

DAVID J. GARCIA
DISTRICT CLERK
BEXAR COUNTY, TEXAS

ORIGINAL

CHROMALLOY GAS TURBINE
CORPORATION

VS.

UNITED TECHNOLOGIES
CORPORATION

[Handwritten Signature]
C.R.T.

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225th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this Charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the Court, that is, what you have seen and heard in this courtroom, together with the law as given you by the Court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the Charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions and do not discuss nor concern yourselves with the effect of your answers.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the Judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the Court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." "Preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

When words are used in this Charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

QUESTION NO. 1:

Did Pratt & Whitney engage in monopolistic conduct which was a material cause of injury to Chromalloy ?

"Monopolistic conduct" means: (1) the possession of monopoly power in a relevant market, and (2) the willful acquisition or maintenance of that power in that market by engaging in exclusionary conduct, as opposed to acquiring or maintaining monopoly power through a superior product, superior business skill or historic accident.

"Monopoly power" means the power to control prices or exclude competition.

"Relevant market" has two parts: (1) the products or services that fall within the same competitive area; and, (2) the geographic area in which those products or services compete. Stated differently, a relevant market may consist of producers who have the actual or potential ability to deprive each other of significant levels of business. Parties may compete in one or more relevant product or service markets. A relevant product or service market consists of those products or services that are reasonable substitutes for one another from the consumer's point of view. Although products or services do not have to be identical to be in the same relevant market, they must compete meaningfully with each other. The relevant geographic market consists of the area or areas in which sellers or suppliers of a product or service compete with one another. The geographic market must correspond to the commercial realities of the industry and be economically significant.

"Exclusionary conduct" means acts or practices that unreasonably or unnecessarily exclude or restrict competition and do not have a legitimate business justification.

"Legitimate business justification" means acts or practices that provide benefits to consumers. A "legitimate business justification" must have been an actual purpose for the acts or practices and must have been in existence when the acts or practices occurred. A desire to increase profits, standing alone, is not a "legitimate business justification." An act or practice is a legitimate business justification if it promotes efficiency by controlling or reducing costs, enhances the quality of a product, or otherwise benefits consumers in a relevant market. Although a company with or without monopoly power may deal or refuse to deal with whomever it pleases, a company with monopoly power that lacks a "legitimate business justification" may not refuse to deal with its competitors in a manner that unnecessarily or unreasonably restricts or excludes competition in a relevant market.

"Material cause of injury" means an injury that flows from or is otherwise reasonably attributable to the exclusionary or restrictive conduct. To be a material cause, the exclusionary or restrictive conduct does not need to be the sole cause of the injury but a significant contributing factor.

Answer "Yes" or "No."

... then answer the following?

Answer: No

If you have answered the preceding Question "Yes," then answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 2:

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Chromalloy for its damages, if any, resulting from such conduct by Pratt & Whitney?

Consider the following element of damages, if any, and none other: Lost profits.

"Profits" mean net profits; that is, the difference between the total gross revenues of a business and the expenses and costs of carrying on that business.

"Lost profits" means the difference, if any, between the net profits Chromalloy would have obtained had the conduct in question not occurred, and Chromalloy's actual net profits.

If you find that Chromalloy's claim for monopolistic conduct, if any, of the relevant markets for parts, if any, to which the HPC outer shroud detail repair or the cherry rivet repair applies accrued before August 29, 1991, then do not include any damages with respect to such repairs for the period prior to August 29, 1991.

Do not include in your answer any amount that you find Chromalloy could have avoided by the exercise of reasonable care.

Answer in dollars and cents, if any.

Answer: _____

If you have answered Question No. 1 "Yes," then answer the following Question.
Otherwise, do not answer the following Question.

QUESTION NO. 3:

In reasonable probability will such conduct by Pratt & Whitney cause irreparable injury to Chromalloy?

"Irreparable injury" means an injury of such nature that the injured party cannot be adequately compensated for the injury in money damages, or that the injury cannot be measured by any certain pecuniary standard.

Answer "Yes" or "No."

Answer: _____

If you have answered "Yes" to Question No. 1, then answer the following Question. Otherwise, do not answer this Question.

QUESTION NO. 4:

Did Pratt & Whitney engage in such conduct willfully or flagrantly?

In answering this question only, you are instructed as follows:

"Willfully" means purposeful intent to injure. "Flagrantly" means an act carried out with flagrant disregard for the rights of others.

Answer "Yes" or "No."

Answer: _____

If you have answered Question No. 1 "No," then answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 5:

Did Pratt & Whitney attempt to engage in monopolistic conduct which was a material cause of injury to Chromalloy?

