



## Preliminary Instructions

### 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.

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 definition or meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and 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 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.

#### Specific Definitions and Instructions

##### Equality of the Parties

All persons, including corporations, small businesses and individuals, are equal before the law and must be treated as equals in a court of justice.

##### Definition of "Person"

The word "person" means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized.

##### Definition of Coca-Cola Enterprises Inc.

For purposes of this jury charge, you are instructed that defendant Coca-Cola Enterprises Inc. includes Coca-Cola Bottling Company of North Texas, Valley Coca-Cola Bottling Company, Austin Coca-Cola Bottling Company, Coca-Cola Bottling Company of Texarkana, Coca-Cola Bottling Company of Shreveport, Sulphur Springs Coca-Cola Bottling Company (after January 1999), and Ouachita Coca-Cola Bottling Company (after February 21, 1996).

## Authority

Under the law, a corporation is a person, but it can act only through its agents — such as its directors, officers; employees, or others acting on its behalf. A corporation is not capable in law of conspiring with its own agents or employees, nor can a corporation conspire with its unincorporated divisions or its wholly-owned subsidiaries. Through its employees and agents, however, it is capable of conspiring with other persons or independent corporations.

A corporation is legally bound by the acts and the statements of its agents or employees done or made within the scope of their employment or their apparent authority.

Acts done within the scope of employment are acts performed on behalf of a corporation and directly related to the performance of the duties the agent or employee has general authority to perform. Apparent authority is the authority that outsiders could reasonably assume the agent or employee would have, judging from his position with the company, the responsibilities previously entrusted to him or his office, and the circumstances surrounding his past conduct.

## Instructions Applicable to Questions 1 through 4

The following definitions and instructions apply to Questions 1 through 4 below.

### Elements of Claim of Conspiracy to Unreasonably Restrain Trade

To establish their claim of a conspiracy to unreasonably restrain trade plaintiffs must prove the following elements by a preponderance of the evidence:

**First**, that a conspiracy existed;

**Second**, that defendants knowingly became a member of that conspiracy; knowingly means voluntarily and intentionally, and not because of mistake or accident or other innocent reason;

**Third**, that the conspiracy constituted an unreasonable restraint of trade; and

**Fourth**, that defendants' activities occurred in or affected any part of trade or commerce.

## Conspiracy

A conspiracy is a combination by two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means. The essence of a conspiracy is an agreement between two or more persons to violate or disregard the law. A conspiracy cannot be formed unless at least two separate persons or corporations reach an agreement or understanding.

## Evaluation of Restraint

In determining whether the alleged restraint was unreasonable, you may consider such factors as the particular business of defendants; the condition of the market before and after the alleged restraint was imposed; the nature of the alleged restraint and its effect on competition; the history of the alleged restraint; the reason for adopting the alleged restraint; and defendants' purpose or intent.

In order to show that the alleged restraint was unreasonable, plaintiffs must prove the following elements by a preponderance of the evidence:

**First**, what the relevant market is;

**Second**, that defendants' alleged restraint or practice had a substantially harmful effect on competition in that relevant market; and

**Third**, that the harmful effect on competition outweighs any beneficial effect on competition.

### Relevant Market

Wherever you see the term "relevant market" in this charge, you are instructed that the following instructions apply.

With respect to their claims for conspiracy in unreasonable restraint of trade, monopolization, attempted monopolization and conspiracy to monopolize, the first thing plaintiffs must prove with respect to each claim is what "relevant market" defendants' businesses are in. There are two aspects you must consider in determining whether plaintiffs have proven the relevant market. The first is the relevant product market; the second is the relevant geographic market.

The basic idea of a relevant product market is that the products within it are reasonable substitutes from a consumer's point of view; that is, the products compete with each other. This does not mean that products must be identical to be in the same relevant product market. It means that, as a matter of practical fact and the actual behavior of consumers, the products are reasonable substitutes for the consumer's needs.

In sum, to determine the relevant product market, you must decide which products compete with each other. This is a practical determination. Products do not have to be identical to be in the same relevant market, but they must compete meaningfully with each other.

