



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 meaning.

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." The term "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.

You have been permitted to take notes during the testimony in this case. In the event any of you took notes, you may rely on your notes during your deliberations. However, you may not share your notes with the other jurors and you should not permit the other jurors to share their notes with you. You may, however, discuss the contents of your notes with the other jurors. You shall not use your notes as authority to persuade your fellow jurors. In your deliberations, give no more and no less weight to the views of a fellow juror just because that juror did or did not take notes. Your notes are not official transcripts. They are personal memory aids, just like the notes of the judge and the notes of the lawyers. Notes are valuable as a stimulant to your memory. On the other hand, you might make an error in observing or you might make a mistake in recording what you have seen or heard. Therefore, you are not to use your notes as authority to persuade fellow jurors of what the evidence was during the trial.

Occasionally, during jury deliberations, a dispute arises as to the testimony presented. If this should occur in this case, you shall inform the Court and request that the Court have the Court Reporter read the portion of disputed testimony to you from the official transcripts. The dispute must be settled by the official transcript, for it is the official transcript, rather than any juror's notes, upon which you must base your determination of the facts and, your verdict in this case.

The word "person" includes not only every individual, but also every corporation, partnership and every other organization, of any kind.

You are instructed that Thermex Energy Corporation and Atlas Powder Co. are corporations, which are not natural persons, and thus, could act only through their agents, servants, employees or representatives.

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.

If you find that either Thermex or Atlas intentionally misplaced, discarded, or destroyed documents or other evidence relating to this case, or otherwise intentionally caused documents or other evidence to be misplaced, discarded or destroyed, then you must presume that the missing evidence would have been unfavorable to that party.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

With respect to the wrongful interference claims, you are instructed that an interference is intentional if committed with the desire to interfere with the contract or with the belief that interference is substantially certain to result.

You are further instructed that an interference with a contract or a prospective business relationship is justified if it results from the good faith exercise of a party's rights or if a party possesses an interest in the subject matter equal or superior to that of the other party.

A party may cause a third party to terminate a terminable-at-will contract with the party's competitor and may obtain the future benefits for the party's own competitive advantage by offering better contract terms. A contract is "terminable-at-will" if it has no fixed duration and can be ended by either party at any time.

The term "malice," means conduct that is specifically intended by one party to cause substantial injury to another party.

The term "conspiracy" means a meeting of the minds of two or more persons to accomplish an unlawful purpose, or to accomplish a lawful purpose by an unlawful means.

A conspiracy consists of the following:

- (1) a combination of two or more persons;
- (2) an agreement or meeting of the minds among those persons on a common purpose;
- (3) that each of such persons had knowledge of that purpose;
- (4) that each of those persons intended to participate; and
- (5) that there was one or more overt acts done in furtherance of the conspiracy.

You are further instructed that, in order to be a conspirator in a conspiracy, one must be a voluntary participant in the alleged conspiracy.

You are further instructed that there can be no conspiracy between a corporation and any of its officers, directors, employees or wholly owned subsidiaries.

It is not necessary for a party to join as defendants in a case all persons who may have participated in an alleged conspiracy. A person injured by such a conspiracy may recover against one or all of those participating, and may enforce its right of recovery against one, or some, or all, at its election. So it is immaterial that any other members of the conspiracy may not have been joined in this suit.

Predatory pricing occurs when: (1) the seller has an objectively reasonable expectation of recouping its losses due to the alleged predatory pricing by charging higher prices later, that is, the predatory pricing is economically feasible; and (2)(a) the price charged is below average variable cost; or (b)(i) there are substantial barriers to market entry; (ii) the seller is charging a price below its short-run profit-maximizing price and its average total cost; and (iii) the benefits of the seller's price depended on its tendency to discipline or eliminate competition and thereby enhance the firm's long-term ability to reap the benefits of monopoly power.

The subjective intent of a seller should not be a factor in determining whether its prices are predatory.

A seller will not have an objectively reasonable expectation of recouping its losses unless the structure of the relevant market will permit the seller to recoup its losses, and the time-value of those losses, from predatory pricing. When a company charges prices that are above a competitive price in that market that does not have significant barriers to entry, new competition enters the market and prices must be lowered to maintain market position.

