

THE TIMES HERALD PRINTING § IN THE DISTRICT COURT OF
COMPANY §
 §
VS. § HARRIS COUNTY, T E X A S
 §
A. H. BELO CORPORATION, ET AL. § 269TH JUDICIAL DISTRICT

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 been previously 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 or 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 of any other vote of less than 10 jurors. If the verdict and all 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 which 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 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 testimony or evidence introduced before you and admitted in this case.

Whenever a question requires other than a "Yes" or "No" answer, 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 reasonable inferred from other facts proved.

"Willfully" as used in Questions Nos. 1 and 3 means to attempt to acquire, to acquire or to maintain monopoly power by exclusionary or restrictive conduct, as distinguished from attempting to acquire, acquiring or maintaining monopoly power by having a superior product or by superior business skill, or as a result of historical accident.

Conduct is exclusionary or restrictive when its benefits depend on eliminating or crippling competition so as to enable the actor to reap the benefits of monopoly power in the aftermath. Exclusionary or restrictive conduct is conduct without legitimate business purpose that makes sense only because it eliminates or cripples competition.

Question No. 1

Did A. H. Belo Corporation or The Dallas Morning News Company willfully attempt to achieve monopoly power in a relevant market or markets?

Answer "Yes" or "No" with respect to each defendant:

A.H. Belo Corporation _____

The Dallas Morning News Company _____

An "attempt to achieve monopoly power" occurs when a party has a specific intent to achieve monopoly power in a relevant market or markets; it engages in exclusionary or restrictive conduct in furtherance of its specific intent; and there is a dangerous probability that it will achieve monopoly power in the relevant market.

"Specific intent" means to act with the conscious object of acquiring the power to control prices or to exclude or destroy competition in the relevant market. Specific intent may be inferred from circumstantial evidence.

The term "monopoly power" is the power to dominate or control a market. This means the power to control prices or to exclude competition in a relevant market. A company may face some competition in a relevant market and still have monopoly power.

The definition of "relevant market" has two aspects: the products that are in competition, and the geographic area within which the competition takes place.

The relevant product market includes products that are reasonable substitutes from a buyer's point of view. This does not mean that products must be identical to be in the same product market. To determine the relevant product market, one must decide which products compete with each other. This is a practical determination.

In determining the relevant product market you may consider the following factors: (1) the lack of reasonable interchangeability of use between the product itself and substitutes for it; (2) industry or public recognition of the relevant market as a separate economic entity; (3) the product's peculiar characteristics and uses; (4) the production facilities required to manufacture or provide the product; (5) distinct customers of the product; (6) distinct prices for the product; (7) sensitivity to price changes; and (8) specialized vendors of the product. No one factor is decisive.

The relevant geographic market consists of the area or areas in which these parties compete for sales in the relevant product market. The geographic market selected must both correspond to the commercial realities of the industry and be economically significant.

If you answered "Yes" to either or both parts of Question No. 1, then answer:

Question No. 2

Was such conduct you have found a cause of damages to the Dallas Times Herald's business?

Answer "Yes" or "No":

Answer: _____

"Cause" means that which, in a natural and continuous sequence, produces a result, and without which cause such result would not have occurred. There may be more than one cause of a result.

Question No. 3

Did A. H. Belo Corporation or the Dallas Morning News Company willfully achieve or maintain monopoly power in a relevant market or markets?

Answer "Yes" to "No" with respect to each defendant:

A. H. Belo Corporation _____

The Dallas Morning News Company _____

If you answered "Yes" to either or both parts of Question No. 3, then answer:

Question No. 4

Was such conduct you have found a cause of damages to the Dallas Times Herald's business?

Answer "Yes" or "No":

Answer: _____

"Cause" means that which, in a natural and continuous sequence, produces a result, and without which cause such result would not have occurred. There may be more than one cause of a result.

Question No. 5

Did A. H. Belo Corporation or The Dallas Morning News Company enter into a contract or conspiracy with Universal Press Syndicate that willfully and unreasonably restrained trade in a relevant market or markets?