The other aspect of relevant market to be considered is the geographic area within which the products compete. This relevant geographic market can be as large as the entire world or the United States or as small as a single community.

The relevant geographic market is the area in which defendants face competition from suppliers that are in the relevant product market, and to which a retailer can practicably turn for supplies.

To determine the proper geographic market, you may consider if changes in prices at one location have fairly direct substantial effects on prices or sales at other locations, and if the people in the industry and the public at large view sellers in the different locations as being in competition with each other. Such evidence would tend to prove that the different locations are in the same relevant geographic market.

You also may consider how readily sellers can and do shift from selling in one location to selling in another. Evidence that sellers shift readily among different locations in response to price changes would tend to indicate that the different locations are in the same geographic market.

In addition, you may consider where purchasers as a practical matter, can and do buy the product; that is, whether buyers residing in one area buy from the same sources as buyers residing in another area or if they buy from local sources rather than more distant sources because they find it more convenient or practical to do so. In this regard, you may consider whether an increase in prices charged by suppliers in one location would cause a substantial number of purchasers to turn to more remote sources of supply. If so, the two locations are part of the same geographic market.

### Effect on Competition

Plaintiffs must show that the claimed restraint harmed overall competition in the relevant market, not just that it harmed plaintiffs or plaintiffs' businesses.

In determining whether defendants' alleged restraint had a harmful effect on competition in the relevant market, you should consider the nature of the claimed restraint, the history of the alleged restraint, the structure of the market, and defendants' position in the market. You should look at such factors as the number of companies or firms in the market, the reasons and the way in which the alleged restraint was imposed, and the nature of the market before and after the contended restraint was imposed.

If you find that the alleged restraint did harm competition in the relevant market, you must then consider the extent to which competition was harmed. A restraint is unreasonable only if it substantially harms competition. A restraint that has only a slight or insubstantial impact on competition is not unreasonable or unlawful.

In determining if the alleged restraint here substantially harmed competition, you should consider defendants' market power and how much of the relevant market was affected by defendants' alleged restraint. If defendants have little market power or defendants' alleged restraint affects only a small part of the market, then it is less likely that defendants' alleged restraint had a substantial effect on the competition in the market. In considering whether defendants have market power, you may consider defendants' market share, but market share may not always, by itself, show defendants' market power.

You also should consider whether the restraint influenced or affected the price, output, or product quality in the relevant market. Where a restraint does not affect price, output, or product quality, it is unlikely to substantially harm competition.

If you find that plaintiffs have proved a relevant market and that defendants' alleged restraint had a substantially harmful effect on competition in that market, you must also weigh any effects of the alleged restraint that are helpful to competition against any harmful effects. If the beneficial effects outweigh the harmful effects, or if the net effect on competition is harmful but insubstantial, the alleged restraint is not unreasonable or unlawful.

The fact that a restraint does not provide any benefit to competition does not necessarily mean that it is unreasonable, however. If the alleged restraint has only a slight or insubstantial adverse impact on competition, it is not unreasonable or unlawful even if it does not benefit competition.

In determining whether the restraint was unreasonable, you also may consider defendants' purpose in imposing the restraint. A purpose or intent to harm competition, by itself, is not sufficient to establish that a restraint of trade was unreasonable. Effect, not intent, is the ultimate test. However, consideration of the purpose of the restraint may help you determine if it likely would have a harmful effect on competition. You may consider, for example, whether defendants imposed the alleged restraint to achieve a legitimate business purpose and, if so, whether the claimed restraint was tailored to achieve that legitimate business purpose or, rather, was broader than necessary.

A firm has no general duty to help its competitors, no matter how much power it has in the market.

### Trade or Commerce

Wherever in this charge the terms "trade" or "commerce" are used, the following definition applies.

The terms "trade" and "commerce" mean the sale, purchase, lease, exchange or distribution of any goods or services wholly or partly within the State of Texas; the offering for sale, purchase, lease or exchange of any goods or services wholly or partly within the State of Texas; the advertising of any goods or services; the business of insurance wholly or partly within the State of Texas; and all other economic activity undertaken in whole or in part for the purpose of financial gain involving or relating to any goods or services wholly or partly within the State of Texas.