A business has the right to select entirely on its own the territory or market in which it will sell its products. Likewise, a business may decide not to sell its products in a particular territory or market, provided that the decision results from the exercise of an independent business judgment and not from any agreement or understanding with a competitor. The antitrust laws, however, prohibit any agreement among competitors to allocate the territories in which they will market or sell their products. A conspiracy to allocate territories is an agreement or mutual understanding between two or more competitors not to compete with each other in particular territories. Territorial allocation exists, for example, where two or more competitors agree that they will each confine their sales efforts to a different geographic area.

A business has the right to select its customers entirely on its own and to sell its products to whomever it chooses. Likewise, a business concern has no legal obligation to sell to a particular customer. A business concern may decide not to solicit or sell to a customer, provided that the decision results from an independent business judgment and not from an agreement or understanding with a competitor. The antitrust laws, however, prohibit any agreement among competitors to allocate customers. A conspiracy to allocate customers is an agreement or mutual understanding between two or more competitors not to compete for the business of particular customers.

A business has the right to determine entirely on its own how much of its product it will produce. The antitrust laws, however, prohibit any agreement among competitors limiting how much one or more of them will produce.

A conspiracy to allocate or limit output is an agreement or mutual understanding between two or more competitors to create a limitation on the production of one or more of them or some limitation on the availability of their product.

It is illegal for two or more competitors to enter into an agreement or mutual understanding to fix, control, raise, lower, maintain or stabilize the prices charged or to be charged for products or services.

A business has the right to deal, or refuse to deal, with whomever it likes, as long as it makes this decision entirely on its own. However, the antitrust laws are violated when two or more competitors agree or come to a mutual understanding not to deal with a third party.

The mere fact that competitors may have acted similarly in their pricing or otherwise, if in fact they so acted, does not by itself establish the existence of any conspiracy or mutual agreement among them to do so. A business may lawfully adopt the same prices, conditions of sale or other practices as its competitors as long as it does so independently and not as part of an agreement or mutual understanding with one or more of its competitors.

Competitors are permitted to trade with each other if they choose to do so voluntarily. A reciprocal trading arrangement is a marketing method whereby the buyer buys one product from a seller, but only on the condition that the seller also purchases a different product from the buyer. The essential characteristic of an invalid reciprocal trading arrangement is a buyer's exploitation of its "purchasing power" over the seller's product to force the seller to purchase a product from the buyer that it either did not want at all or might have preferred to purchase elsewhere. When such forcing is present, competition in the market for the tied, or buyer's, product may be restricted or foreclosed to competitors who might otherwise sell that product to the seller.

The mere acquisition by one corporation of another (or its assets), even though it may result in some lessening of competition, is not forbidden; the antitrust laws prohibit only those acquisitions that in reasonable likelihood will result in a substantial lessening of competition in the relevant market.

The antitrust laws do not prohibit a corporation from forming subsidiary or parent corporations for the purpose of conducting its immediately lawful business, or natural and legitimate branch extensions of such business, where the effect of such transaction is not to lessen competition substantially.

There are two aspects you must consider about a "relevant market." The first is the relevant product market; the second is the relevant geographic market.

a) Relevant Product Market

The basic idea of a relevant product market is that the products within it are reasonable substitutes from a buyer'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 buyers' actual behavior, the products are reasonable substitutes for the buyer's needs.

b) Relevant Geographic Market

The other aspect of relevant market to be considered is the geographic area within which the products compete. This area of effective competition need not be of any particular size. For example, it can be as large as the United States or as small as a single community.

The law provides that anyone who is injured by an antitrust violation may recover damages for any injury to its business or property caused by the violation.

An antitrust injury is an injury of the type the antitrust laws were intended to prevent and that flows from that which makes the alleged acts unlawful, if any. Antitrust injury does not arise until a private party is adversely affected by an anticompetitive aspect of the defendant's conduct.

In the context of pricing practices, only "predatory pricing" has the requisite anticompetitive effect on a competitor.

Low prices benefit consumers regardless of how those prices are set, and so long as they are above predatory levels they do not threaten competition. Hence, they cannot give rise to an antitrust injury.