"Attempt to engage in monopolistic conduct" means (1) a party has engaged in exclusionary conduct (2) with the specific intent to acquire or maintain monopoly power and (3) there is a dangerous probability of the party achieving monopoly power in a relevant market.

"Exclusionary conduct" means acts or practices that unreasonably or unnecessarily exclude or restrict competition and do not have a legitimate business justification.

"Legitimate business justification" means acts or practices that provide benefits to consumers. A "legitimate business justification" must have been an actual purpose for the acts or practices and must have been in existence when the acts or practices occurred. A desire to increase profits, standing alone, is not a "legitimate business justification." An act or practice is a legitimate business justification if it promotes efficiency by controlling or reducing costs, enhances the quality of a product, or otherwise benefits consumers in a relevant market.

"Monopoly power" means the power to control prices or exclude competition.

"Relevant market" has two parts: (1) the products or services that compete with each other; and, (2) the geographic area in which these products or services compete. Stated differently, a relevant market may consist of producers who have the actual or potential ability to deprive each other of significant levels of business. Parties may compete in one or more relevant markets. The relevant product or service market consists of those products or services that are reasonable substitutes for one another from the consumer's point of view. Although products or services do not have to be identical to be in the same relevant market, they must compete meaningfully with each other. The relevant geographic market consists of the area or areas in which sellers or suppliers of a product or service compete with one another. The geographic market must correspond to the commercial realities of the industry and be economically significant.

"Material cause of injury" means an injury that flows from or is otherwise reasonably attributable to the exclusionary or restrictive conduct. To be a material cause, the exclusionary or restrictive conduct does not need to be the sole cause of the injury but only a significant contributing factor.

Answer "Yes" or "No."

Answer: Yes

If you have answered the preceding Question "Yes," then answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 6:

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Chromalloy for its damages, if any, resulting from such attempted conduct by Pratt & Whitney?

Consider the following element of damages, if any, and none other: Lost profits.

"Profits" means net profits; that is, the difference between the total gross revenues of a business and the expenses and costs of carrying on that business.

"Lost profits" means the difference, if any, between the net profits Chromalloy would have obtained had the conduct in question not occurred, and Chromalloy's actual net profits. PROFITS (2)

If you find that Chromalloy's claim for attempted monopolistic conduct, if any, of the relevant markets for parts, if any, to which the HPC outer shroud detail repair or the cherry rivet repair applies accrued before August 29, 1991, then do not include any damages with respect to such repairs for the period prior to August 29, 1991.

Do not include in your answer any amount that you find Chromalloy could have avoided by the exercise of reasonable care.

Answer in dollars and cents, if any.

Answer: NO

If you have answered Question No. 5 "Yes," then answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 7:

In reasonable probability will such attempted conduct by Pratt & Whitney cause irreparable injury to Chromalloy?

"Irreparable injury" means an injury of such nature that the injured party cannot be adequately compensated for the injury in money damages, or that the injury cannot be measured by any certain pecuniary standard.

Answer "Yes" or "No."

Answer: No

If you have answered "Yes" to Question No. 5, then answer this Question. Otherwise, do not answer this Question.

QUESTION NO. 8:

Did Pratt & Whitney attempt to engage in such conduct willfully or flagrantly?

In answering this Question only, you are instructed as follows:

"Willfully" means purposeful intent to injure. "Flagrantly" means an act carried out with flagrant disregard for the rights of others.

Answer "Yes" or "No."

Answer: Yes

QUESTION NO. 9:

Did Chromalloy engage in unfair competition in any of the following respects:

"Unfair competition" means any practice, act or conduct by a company that is reasonably likely to deceive its customers into believing that its work is approved, endorsed or authorized by another company.

- a. Certifying to customers that Chromalloy Orangeburg's weld wire repairs to the "knife edges" of bearings seals contained in Pratt & Whitney JT9D engines had been accomplished in accordance with Pratt & Whitney repair specifications?

Answer "Yes" or "No."

Answer: Yes

- b. Certifying to Qantas Airlines that Pratt & Whitney had authorized Chromalloy Orangeburg and Fort Walton Beach to perform Pratt & Whitney Service Bulletin 5451 in repairing a Pratt & Whitney JT9D low pressure turbine case?

Answer "Yes" or "No."

Answer: Yes

- c. Certifying to Qantas Airlines that Chromalloy Orangeburg and Fort Walton Beach had repaired a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines in accordance with Pratt & Whitney Service Bulletin 5451?

Answer "Yes" or "No."

Answer: Yes

- d. Certifying to United Airlines that Chromalloy's Turbine Support Division had installed "felt metal" in Pratt & Whitney PW 4000 engines owned by United Airlines in accordance with Pratt & Whitney repair specifications?

Answer "Yes" or "No."