### Elements of Monopolization Claim

On their claim of monopolization, plaintiffs must have proved each of the following elements by a preponderance of the evidence:

**First**, that defendants had monopoly power in a relevant market;

**Second, that defendants willfully acquired or maintained that power as distinguished from growth or development as a consequence of the superior product, business acumen, or historical accident; and**

**Third, that defendants' activities occurred in or affected any part of trade or commerce.**

### Monopoly Power Defined

Monopoly power is the power to control prices in or to exclude competition from the relevant market.

The power to exclude competition means the power of a company to dominate a market by eliminating existing competition from that market or by preventing new competition from entering the market.

### Willful Acquisition of Monopoly Power

To prove defendants acted willfully, plaintiffs must prove either that defendants engaged in predatory or exclusionary acts or practices with the conscious object of furthering the dominance of defendants in the relevant market or that this was the necessary direct consequence of defendants' conduct or business arrangements.

Predatory or exclusionary conduct is conduct that has the effect of preventing or excluding competition or frustrating or impairing the efforts of other firms to compete for customers within a relevant market. It is not necessary that such conduct be unlawful in and of itself, apart from its effect in securing or maintaining one or more of the defendants' monopoly power.

You may not find that a company willfully acquired or maintained monopoly power if it has acquired or maintained that power solely through the exercise of superior foresight and skill; or because of natural advantages, such as unique geographic access to raw materials or markets; or because of economic or technological efficiency, including efficiency resulting from scientific research; or by obtaining a lawful patent; or because a change in cost or taste has driven out all but one supplier; or simply because the market is so limited that it is impossible to efficiently produce the product except by a plant large enough to supply the whole demand. The acts or practices that result in the acquisition or maintenance of monopoly power must represent something more than the conduct of business that is part of the normal competitive process or extraordinary commercial success. They must represent conduct that has made it very difficult or impossible for competitors to engage in fair competition.

### Maintenance of Lawfully Acquired Monopoly Power

Mere possession of monopoly power, if lawfully acquired, does not violate the antitrust laws. But it is unlawful to use monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage, or to destroy a competitor.

Therefore, a company that has lawfully acquired monopoly power may not use that power to maintain or tighten its hold on the market. Such use may be shown by conduct that depends for its success on the company's monopoly power, as distinguished from conduct that could be successfully employed by firms without monopoly power in the relevant market.

In determining whether there has been an unlawful exercise of monopoly power, you must bear in mind that a company has not acted unlawfully simply because it has engaged in ordinary competitive behavior that would have been an effective means of competition if it were engaged in by a firm without monopoly power, or simply because it is large and efficient. To find defendant liable for monopolization because of the maintenance of lawfully acquired monopoly power through use of that power, you must determine that the defendant actually exercised monopoly power to maintain or tighten its control of the market.

#### Elements of Attempt to Monopolize

With respect to their claim of attempted monopolization against defendants, plaintiffs must prove each of the following elements by a preponderance of the evidence:

First, that defendants engaged in predatory or anticompetitive conduct;

Second, that defendants had a specific intent to achieve monopoly power in a relevant market;

Third, that there was a dangerous probability that defendants would achieve their goal of monopoly power in the relevant market; and

Fourth, that defendants' activities occurred in or affected any part of trade or commerce.

#### Specific Intent - Attempt to Monopolize

There are several ways in which the plaintiffs may prove that one or more of the defendants had the specific intent to monopolize. There may be evidence of direct statements of a defendant's intent to obtain a monopoly in the relevant market. Specific intent to monopolize also may be inferred from what a defendant did.

#### Elements of Conspiracy to Monopolize Claim

With respect to their claim of conspiracy to monopolize against defendants, plaintiffs must prove each of the following elements by a preponderance of the evidence:

First, that an agreement or mutual understanding between two or more persons to obtain or maintain monopoly power in a relevant market existed;

**Second, that the defendant knowingly – that is, voluntarily and intentionally – became a party to that agreement or mutual understanding;**

**Third, that the defendants specifically intended that the parties to the agreement would obtain or maintain monopoly power in the relevant market;**

**Fourth, that one or more of the defendants committed an overt act in furtherance of the conspiracy; and**

**Fifth, that defendants' activities occurred in or affected any part of trade or commerce.**

### Specific Intent - Conspiracy to Monopolize

There are several ways in which the plaintiffs may prove that a defendant had the specific intent to monopolize. There may be evidence of direct statements of a defendant's intent. Specific Intent also may be inferred from what a defendant did.