Even in an oligopolistic market, when a business drops its prices to a competitive level to demonstrate to a maverick the unprofitability of straying from the group, it would be illogical to condemn the price cut; the antitrust laws then would be an obstacle to the chain of events most conducive to a breakdown of oligopoly pricing and the onset of competition. Even if the ultimate effect of the cut is to induce or reestablish supracompetitive pricing, discouraging a price cut and forcing firms to maintain supracompetitive prices, thus depriving consumers of the benefits of lower prices in the interim, does not constitute sound antitrust policy.

Lost profits means the amount by which Thermex's gross revenues would have exceeded all of the costs and expenses that would have been necessary to produce those revenues.

Do not include in your calculation of damages, if any, those damages that you find Thermex could have avoided by the exercise of reasonable care.

The law requires an injured party to take all reasonable steps that it can to avoid further injury and thereby reduce its loss. If a plaintiff fails to take reasonable steps available to it, and the failure to take those steps results in greater harm to the plaintiff than the plaintiff would have suffered had it taken those steps, the plaintiff may not recover damages for injury which it would have avoided if it had taken reasonable actions that would have reduced its injury. The burden of proof on this issue is on Atlas. Atlas must prove that Thermex acted unreasonably in failing to take specific steps to minimize or limit its losses, that the failure to take those specific steps resulted in its losses being greater than they would have been had it taken such steps, and the amount by which Thermex's loss would have been reduced had Thermex taken those steps.

"Willful" means the conscious doing of an act with an evil intent or with legal malice or without reasonable ground for believing the act to be lawful and without legal justification.

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

A claim "accrues" when the defendants' wrongful act, if any, causes the plaintiff an injury, regardless of when the plaintiff learns of the injury.

QUESTION NO. 1

Did Atlas wrongfully interfere with the following alleged contracts involving Thermex?  
Answer yes or no.

You are instructed that a party wrongfully interferes with a contract when:

- (1) There is an existing contract subject to interference;
- (2) There are willful and intentional acts of interference;
- (3) The intentional act was the proximate cause of the Plaintiff's harm; and
- (4) There was actual damage or harm.

- |  |                           |
|--|---------------------------|
| (a) Contract between Thermex and Ensign Bickford for the purchase of Nonel blasting accessories. | <u>Yes</u><br>(yes or no) |
| (b) The lending agreement with G.E.C.C.  | <u>//</u><br>(yes or no)  |
| (c) Frank Kivett   | <u>//</u><br>(yes or no)  |
| (d) Lamar Suddeth  | <u>//</u><br>(yes or no)  |
| (e) Reed Sapp  | <u>//</u><br>(yes or no)  |
| (f) Gary Eck   | <u>//</u><br>(yes or no)  |
| (g) Neil Gehrig  | <u>//</u><br>(yes or no)  |

QUESTION NO. 2

If your answer to any part of the preceding question was "yes," then answer this question. Otherwise, go to Question No. 6.

Did Thermex's wrongful interference with existing contracts claims, if any, accrue before November 27, 1988? Answer yes or no.

- |     |  |                           |
|-----|--|---------------------------|
| (a) | Contract between Thermex and Ensign Bickford for the purchase of Nonel blasting accessories. | <u>Yes</u><br>(yes or no) |
| (b) | The lending agreement with G.E.C.C.  | <u>//</u><br>(yes or no)  |
| (c) | Frank Kivett   | <u>//</u><br>(yes or no)  |
| (d) | Lamar Suddeth  | <u>//</u><br>(yes or no)  |
| (e) | Reed Sapp  | <u>//</u><br>(yes or no)  |
| (f) | Gary Eck   | <u>//</u><br>(yes or no)  |
| (g) | Neil Gehrig  | <u>//</u><br>(yes or no)  |

QUESTION NO. 3

If your answer to any part of Question No. 1 was "yes," then answer this question. If you answered "no" to each part of Question No. 1, go to Question No. 6.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Thermex for its damages, if any, proximately caused by Atlas' alleged wrongful interference?

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

1. Lost profits.

Do not add any amount for interest.

Answer in dollars and cents:

\$ 3,360,000

QUESTION NO. 4

If you have answered any part of Question No. 1 "yes," then answer the corresponding part of this question. If you answered "no" to each part of Question No. 1, go to Question No. 6.