Answer the corresponding

Answer: Yes

If your answer to any part of Question No. 9 is "Yes," then answer the corresponding part or parts of the following question. Otherwise, do not answer the following question.

QUESTION NO. 10:

In reasonable probability, will Chromalloy's unfair competition cause irreparable injury to Pratt & Whitney in any of the following respects:

"Irreparable injury" means an injury of such nature that the injured party cannot be adequately compensated for the injury in money damages, or that the injury cannot be measured by any certain pecuniary standard.

- a. Chromalloy's certification to customers that Chromalloy Orangeburg's weld wire repairs to the "knife edges" of bearing seals contained in Pratt & Whitney JT9D engines had been accomplished in accordance with Pratt & Whitney repair specifications?

Answer "Yes" or "No."

Answer: No

- b. Chromalloy's certification to Qantas Airlines that Pratt & Whitney had authorized Chromalloy Orangeburg and Fort Walton Beach to perform Pratt & Whitney Service Bulletin 5451 in repairing a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines?

Answer "Yes" or "No."

Answer: No.

- c. Chromalloy's certification to Qantas Airlines that Chromalloy Orangeburg and Fort Walton Beach had repaired a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines in accordance with Pratt & Whitney Service Bulletin 5451?

Answer "Yes" or "No."

Answer: NO

- d. Chromalloy's certification to United Airlines that Chromalloy's Turbine Support Division had installed "felt metal" in Pratt & Whitney PW 4000 engines owned by United Airlines in accordance with Pratt & Whitney repair specifications?

Answer "Yes" or "No."

Answer: NO

QUESTION NO. 11:

Did Chromalloy engage in misappropriation of Pratt & Whitney's data and drawings to manufacture parts for Chromalloy's Quantum Division's own use in performing repairs?

"Misappropriation" means the unauthorized use by one company of property, such as data and drawings, developed or created through another company's extensive time, labor, skill and money, to gain a special advantage in competing with the company who developed or created the property.

Answer "Yes" or "No."

Answer: Yes

If your answer to Question No. 11 is "Yes," then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 12:

In reasonable probability, will Chromalloy's misappropriation cause irreparable injury to Pratt & Whitney?

"Irreparable injury" means an injury of such nature that the injured party cannot be adequately compensated for the injury in money damages, or that the injury cannot be measured by any certain pecuniary standard.

Answer "Yes" or "No."

Answer: NO

If your answer to Question No. 9(a), 9(b) or 9(c) is "Yes," then answer the corresponding part or parts of the following question. Otherwise, do not answer the following question.

QUESTION NO. 13:

Did Chromalloy fraudulently conceal from Pratt & Whitney facts giving rise to any of the following claims of unfair competition:

A party "fraudulently conceals" facts giving rise to a claim if:

- the party knows those facts;
- the party has a fixed purpose to conceal those facts;
- the party actively conceals those facts; and
- the party's concealment of those facts is reasonably relied upon by another party.

- a. Chromalloy's certification to customers that Chromalloy Orangeburg's weld wire repairs to the "knife edges" of bearing seals contained in Pratt & Whitney JT9D engines had been accomplished in accordance with Pratt & Whitney repair specifications?

Answer "Yes" or "No."

Answer: Yes

- b. Chromalloy's certification to Qantas Airlines that Pratt & Whitney had authorized Chromalloy Orangeburg and Fort Walton Beach to perform Pratt & Whitney Service Bulletin 5451 in repairing a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines?

Answer "Yes" or "No."

Answer: Yes

- c. Chromalloy's certification to Qantas Airlines that Chromalloy Orangeburg and Fort Walton Beach had repaired a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines in accordance with Pratt & Whitney Service Bulletin 5451?

Answer "Yes" or "No."

Answer: Yes

If your answer to Question No. 9(a), 9(b) or 9(c) is "Yes," then answer the corresponding part or parts of the following question. Otherwise, do not answer the following question.

QUESTION NO. 14:

Did Pratt & Whitney discover or, in the exercise of reasonable diligence, should Pratt & Whitney have discovered the facts giving rise to any of the following claims of unfair competition before December 28, 1993:

- a. Chromalloy's certification to customers that Chromalloy Orangeburg's weld wire repairs to the "knife edges" of bearing seals contained in Pratt & Whitney JT9D engines had been accomplished in accordance with Pratt & Whitney repair specifications?

Answer "Yes" or "No."

Answer: Yes

- b. Chromalloy's certification to Qantas Airlines that Pratt & Whitney had authorized Chromalloy Orangeburg and Fort Walton Beach to perform Pratt & Whitney Service Bulletin 5451 in repairing a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines?

Answer "Yes" or "No."

