1.5 million, which under the federal antitrust laws are trebled to \$4.5, plus additional damages to be proven at trial;

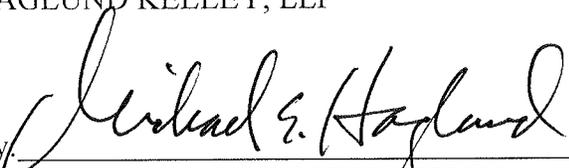
2. On its Second Claim for Relief, for preliminary and permanent injunctions against any further price discrimination by defendants and for damages of \$1.5 million, which under ORS 646.140 are trebled to \$4.5 million plus additional damages to be proven at trial;

3. For an award of its reasonable attorney's fees, investigative costs and costs and disbursements incurred herein; and

4. For other relief deemed appropriate by this Court.

DATED this 2nd day of August, 2013.

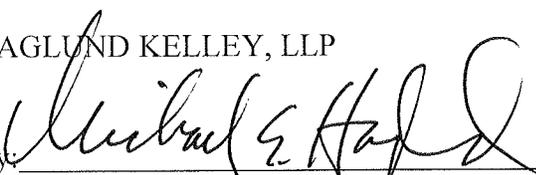
HAGLUND KELLEY, LLP

By: 
Michael E. Haglund, OSB No. 772030
Attorneys for Plaintiff

Plaintiff demands a trial by jury.

DATED this 2nd day of August, 2013.

HAGLUND KELLEY, LLP

By: 
Michael E. Haglund, OSB No. 772030