Was Atlas' wrongful interference, if any, done with malice towards Thermex?

- |     |  |                           |
|-----|--|---------------------------|
| (a) | Contract between Thermex and Ensign Bickford for the purchase of Nonel blasting accessories. | <u>YES</u><br>(yes or no) |
| (b) | The lending agreement with G.E.C.C.  | <u>//</u><br>(yes or no)  |
| (c) | Frank Kivett   | <u>//</u><br>(yes or no)  |
| (d) | Lamar Suddeth  | <u>//</u><br>(yes or no)  |
| (e) | Reed Sapp  | <u>//</u><br>(yes or no)  |
| (f) | Gary Eck   | <u>//</u><br>(yes or no)  |
| (g) | Neil Gehrig  | <u>//</u><br>(yes or no)  |

QUESTION NO. 5

If your answer to any portion of Question No. 1 is "yes," then answer the corresponding part of this question. Otherwise, go to Question No. 6.

Was Atlas' wrongful interference, if any, with any of the following alleged contracts justified?

- (a) Contract between Thermex and Ensign Bickford for the purchase of Nonel blasting accessories. NO  
(yes or no)
- (b) The lending agreement with G.E.C.C. NO  
(yes or no)
- (c) Frank Kivett NO  
(yes or no)
- (d) Lamar Suddeth NO  
(yes or no)
- (e) Reed Sapp NO  
(yes or no)
- (f) Gary Eck NO  
(yes or no)
- (g) Neil Gehrig NO  
(yes or no)

QUESTION NO. 6

There is a wrongful interference with prospective business relationships when:

- (1) There is a reasonable probability of entering into a business relationship;
- (2) A party acted maliciously by preventing the relationship from occurring, with the purpose of harming another; and
- (3) Actual harm or damage results.

One who intentionally causes a third party not to enter into a prospective business relationship with another person who is his competitor, or intentionally causes a third person not to continue an existing terminable-at-will contract with another who is his competitor, does not interfere wrongfully with the relationship if:

- (a) The relation concerns a matter involved in the competition between the actor and his competitor, and
- (b) The actor does not employ wrongful means, and
- (c) His action does not create or continue an unlawful restraint of trade, and
- (d) His purpose is at least in part to advance his interest in competing with the other.

Did Atlas wrongfully interfere with Thermex's alleged prospective business relationships with any of the following persons:

General Electric Capital Corporation (GECC)

YES  
(yes or no)

Ensign Bickford

YES  
(yes or no)

Nobel Insurance Ltd.

YES  
(yes or no)

Canadian Investment Corporation (CIC)/Explosive Technology, Inc, (ETI)

YES  
(yes or no)

P&M McKinley

YES  
(yes or no)

Texas Crushed Stone

YES  
(yes or no)

AECI Coal Company

YES  
(yes or no)

Amax Coal Company

Yes  
(yes or no)

Georgia Marble

"  
(yes or no)

Tarmac Quarries

"  
(yes or no)

LaRoche Industries, Inc.

1/  
(yes or no)

Kaser Corp.

1/  
(yes or no)

QUESTION NO. 7

If you answered any part of Question No. 6 "yes," then answer the corresponding part of this question. If you answered "no" to each part of Question No. 6, then go to Question No. 11.

Did Thermex's alleged wrongful interference with prospective business relationships claims, if any, accrue before November 27, 1988? Answer yes or no.

General Electric Capital Corporation (GECC)

YES  
(yes or no)

Ensign Bickford

11  
(yes or no)

Nobel Insurance Ltd.

21  
(yes or no)

Canadian Investment Corporation (CIC)/Explosive Technology, Inc, (ETI)

11  
(yes or no)

P&M McKinley

11  
(yes or no)

Texas Crushed Stone

11  
(yes or no)

AECI Coal Company

11  
(yes or no)

Amax Coal Company

11  
(yes or no)

Georgia Marble

11  
(yes or no)

Tarmac Quarries

11  
(yes or no)

LaRoche Industries, Inc.

11  
(yes or no)

Kaser Corp.