### Injury to Business or Property

Plaintiffs must also establish as a part of their claims for conspiracy in unreasonable restraint of trade, monopolization, attempted monopolization and conspiracy to monopolize that they suffered injury in their business or property as a proximate result of the alleged conduct. In the course of normal, lawful competition, some businesses may suffer economic losses or even go out of business. The antitrust laws are violated only when unlawful competitive practices cause such economic losses. An injury to a business is the "proximate result" of an antitrust violation only when the act or transaction constituting the violation directly and in natural and continuous sequence produces, or contributes substantially to producing, the injury. In other words, the defendants' alleged violation of the antitrust laws must be a direct, substantial and identifiable cause of the injury that plaintiffs claim to have suffered, but a plaintiff need not exhaust all possible alternative sources of injury in proving compensable injury. Proof of an antitrust violation does not necessarily mean the plaintiffs were damaged. Proof of an antitrust violation and antitrust injury must be shown independently. Plaintiffs can recover only if the loss stems from a reduction in competition because of the defendants' behavior. There is no antitrust injury unless that behavior reduced competition, even if the behavior violated the antitrust law at issue.

### Damages

If you find that plaintiffs have been injured by an antitrust violation committed by defendants, the law provides that plaintiffs should be fairly compensated for all damages to their business or property that were a direct result or likely consequence of the conduct that you have found to be unlawful. A defendant's violations of the antitrust laws often create a situation in which it is hard to determine the precise amount of damages suffered by the plaintiffs. Plaintiffs' right to be fairly compensated should not be affected by any difficulty you may have in determining the precise amount of the recovery so long as there

is a reasonable basis in the evidence for your award. You may not, however, calculate damages based only on speculation or guesswork, and you must remember that you can award plaintiffs damages only for injuries caused by a violation of the antitrust laws. You may not award damages for injuries or losses caused by other factors.

Instructions Applicable to Questions 7 and 8

The following definitions and instructions apply to Questions 7 and 8 below.

Past Lost Profits

Profit means net profit: the amount by which plaintiffs' gross revenues would have exceeded all of the costs and expenses that would have been necessary to produce those revenues. You may calculate net profit, if any, in the following way:

You have heard evidence of the plaintiffs' actual net profits in a period before the antitrust violation. If you find that the earlier period is a reliable guide to estimate what the plaintiffs' actual net profits would have been later, in the absence of the antitrust violation, then you may calculate plaintiffs' loss of profits by comparing (a) plaintiffs' actual net profits in the earlier period with (b) plaintiffs' actual net profits (or loss) thereafter.

Future Lost Profits

You must make a just and reasonable estimate of both the amount of profits, if any, plaintiffs would have earned in future years and the length of time they would have earned those profits. You should consider the various uncertainties that could affect the future success of plaintiffs' businesses, such as general market conditions, competition plaintiffs would face in the future, and the like. You may also consider whether it is reasonable to project the stream of profit into the future for a period of years (as plaintiffs have done in this case).

You may calculate future lost profits, if any, in the following way:

You have heard evidence of the plaintiffs' actual net profits in a period before the antitrust violation. If you find that the earlier period is a reliable guide to estimate what the plaintiffs' net profits would be in the future, in the absence of the antitrust violation, then you may calculate the plaintiffs' future lost profits by comparing (a) plaintiffs' actual net profits in the earlier period with (b) your estimate of plaintiffs' future net profits (or loss).

If you award future profits, you must discount the amount to its present value, using a discount rate of interest that you find reasonable. This is because the right to receive a certain sum of money at a future date is worth less than the same amount of money in hand today. For example, if you receive \$100 today that you would otherwise not receive until a year from now, you can invest that \$100 so that a year from now, the return on that \$100 investment will make it worth something more than \$100.