Answer "Yes" or "No" with respect to each defendant::

A. H. Belo Corporation _____

The Dallas Morning News Company _____

With respect to Question No. 5, a "conspiracy" is an agreement by two or more persons to accomplish some unlawful purpose or to accomplish a lawful purpose by unlawful means.

In order to establish that a conspiracy existed, plaintiff must have proved both the following elements:

First, that the alleged conspiracy existed; and

Second, that a defendant knowingly became a member of that conspiracy.

"Knowingly" means voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

A conspiracy may be inferred from circumstantial evidence.

Under the law, a corporation is a person, but it can act only through its agents--such as 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 in law of conspiring with other persons or independent corporations.

In determining whether or not a particular restraint has "unreasonably restrained trade" under the antitrust laws, you may consider the following factors:

First, the nature of the particular industry involved;

Second, facts which are peculiar to the particular industry involved;

Third, the nature of the restraint, and its effect, actual and probable;

Fourth, the history of the restraint, and

Fifth, the reasons for adopting the particular practice which is alleged to be a restraint.

A determination should be made from a consideration of all the evidence in the case and the economic effects upon competition.

If you answered "Yes" to either or both parts of Question No. 5, then answer:

Question No. 6

Was such conduct you have found a cause of damages to the Dallas Times Herald's business?

Answer "Yes" or "No":

Answer: _____

"Cause" means that which, in a natural and continuous sequence, produces a result, and without which cause such result would not have occurred. There may be more than one cause of a result.

If you have answered "Yes" to either or both parts of Question No. 7, then answer:

Question No. 8

Was the defendants' conduct privileged or justified?

Answer: "Yes" or "No" with respect to each defendant.

A. H. Belo Corporation _____

The Dallas Morning News Company _____

A person is privileged or justified to interfere with the business relations of another with the motive and purpose, at least in part, to advance or protect his own business or financial interests. But one who interferes only out of spite, to do injury to others, or for other bad motive, has no justification, and his interference is improper.

Question No. 7

Did the defendants knowingly and intentionally with the intent of harming the Dallas Times Herald cause Universal Press Syndicate not to continue its agreements or business relationship with the Dallas Times Herald?

Answer: "Yes" or "No" with respect to each defendant.

A. H. Belo Corporation _____

The Dallas Morning News Company _____

If you have answered "Yes" to either or both parts of Question No. 7, then answer:

Question No. 9

Was such interference a proximate cause of damages to the Dallas Times Herald?

Answer: "Yes" or "No" with respect to each defendant.

A. H. Belo Corporation _____

The Dallas Morning News Company _____

"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.

If you answered "Yes" to Question No. 2, or "Yes" to Question No. 4, or "Yes" to Question No. 6, or "Yes" to Question No. 9, then answer:

Question No. 10

What sum of money, if any, if paid now in cash would fairly and reasonably compensate the Dallas Times Herald for damages from a loss of profits, if any, that have resulted or will result from the transfer of the Universal Press Syndicate features?

Answer in dollars and cents, if any.

ANSWER: _____

Loss of profits are lost revenues, if any, minus reduced costs, if any, resulting from the transfer of the Universal Press Syndicate features. Loss of future profits, if any, must be reduced to present cash value to determine these damages, if any.

If you answered "Yes" to either or both parts of Question No. 9 and if you have also answered Question No. 10, then answer:

Question No. 11

Did A. H. Belo Corporation or The Dallas Morning News Company act with actual malice? "Actual malice" means acting with ill-will, spite, or evil motive for the purpose of injuring the Dallas Times Herald.

Answer "Yes" or "No" with respect to each defendant:

A. H. Belo Corporation _____

The Dallas Morning News Company _____

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.

ANSWER TO JURY QUESTION 1

If the only purpose of conduct is to eliminate or cripple competition, it is exclusionary or restrictive.

If conduct has a legitimate business purpose, it is not exclusionary or restrictive.

ANSWER TO JURY QUESTION 2

The relevant product market is not UPS features.

The Plaintiff contends that the relevant product market is newspapers. The Defendants contend the relevant product market includes newspapers and other media, such as television, radio, magazines, direct mail, yellow pages, and the like. This is for you to decide.