NO  
(yes or no)

QUESTION NO. 8

If your answer to any part of Question No. 6 was "yes," then answer this question. If you answered "no" to each part of Question No. 6, then go to Question No. 11.

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

1. Lost profits.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Thermex for its damages, if any? Answer in dollars and cents.

\$ 4,500,000

QUESTION NO. 9

If you have answered any part of Question No. 6 "yes," then answer the corresponding part of this question. If you answered "no" to each part of Question No. 6, go to Question No. 11.

Was Atlas' wrongful interference, if any, done with malice towards Thermex?

General Electric Capital Corporation (GECC)	<u>YES</u> (yes or no)
Ensign Bickford	<u>//</u> (yes or no)
Nobel Insurance Ltd.	<u>//</u> (yes or no)
Canadian Investment Corporation (CIC)/Explosive Technology, Inc, (ETI)	<u>//</u> (yes or no)
P&M McKinley	<u>//</u> (yes or no)
Texas Crushed Stone	<u>//</u> (yes or no)
AECI Coal Company	<u>//</u> (yes or no)
Amax Coal Company	<u>//</u> (yes or no)
Georgia Marble	<u>//</u> (yes or no)
Tarmac Quarries	<u>//</u> (yes or no)
LaRoche Industries, Inc.	<u>//</u> (yes or no)
Kaser Corp.	<u>//</u> (yes or no)

QUESTION NO. 10

If your answer to any part of Question No. 6 is "yes," then answer the corresponding part of this question. Otherwise, go to Question No. 11.

Was Atlas' wrongful interference, if any, with any of the following alleged prospective business relationships justified?

General Electric Capital Corporation (GECC)	<u>NO</u> (yes or no)
Ensign Bickford	<u>11</u> (yes or no)
Nobel Insurance Ltd.	<u>11</u> (yes or no)
Canadian Investment Corporation (CIC)/Explosive Technology, Inc, (ETI)	<u>11</u> (yes or no)
P&M McKinley	<u>11</u> (yes or no)
Texas Crushed Stone	<u>11</u> (yes or no)
AECI Coal Company	<u>11</u> (yes or no)
Amax Coal Company	<u>11</u> (yes or no)
Georgia Marble	<u>11</u> (yes or no)
Tarmac Quarries	<u>11</u> (yes or no)
LaRoche Industries, Inc.	<u>11</u> (yes or no)
Kaser Corp.	<u>11</u> (yes or no)

QUESTION NO. 11

Did Atlas engage in any of the following alleged conspiracies? Answer each of the subparts yes or no.

- (a) A conspiracy with Ireco to conspire to dominate and control the U.S. market for explosives?

Yes  
(yes or no)

- (b) A conspiracy with Calie Stephens to put Thermex out of business?

Yes  
(yes or no)

- (c) A conspiracy with Van Amburgh Alamo, Inc. or Woodard Explosives, Inc. to interfere with, monopolize or restrain trade against Thermex customers?

~~Yes~~ No  
(yes or no)

- (d) A conspiracy with Ireco and the IME to allocate territories and fix prices?

Yes  
(yes or no)

- (e) A conspiracy with Ireco and Nobel Insurance Company to deny Thermex insurance and thereby boycott Thermex?

Yes  
(yes or no)

QUESTION NO. 12

If you answered any part of Question No. 11 "yes," answer this question. Otherwise, go to Question No. 17.

What date did the most recent act of conspiracy, if you found any, occur? Answer by writing in a date.

May 4, 1989  
(date)

QUESTION NO. 13

If you answered Question No. 12 by filling in a date, answer this question. Otherwise go to Question No. 17.

By what date should Thermex in the exercise of reasonable diligence have discovered the conspiracy, if any, you have found? Answer by stating a date.

March 17, 1992  
(date)

QUESTION NO. 14

If you answered any part of Question No. 11 "yes," then answer this question. If you answered "no" to each part of Question No. 11, go to Question No. 17.

What sum of money, if any, if paid now in cash would fairly and reasonably compensate Thermex for its damages, if any, proximately caused by Atlas' participation in the alleged conspiracy or conspiracies, if any, that you have found to exist?

Consider the following elements of damage, if any, and none other:

1. lost profits.

Do not add any amount for interest on past damages.

