



*Charge of the Court*

LADIES AND GENTLEMEN OF THE JURY:

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

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the

jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

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

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

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

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 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.

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.

#### **ADDITIONAL INSTRUCTIONS**

##### *Violation of Texas Antitrust Law*

The plaintiffs claim that the defendants violated the antitrust laws of this state by entering into a conspiracy to restrain trade by fixing the price of bread and bread products throughout the State of Texas. Defendants deny that they participated in any such conspiracy.

Under the Texas Free Enterprise and Antitrust Act, 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. This prohibition is violated

not only if the same price is set by an agreement or mutual understanding among competitors, but also if the range or level of prices is agreed upon or various price formulas are agreed upon.

In order to establish a price-fixing claim against a defendant, plaintiffs must have proved as to that defendant each of the following elements by a preponderance of the evidence:

*First*, that an agreement or mutual understanding to fix the prices of bread or bread products existed;

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

*Third*, that the agreement or mutual understanding proximately caused plaintiffs to suffer an injury to their business or property.

"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 the degree of care required of him 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.

#### *Existence of a Conspiracy*

A conspiracy is an agreement by two or more persons to accomplish some unlawful purpose or to accomplish a lawful purpose by unlawful means. A conspiracy is a kind of "partnership" in which each person found to be a member of the conspiracy is liable for the acts and statements of the other members made during the existence and in furtherance of the conspiracy. To create such a relationship, two or more persons or companies must enter into an

agreement or mutual understanding that they will act together for some unlawful purpose or to achieve a lawful purpose by unlawful means.

In order to establish the existence of a conspiracy, however, the evidence need not show that its members entered into any express, formal, or written agreement; that they met together; or that they directly stated what their object or purpose was, or the details of it, or the means by which they would accomplish their purpose. The agreement itself may have been entirely unspoken. What the evidence must show in order to prove that a conspiracy existed is that the alleged members of the conspiracy in some way came to an agreement or mutual understanding to accomplish a common purpose.

A conspiracy may be formed without all parties coming to an agreement at the same time, as where competitors, without previous agreement, separately accept invitations to participate in a plan to restrain trade. The unlawful agreement may be shown if the proof establishes that the parties knowingly worked together to accomplish a common purpose. It is not essential that all persons acted exactly alike.

Mere presence at the scene of an alleged transaction or the mere fact that alleged members may have associated with each other or engaged in similar conduct, does not necessarily establish the existence of a conspiracy. Nor is mere presence at the scene of an alleged price-fixing action sufficient to establish that a defendant knowingly participated in it.

In determining whether an agreement or mutual understanding has been proved, you must view the evidence as a whole and not piecemeal. In considering the evidence, you should first determine whether or not the alleged conspiracy did exist. If you conclude that any conspiracy

did exist, you should next determine whether the defendants knowingly became members of that conspiracy with the intent to further its purpose. A person acts knowingly if he acts voluntarily and intentionally, and not by mistake or accident.

Under the law, a corporation is a person, but it can only act 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. Through its employees, however, it is capable of conspiring with other persons or corporations.

A corporation is entitled to the same fair trial as a private individual. The acts of a corporation are to be judged by the same standard as the acts of a private individual, and you may hold a corporation liable only if such liability is established by the preponderance of the evidence. All persons, including corporations, are equal before the law.

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. An employee is acting within the scope of his employment if he is acting in furtherance of the business of his employer and within the scope of the general authority given him by his employer.

Apparent authority of an employee may arise either (1) from a corporation knowingly permitting an employee to hold himself out as having authority, or (2) by a corporation's actions that reflect a lack of ordinary care so as to clothe an agent with the appearance of authority, thus leading a reasonable person to believe that the employee had the authority that he attempts to exercise.

A corporation is also bound by the acts of its employees that it ratifies. Ratification may be express or implied. Implied ratification occurs if a party, though it may have been unaware of unauthorized conduct taken on its behalf at the time it occurred, retains the benefit of the transaction involving unauthorized conduct after it acquired full knowledge of the unauthorized conduct. Implied ratification results in ratification of the entire transaction.

The fact that a company has instructed its employees not to violate the antitrust laws does not excuse the company from responsibility for the unlawful acts of its agents or employees done within the scope of their employment or apparent authority.

#### *Damages*

If you find that the plaintiffs have been injured by an antitrust violation committed by one or more defendants, the law provides that the plaintiffs should be fairly compensated for all damages to their business and property which were a direct result or likely consequence of the conduct which you found to be unlawful. A defendant's violation of the antitrust laws often creates a situation in which it is hard to determine the precise amount of damages suffered by the plaintiffs. Plaintiffs' right to be 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.

A person who knowingly joins an existing conspiracy, or who participates only in part of a conspiracy with knowledge of the overall conspiracy, is just as responsible as if he had been one of those who formed or began the conspiracy and participated in every part of it.

*Successor Liability*

You are instructed that Interstate Brands Corporation is legally responsible for the conduct of Continental Baking Company. Under Texas law, when two companies merge, the resulting company assumes all of the liabilities of the merged companies.

Certificate

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

(To be signed by the presiding juror if unanimous)

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PRESIDING JUROR

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

Lila M. Moore  
Frank R. Rutledge  
Sam A. Elliott  
Dewey L. Bailey  
Sandra D. Jean  
Lamara J. Moore

Elanora Eaves  
Wilfred Resto  
David W. [unclear]  
Archie [unclear]  
Subera McDougald

## QUESTIONS

1. Do you find that one or more of the defendants knowingly became part of a conspiracy, if any, to fix, control, raise, lower, maintain, or stabilize the prices of bread and bread products in Texas at any time during the period from 1977 to March 1993? Indicate your response by placing a "Yes" or a "No" next to the name of each defendant.

Interstate Brands (or its predecessor Continental

Baking Company) NO

Pat Coyle NO

Jeffrey Gordon NO

2. If you answered "Yes" to any part of question number 1, answer the following question. Do you find that defendants fraudulently concealed the existence of any unlawful conspiracy prior to January 27, 1993? Indicate your answer by noting a "Yes" or a "No."
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3. If you answered "Yes" to any part of question number 1, answer the following question. What do you determine to be the percentage, if any, that the defendants and their conspirators overcharged the members of the class as the proximate result of any unlawful conspiracy?

Please write in the specific percentage, if any, you find the defendants and their co-conspirators overcharged during each of the time periods listed below:

1988-1992 \_\_\_\_\_ %

1977-1987 \_\_\_\_\_ %

4. If you answered "Yes" to any part of question number 1, answer the following question. What do you determine to be the fair dollar calculation of the damages, if any, incurred by the plaintiffs and the members of the class as the proximate result of any unlawful conspiracy for the period from 1988 to 1992?

This question asks for the damages proximately caused by the unlawful conspiracy, whether caused by a defendant named in this lawsuit or its un-named co-conspirators, for the period from 1988 to 1992.

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5. If you answered "Yes" to any part of question number 1, answer the following question. As for each defendant you found was a member of the conspiracy, indicate whether that defendant's conduct was wilful or flagrant by placing a "Yes" or a "No" next to the defendant's name?

"Wilful" 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.

Interstate Brands (or its predecessor Continental

Baking Company) \_\_\_\_\_

Pat Coyle \_\_\_\_\_

Jeffrey Gordon \_\_\_\_\_