### Lost Franchise Value

Plaintiffs have presented evidence concerning the franchise value of their businesses. If you find that defendants' alleged antitrust violation caused damage to plaintiffs' franchise values, then you may award damages for loss of franchise value. In determining loss of franchise value and lost future profits, you should not add or combine these figures together.

### Mitigation of Damages

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

QUESTION 1

Answer "Yes" or "No" in the blanks below.

Do you find that the conduct complained of by the plaintiffs in this case:

- |   | <u>Yes / No</u>          |
|---|--------------------------|
| (a) constitutes an unreasonable restraint of trade?         | <u>YES</u>               |
| (b) constitutes monopolization or attempted monopolization? | <u>YES</u>               |
| (c) constitutes a conspiracy to monopolize?                 | <u><del>NO</del> YES</u> |

If you have answered Questions 1(a), 1(b) and 1 (c) above "No," then do not answer any other questions. Otherwise, proceed to Question 2.

Answer this question only if you answered Question 1(a) "Yes." Otherwise, do not answer this question.

**QUESTION 2**

Which of the companies listed below committed the conduct found by you in answer to Question 1(a) as to any of the plaintiffs listed below?

Answer "Yes" or "No" in the blanks below.

**As to Plaintiff Harmar Bottling Co., Inc.**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

YES

YES

**As to Plaintiff Royal Crown Bottling Co., Inc.**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

YES

YES

**As to Plaintiff O-Mc Beverages, Inc.**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

YES

YES

**As to Plaintiff Bolls Distributing Company**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

YES

YES

**As to Plaintiff Hackett Beverages, Inc.**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

YES

YES

Answer this question only if you answered Question 1(b) "Yes." Otherwise, do not answer this question.

**QUESTION 3**

Did the company listed below commit the conduct found by you in answer to Question 1(b) as to any of the plaintiffs listed below?

Answer "Yes" or "No" in the blanks below.

**As to Plaintiff Harmer Bottling Co., Inc.**

Coca-Cola Enterprises Inc.

Yes / No

YES

**As to Plaintiff Royal Crown Bottling Co., Inc.**

Coca-Cola Enterprises Inc.

Yes / No

YES

**As to Plaintiff Q-Mc Beverages, Inc.**

Coca-Cola Enterprises Inc.

Yes / No

YES

**As to Plaintiff Bolls Distributing Company**

Coca-Cola Enterprises Inc.

Yes / No

YES

**As to Plaintiff Hackett Beverages, Inc.**

Coca-Cola Enterprises Inc.

Yes / No

YES

Answer this question only if you answered Question 1(c) "Yes." Otherwise, do not answer this question.

**QUESTION 4**

Which of the companies listed below committed the conduct found by you in answer to Question 1(c) as to any of the plaintiffs listed below?

Answer "Yes" or "No" in the blanks below.

**As to Plaintiff Harmar Bottling Co., Inc.**

**Yes / No**

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff Royal Crown Bottling Co., Inc.**

**Yes / No**

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff O-Mc Beverages, Inc.**

**Yes / No**

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff Bolla Distributing Company**

**Yes / No**

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff Hackett Beverages, Inc.**

**Yes / No**

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

Answer this question only if you have answered Question 1(a), 1(b) or 1(c) "Yes." Otherwise, do not answer this question. You are further instructed that you are to answer this question only as to those particular combinations of plaintiff(s) and defendant(s) to which you answered "Yes" in Question 2, 3, or 4.

**QUESTION 5**

Did one or more of the defendants listed below wrongfully interfere with existing business relationships between a plaintiff listed below and retailers?

A plaintiff must have proven each of the following elements by a preponderance of the evidence:

First, the existence of a business relationship subject to interference;

Second, the occurrence of an act of interference that was willful and intentional, and with the purpose of harming a plaintiff;

Third, that there was a reasonable probability that the business relationship would continue except for such interference; and

Fourth, that the defendant acted without any privilege or justification.

Answer "Yes" or "No" for each of the following for each plaintiff:

**As to Plaintiff Harmar Bottling Co., Inc.**

Yes / No

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff Royal Crown Bottling Co., Inc.**

Yes / No

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff O-Mc Beverages, Inc.**

Yes / No

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

As to Plaintiff Bolls Distributing Company

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

• YES

YES

As to Plaintiff Hackett Beverages, Inc.