\$ 34,000,000

QUESTION NO. 15

If you answered any part of Question No. 11 "yes," then answer this question. If you answered "no" to each part of Question No. 11, go to Question No. 17.

Was Atlas' participation, if any, in any of the following conspiracies, if any, that you may have found to have existed and which caused Thermex any damages done, if at all, with malice towards Thermex?

- (a) A conspiracy with Ireco to conspire to dominate and control the U.S. market for explosives?

Yes  
(yes or no)

- (b) A conspiracy with Calie Stephens to put Thermex out of business?

1/  
(yes or no)

- (c) A conspiracy with Van Amburgh Alamo, Inc. or Woodard Explosives, Inc. to interfere with, monopolize or restrain trade against Thermex customers?

No  
(yes or no)

- (d) A conspiracy with Ireco and the IME to allocate territories and fix prices?

Yes  
(yes or no)

- (e) A conspiracy with Ireco and Nobel Insurance Company to deny Thermex insurance and thereby boycott Thermex?

Yes  
(yes or no)

QUESTION NO. 16

If you answered Question Nos. 4, 9, or 15 "yes," answer this question. If you answered "no" to each of those questions, do not answer this question.

What sum of money, if any, should Atlas pay Thermex as exemplary damages relating to Atlas' alleged malicious participation in any of the above alleged conspiracies?

\$ 512,000,000

"Exemplary damages" means an amount that you may in your discretion award as an example to others, or as a penalty, or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are

- a. the nature of the wrong;
- b. the character of the conduct involved;
- c. the degree of culpability of the wrongdoer;
- d. the extent to which such conduct offends a public sense of justice and prosperity;
- e. the situation and sensibilities of the parties concerned;
- f. the net worth of the wrongdoer; and
- g. compensation for inconvenience and attorney's fees.

QUESTION NO. 17

Did Atlas conspire with Ireco, LaRoche Industries, Inc., Arcadian Corp., or Van Amburgh Alamo, Inc. to unreasonably restrain trade in any of the following alleged relevant markets by engaging in territorial allocations, customer allocations, production allocations, price fixing, predatory pricing, group boycotts, reciprocal trading, distributor acquisitions, or by publishing fraudulent explosive product tonnage data to the IME?

The relevant geographic market is the United States.

Answer "yes" or "no" to each of the products listed below by making a check in the appropriate blank.

	Yes	No
High Explosives	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bulk Products	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Packaged Products	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ANFO	<input checked="" type="checkbox"/>	<input type="checkbox"/>

To restrain trade and commerce means to interfere unreasonably with the ordinary, usual and freely competitive pricing or distribution system of the open market in trade and commerce. The amount or quantity or value of the commerce involved or affected by an unreasonable restraint of trade is immaterial. The Texas Act brands as unlawful any conspiracy which would operate to restrain unreasonably any trade or commerce, regardless of how small an amount or quantity or value.

QUESTION NO. 18

If you answered any part of the preceding question "yes," answer this question. Otherwise, go to Question No. 22.

What date did the most recent act of conspiracy to restrain trade, if you found any, occur? Answer by writing in a date.

May 4 1989  
(date)

QUESTION NO. 19

If you answered the preceding question by filling in a date, answer this question. Otherwise, go to Question No. 22.

By what date should Thermex in the exercise of reasonable diligence have discovered the conspiracy to restrain trade, if any, you have found? Answer by stating a date.

March 13, 1992  
(date)

QUESTION NO. 20

If you answered the preceding question by filling in a date, answer this question. Otherwise, go to Question No. 22.

Did the alleged conspiracy to restrain trade involving Atlas, if any, cause Thermex to incur an antitrust injury related to its business or property? Answer "yes" or "no."

Yes  
(yes or no)

QUESTION NO. 21

If you answered the preceding question "yes," answer this question. Otherwise, go to Question No. 22.

Was Atlas' part in the alleged conspiracy to restrain trade, if any, willful or flagrant? Answer "yes" or "no."

Yes  
(yes or no)

QUESTION NO. 22

Did Atlas conspire with Ireco, LaRoche Industries, Inc., Arcadian Corp., or Van Amburgh Alamo, Inc. to monopolize any of the following alleged relevant markets?