Answer: Yes

c. Chromalloy's certification to Qantas Airlines that Chromalloy Orangeburg and Fort Walton Beach had repaired a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines in accordance with Pratt & Whitney Service Bulletin 5451?

Answer "Yes" or "No."

Answer: Yes

QUESTION NO. 15:

Did the manner in which Chromalloy's Turbine Support Division installed "felt metal" in Pratt & Whitney PW 4000 engines owned by United Airlines fail to comply with a material obligation of the November 21, 1990 Repair Process Agreement between Pratt & Whitney and Chromalloy's Turbine Support Division?

You are instructed that an obligation is "material" if a failure to perform or comply with the obligation deprives the other party of a substantial benefit that it could have reasonably anticipated from full performance.

Answer "Yes" or "No."

Answer: Yes

If you have answered "Yes" to any part of Question No. 9, then answer the corresponding part of Question No. 16. If you have answered "Yes" to Question No. 11, then answer Question No. 16(e).

QUESTION NO. 16:

Has Pratt & Whitney waived the following claims:

Waiver is the intentional relinquishment of a known right or intentional conduct inconsistent with claiming that right.

- a. Pratt & Whitney's unfair competition claim based on Chromalloy's certification to customers that Chromalloy Orangeburg's weld wire repairs to the "knife edges" of bearings seals contained in Pratt & Whitney JT9D engines had been accomplished in accordance with Pratt & Whitney repair specifications?

Answer "Yes" or "No."

Answer: No

- b. Pratt & Whitney's unfair competition claim based on Chromalloy's certification to Qantas Airlines that Pratt & Whitney had authorized Chromalloy Orangeburg and Fort Walton Beach to perform Pratt & Whitney Service Bulletin 5451 in repairing a Pratt & Whitney JT9D low pressure turbine case.

Answer "Yes" or "No."

Answer: No

c. Pratt & Whitney's unfair competition claim based on Chromalloy's certification to Qantas Airlines that Chromalloy Orangeburg and Fort Walton Beach had repaired a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines in accordance with Pratt & Whitney Service Bulletin 5451.

Answer "Yes" or "No."

Answer: No

d. Pratt & Whitney's unfair competition claim based on Chromalloy's certification to United Airlines that Chromalloy's Turbine Support Division had installed "felt metal" in Pratt & Whitney PW 4000 engines in accordance with Pratt & Whitney repair specifications.

Answer "Yes" or "No."

Answer: No

e. Pratt & Whitney's claim based on Chromalloy's misappropriation of Pratt & Whitney's data and drawings to manufacture parts for Chromalloy's Quantum Division's own use in performing repairs.

Answer "Yes" or "No."

Answer: No

If you have answered "Yes" to Question No. 9(d), then answer Question No. 17(d). If you have answered "Yes" to Question No. 11, then answer Question No. 17(e).

QUESTION NO. 17:

- a. Did Chromalloy's certification to customers that Chromalloy Orangeburg's weld wire repairs to the "knife edges" of bearings seals contained in Pratt & Whitney JT9D engines had been accomplished in accordance with Pratt & Whitney repair specifications occur before December 28, 1993?
- b. Did Chromalloy's certification to Qantas Airlines that Pratt & Whitney had authorized Chromalloy Orangeburg and Fort Walton Beach to perform Pratt & Whitney Service Bulletin 5451 in repairing a Pratt & Whitney JT9D low pressure turbine case occur before December 28, 1993?
- c. Did Chromalloy's certification to Qantas Airlines that Chromalloy Orangeburg and Fort Walton Beach had repaired a Pratt & Whitney JT9D low pressure turbine case owned by Qantas Airlines in accordance with Pratt & Whitney Service Bulletin 5451 occur before December 28, 1993?
- d. Did Chromalloy's certification to United Airlines that Chromalloy's Turbine Support Division had installed "felt metal" in Pratt & Whitney PW 4000 engines in accordance with Pratt & Whitney repair specifications occur before December 28, 1993? .

Answer "Yes" or "No."

Answer: No

c. Did Chromalloy's misappropriation of Pratt & Whitney's data and drawings to manufacture parts for Chromalloy's Quantum Division's own use in performing repairs occur before December 28, 1993?

Answer "Yes" or "No."

Answer: Yes

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is have this complete Charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror -

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this Charge,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.


JUDGE PRESIDING

CERTIFICATE

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

Harvey Jackson
Presiding Juror

(To be signed by those rendering the verdict if not unanimous.)

Blanca S. Vignier
Alma C. Wilson
Anna S. Mercer
Carmen S. Twiss
Esther Wilson
Emily P. White

Rose Patterson
Edith S.
Lina St. Jacques
Rudolph S. Garcia
Mary C. Buschardt
Harvey Jackson

FILED IN 18