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

YES

YES

Answer this question only if you have answered Question 1(a), 1(b) or 1(c) "Yes." Otherwise, do not answer this question. You are further instructed that you are to answer this question only as to those particular combinations of plaintiff(s) and defendant(s) to which you answered "Yes" in Question 2, 3, or 4.

**QUESTION 6**

Did one or more of the defendants listed below wrongfully interfere with a plaintiff's prospective business relationships with retailers?

Each plaintiff must have proven each of the following elements by a preponderance of the evidence:

First, that there was a reasonable probability that the plaintiff would have entered into a business relationship with a retailer;

Second, that the defendant intentionally prevented the business relationship from occurring with the purpose of harming the plaintiff; and

Third, that the defendant acted without any privilege or justification.

Answer "Yes" or "No" for each of the following for each plaintiff:

**As to Plaintiff Harmar Bottling Co., Inc.**

The Coca-Cola Company

Yes / No

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff Royal Crown Bottling Co., Inc.**

The Coca-Cola Company

Yes / No

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff O-Mc Beverages, Inc.**

The Coca-Cola Company

Yes / No

YES

Coca-Cola Enterprises Inc.

YES

**As to Plaintiff Bolls Distributing Company**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

• YES

YES

**As to Plaintiff Hackett Beverages, Inc.**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

Yes / No

YES

YES

If you answered "Yes" in response to Questions 2, 3 and/or 4, answer this question. Otherwise, do not answer this question.

**QUESTION 7**

As to each plaintiff for which you have answered "Yes" in Questions 2, 3 or 4, determine the sum of money, if paid now in cash, that would fairly and reasonably compensate such plaintiff for its damages, if any, that were the proximate result of the conduct you have found.

Consider the following elements of damages, if any, and none other: past lost profits, future lost profits, and/or lost franchise value as defined above.

You should not award damages to Bolls Distributing Company for conduct occurring prior to May 7, 1994, and you should not award damages to Hackett Beverages, Inc. for conduct occurring prior to April 28, 1995.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any, for the specific types of damages listed below.

**Hammr Bottling Company**

- 1. Past Lost Profits \$ 1,520,019<sup>50</sup>
- 2. Future Lost Profits \$ 394,628<sup>00</sup>
- 3. Lost Franchise Value \$ 727,631<sup>00</sup>

**Royal Crown Bottling Company**

- 1. Past Lost Profits \$ 584,012<sup>25</sup>
- 2. Lost Franchise Value \$ 523,371<sup>00</sup>

**O-Mc Beverages, Inc.**

- 1. Past Lost Profits \$ 53,892<sup>50</sup>
- 2. Lost Franchise Value \$ 757,543<sup>50</sup>

**Bolls Distributing Company**

- 1. Past Lost Profits \$ 223,082<sup>50</sup>
- 2. Future Lost Profits \$ 78631<sup>80</sup>
- 3. Lost Franchise Value \$ 141,086<sup>75</sup>

**Hackett Beverages, Inc.**

- 1. Past Lost Profits \$ 100,000<sup>00</sup>
- 2. Future Lost Profits \$ 50,000<sup>00</sup>

If you answered "Yes" in response to Questions 5 and/or 6, answer this question. Otherwise, do not answer this question.

**QUESTION 8**

As to each plaintiff for which you have answered "Yes" in Questions 5 and/or 6 determine the sum of money, if paid now in cash, that would fairly and reasonably compensate such plaintiff for its damages, if any, that were the proximate result of the conduct you have found.

Consider the following elements of damages, if any, and none other: past lost profits, future lost profits, and/or lost franchise value as defined above.

You should not award damages to Hammar Bottling Company, Inc. or Royal Crown Bottling Company for conduct occurring prior to February 19, 1991; you should not award damages to Bolls Distributing Company or O-Mc Beverages, Inc. for conduct occurring prior to May 7, 1996; and you should not award damages to Hackett Beverages, Inc. for conduct occurring prior to April 28, 1997.

Do not add any amount for interest on damages, if any.