The relevant geographic market is the United States.

Answer "yes" or "no" to each of the products listed below by making a check in the appropriate blank.

	Yes	No
High Explosives	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bulk Products	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Packaged Products	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ANFO	<input checked="" type="checkbox"/>	<input type="checkbox"/>

A conspiracy to monopolize has the following elements:

First, that there existed a conspiracy between the alleged co-conspirators to obtain or maintain monopoly power in the relevant market;

Second, that the alleged co-conspirators knowingly--that is, voluntarily and intentionally--became a party to that agreement or mutual understanding; and

Third, that the co-conspirators specifically intended that the parties to the agreement would obtain or maintain monopoly power in the relevant market; and

Fourth, the commission of at least one overt act in furtherance of the conspiracy.

Monopoly power, for purposes of the offense of conspiracy to monopolize, is the power of a group of companies to dominate or control an appreciable part of the relevant market. This means the power to control prices in or to exclude competition from that relevant market.

The power to control prices is the power of a group of companies, acting together, to establish appreciably higher prices for their goods without a substantial loss of business to competitors. Thus, if a group of companies could not raise prices without eventually losing a substantial part of their sales volume to suppliers of identical or equivalent products, it is unlikely that they have monopoly power in the sense of power to control prices.

A specific intent to monopolize means the conscious object of acquiring the power to control prices or to exclude or destroy competition in that relevant market.

When evaluating a company's share of the alleged relevant markets, you should consider only the sales of products manufactured and sold by that company and its wholly-owned subsidiaries.

QUESTION NO. 23

If you answered any part of the preceding question "yes," answer this question. Otherwise, go to Question No. 27.

What date did the most recent act of conspiracy to monopolize, if you found any, occur? Answer by writing in a date.

May 4 1989  
(date)

QUESTION NO. 24

If you answered the preceding question by filling in a date, answer this question. Otherwise, go to Question No. 27.

By what date should Thermex in the exercise of reasonable diligence have discovered the conspiracy to monopolize, if any, you have found? Answer by stating a date.

March 13, 1992  
(date)

QUESTION NO. 25

If you answered any part of Question No. 22 "yes," then answer this question. If you answered "no" to each part of Question No. 22, then go to Question No. 27.

Did the alleged conspiracy to monopolize involving Atlas, if any, cause Thermex to incur an antitrust injury related to its business or property?

Yes  
(yes or no)

QUESTION NO. 26

If you answered any part of the Question No. 22 "yes," answer this question. Otherwise, go to Question No. 27.

Was Atlas' part in the alleged conspiracy to monopolize willful or flagrant?

Yes  
(yes or no)

QUESTION NO. 27

Did Atlas attempt to monopolize any of the following alleged relevant markets?

The relevant geographic market is the United States.

Answer "yes" or "no" to each of the products listed below by making a check in the appropriate blank.

	Yes	No
High Explosives	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bulk Products	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Packaged Products	<input checked="" type="checkbox"/>	<input type="checkbox"/>

In order to show an attempt to monopolize a particular relevant market, the following elements must be proven:

There was a specific intent to achieve monopoly power in that relevant market;

Second, that exclusionary or restrictive conduct in furtherance of that specific intent was engaged in; and

Third, that there was a dangerous probability that sooner or later the goal of monopoly power in the relevant market would be achieved.

QUESTION NO. 28

If you answered any part of Question No. 27 "yes", then answer this question. Otherwise, go to Question No. 32.

What date did the most recent act of attempt to monopolize, if you found any, occur? Answer by writing in a date.

May 4 1989  
(date)

QUESTION NO. 29

If you answered the preceding question by filling in a date, answer this question. Otherwise, go to Question No. 32.

By what date should Thermex in the exercise of reasonable diligence have discovered the attempt to monopolize, if any, you have found? Answer by stating a date.

March 13, 1992  
(date)

QUESTION NO. 30

If you answered any part of Question No. 27 "yes," then answer this question. If you answered "no" to each part of Question No. 27, then go to Question No. 32.

Did Atlas' alleged attempt to monopolize, if any, cause Thermex to incur an antitrust injury related to its business or property?

Yes  
(yes or no)

QUESTION NO. 31

If you answered any part of Question No. 27 "yes", answer this question. If not, go to Question No. 32.

Was the alleged attempt to monopolize, if any, that you have found willful or flagrant?

Yes  
(yes or no)

QUESTION NO. 32

Was the probable effect of Atlas' acquisition of distributors substantially to lessen competition in any of the following alleged relevant markets?

The relevant geographic market is the United States.

Answer "yes" or "no" to each of the products listed below by making a check in the appropriate blank.

	Yes	No
High Explosives	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bulk Products	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Packaged Products	<input checked="" type="checkbox"/>	<input type="checkbox"/>

QUESTION NO. 33

If you answered any part of the preceding question "yes", answer this question. Otherwise, go to Question No. 37.

What date did the most recent distributor acquisition, if you found any, occur? Answer by writing in a date.

12/31/91  
(date)

QUESTION NO. 34

If you answered the preceding question by filling in a date, answer this question. Otherwise, go to Question No. 37.

By what date should Thermex in the exercise of reasonable diligence have discovered the distributor acquisitions, if any, you have found? Answer by stating a date.

3/13/92  
(date)

QUESTION NO. 35

If you answered any part of Question No. 32 "yes," then answer this question. Otherwise, go to Question No. 37.

Did Atlas' distributor acquisitions, if any, that had a probable effect of substantially lessening competition in the alleged relevant market cause Thermex to incur an antitrust injury related to its business or property?

Yes  
(yes or no)

QUESTION NO. 36

If you answered any part of Question No. 32 "yes," then answer this question. Otherwise, go to Question No. 37.

Were Atlas' distributor acquisitions, if any, that allegedly had a probable effect of substantially lessening competition, willful or flagrant?

Yes  
(yes or no)

QUESTION NO. 37

If you answered any part of Questions Nos. 17, 22, 27, or 32 "yes," then answer this question. Otherwise, go to Question No. 38.

What sum of money, if any, if paid now in cash would reasonably compensate Thermex in damages for its related antitrust injury, if any.

Consider the following elements of damage, if any, and none other:

1. lost profits;
2. future lost profits;
3. goodwill - diminution of value of assets; and
4. going concern value.

When determining Thermex's damages, if any, do not include any amounts that relate to events occurring prior to November 27, 1986.

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

(a) Past damages \$ 50,000,000

(b) Future damages \$ 50,000,000

In connection with element no. 1 above, you may use one of the 3 following measures; but you may not use more than one:

In determining the amount of any profits lost by Thermex, if any, you are entitled to compare Thermex's actual net profits in a period before the alleged antitrust violation with its actual net profits, or loss, thereafter, so long as you find that the earlier operating experience provides a reliable guide for estimating what Thermex's actual experience would have been in the absence of the alleged antitrust violation; or

In determining the amount of any profits lost by Thermex, if any, you are entitled to compare the actual profit performance of Thermex with the profit performance of comparable businesses that were not affected by the alleged unlawful conduct of defendant. In order for this to be a reasonable basis for determining Thermex's lost profits, if any, you must find that the other businesses whose performance is compared to Thermex's business are generally comparable or similar to Thermex's business, aside from the effect of the alleged violation of the antitrust laws; or

In determining the amount of any profits lost by Thermex, if any, you are entitled to consider evidence relating to the market share that Thermex would have had but for the alleged violation of the antitrust laws and to calculate the amount of profit Thermex would have earned

had it not been for the alleged antitrust violation, based on that market share, evidence of the size of the market, and evidence relating to the profit margin, if any, Thermex would have secured on such sales.

In this case, Thermex seeks damages for future lost profits. If you find that Atlas' alleged antitrust violation has caused Thermex an antitrust injury and a related loss of profits it could otherwise reasonably expect to earn in the future, you may award Thermex damages for those future lost profits.

QUESTION NO. 38

What is a reasonable fee for the necessary services of Thermex's attorneys in this case?

Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

ANSWER BY STATING A PERCENTAGE OF THE RECOVERY BY THERMEX ENERGY CORPORATION IN THIS CASE:

ANSWER: 33<sup>1</sup>/<sub>3</sub> %

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to 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.

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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.)

\_\_\_\_\_  
Presiding Juror

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

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____