Answer in dollars and cents for damages, if any, for the specific types of damages listed below.

**Hammar Bottling Company**

- 1. Past Lost Profits \$ 1,520,019<sup>50</sup>
- 2. Future Lost Profits \$ 394,628<sup>00</sup>
- 3. Lost Franchise Value \$ 927,631<sup>00</sup>

**Royal Crown Bottling Company**

- 1. Past Lost Profits \$ 584,012<sup>25</sup>
- 2. Lost Franchise Value \$ 523,371<sup>00</sup>

**O-Mc Beverages, Inc.**

- 1. Past Lost Profits \$ 17964<sup>17</sup>
- 2. Lost Franchise Value \$ 185,847<sup>66</sup>

**Bolla Distributing Company**

- 1. Past Lost Profits \$ 133,849<sup>50</sup>
- 2. Future Lost Profits \$ 47,178<sup>90</sup>
- 3. Lost Franchise Value \$ 84,652<sup>05</sup>

**Hackett Beverages, Inc.**

- 1. Past Lost Profits \$ 60,000<sup>00</sup>
- 2. Future Lost Profits \$ 30,000<sup>00</sup>

If in answer to either Question 2, Question 3, or Question 4, you have answered "Yes" to any one or more of the defendants listed below, then answer the following question as to each such defendant. Otherwise, do not answer the following question as to that particular defendant.

QUESTION 9

Was the conduct of one or more of the defendants listed below a willful or flagrant violation of the Texas antitrust laws?

"Willful" means intentional.

"Flagrant" means conspicuously offensive; that is, so obviously inconsistent with what is right and proper as to appear to be a flouting of law or morality.

Answer "Yes" or "No" for each of the following:

Yes/No

The Coca-Cola Company

YES

Coca-Cola Enterprises Inc.

YES

If in answer to Question 5 and/or Question 6 you have answered "Yes" to any one or more of the defendants listed below a plaintiff, then answer the following question as to each such defendant. Otherwise, do not answer the following question as to that particular defendant.

**QUESTION 10**

Do you find by clear and convincing evidence that such conduct found by you resulted from malice?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means:

- (a) a specific intent by the defendant(s) to cause substantial injury to plaintiffs; or,
- (b) an act or omission by the defendant(s)
  - (i) which, when viewed objectively from the standpoint of the defendant(s) at the time of its occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
  - (ii) of which the defendant(s) had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

In answering this question, you will only consider acts of a defendant if that were committed by:

1. Corporate officers;
2. Those who have authority to employ, direct, and discharge servants of the master;
3. Those engaged in the performance of nondelegable or absolute duties of the master; or
4. Those to whom the master has confided the management of the whole or a department or division of the business.

Answer "Yes" or "No" for each of the following for each plaintiff:

As to Plaintiff Harmar Bottling Co., Inc.

Yes / No

The Coca-Cola Company

No

Coca-Cola Enterprises Inc.

No

**As to Plaintiff Royal Crown Bottling Co., Inc.**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

**Yes / No**

• No

No

**As to Plaintiff Q-Mc Beverages, Inc.**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

**Yes / No**

No

No

**As to Plaintiff Bolls Distributing Company**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

**Yes / No**

No

No

**As to Plaintiff Hackett Beverages, Inc.**

The Coca-Cola Company

Coca-Cola Enterprises Inc.

**Yes / No**

No

No

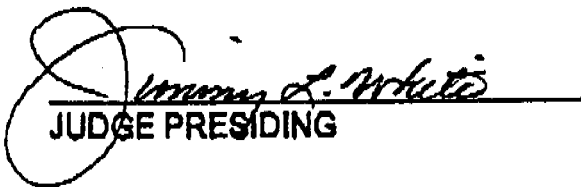
After you retire to the jury room, you will select your own presiding juror. Then you will deliberate upon your answers to the questions asked.

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).

*James McCallum*  
James McCallum  
PRESIDING JUROR

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

Chris Hughes

Steve Derrick

Rhonda Young

Lucile Evans

Nikki Brock

Wesley Johnson

James McCallum

Delores Woods

Alta L. Robert

Beverly Carr

Thad Bett