

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMSPORTS AND ENTERTAINMENT, LLC,)

Plaintiff,)

vs.)

Case No. 02 C 2298

PARADAMA PRODUCTIONS, INC., d/b/a)

AMA Pro Racing; CLEAR CHANNEL)

COMMUNICATIONS, INC.; SFX)

ENTERTAINMENT, INC., d/b/a Clear)

Channel Entertainment; and SFX MOTOR)

SPORTS, INC., d/b/a Clear Channel)

Entertainment Motor Sports,)

INSTRUCTIONS GIVEN TO THE JURY

Date: March 16, 2005

Members of the jury, you have seen and heard all the evidence, and you are about to hear the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

You must give each party to this case the same fair consideration. All persons and corporations stand equal before the law and are to be dealt with as equals in a court of justice.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

In determining the facts, you may consider only the evidence that I have admitted in this case. The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

Certain testimony was presented to you by the playing of depositions. You should give this testimony the same consideration you would give it had the witness appeared and testified here in court.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof of a fact that does not require an inference, such as the testimony of someone who claims to have personal knowledge of something. Circumstantial evidence is proof of a fact, or a series of facts, which tends to show that another fact is true.

You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any evidence in the case.

You are to consider all of the evidence in determining your verdict. However, that does not mean that you must accept all of the evidence as true or accurate.

In determining the facts, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide what weight, if any, to give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

A witness may be discredited or “impeached” by contradictory evidence; by, among other things, a showing that he or she testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’ testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

You have heard certain witnesses, namely, Robert Baade, Stephen Siwek, and Dennis Carlton, give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

It is proper for a lawyer to meet with any witness in preparation for trial. The fact that a witness has spoken with a lawyer does not reflect negatively on the believability of the witness.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

When I say a particular party must prove a proposition by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that the proposition is more probably true than not true.

The parties

The plaintiff in this case is JamSports and Entertainment, LLC.

The defendants in this case are:

- (1) Paradama Productions, Inc., which does business under the name AMA Pro Racing, Inc.;
- (2) Clear Channel Communications, Inc.;
- (3) SFX Entertainment, Inc., which does business under the name Clear Channel Entertainment, Inc.;
- (4) SFX Motor Sports, Inc., which does business under the name Clear Channel Motor Sports, Inc., and is also sometimes referred to as the Clear Channel Motor Sports Division.

In these instructions, I will refer to Clear Channel Communications, Inc., SFX Entertainment, Inc., and SFX Motor Sports, Inc. collectively as “Clear Channel.” You should consider those three firms to be a single unit for purposes of these instructions.

The claims

JamSports has made one claim against AMA Pro and three claims against Clear Channel.

You must give separate consideration to each claim.

Claim against AMA Pro Racing

JamSports' claim against AMA Pro is that AMA Pro breached the terms of the November 2, 2001 letter of intent between AMA Pro and JamSports.

AMA Pro denies this claim.

Claims against Clear Channel

JamSports' first claim against Clear Channel is that it unlawfully monopolized the market for promoting supercross races in the United States.

JamSports' second claim against Clear Channel is that it intentionally interfered with the November 2, 2001 letter of intent between JamSports and AMA Pro Racing.

JamSports' third claim against Clear Channel is that it intentionally interfered with JamSports' expectation of entering into a business relationship with AMA Pro.

Clear Channel denies each of these claims.

Claim against AMA Pro - nature of claim

JamSports' claim against AMA Pro is that it breached the November 2, 2001 letter of intent. In this case, I have already ruled that the letter of intent was a binding contract between JamSports and AMA Pro on the following terms:

- (1) AMA Pro was required to negotiate exclusively and in good faith with JamSports for 90 days after the letter of intent was signed.
- (2) AMA Pro was prohibited from entering into any discussion or negotiation with any third party regarding the subject matter of the letter of intent.
- (3) AMA Pro and JamSports were required to advise each other promptly if either received an offer.
- (4) AMA Pro and JamSports were prohibited from divulging the terms of the letter of intent to anyone other than their attorneys, accountants, or financial consultants.

I have ruled that AMA Pro breached the letter of intent by failing to advise JamSports of its receipt, during the 90 day exclusivity period, of Clear Channel's proposal for supercross promotion. In addition to this breach, JamSports claims that AMA Pro breached the letter of intent by: (a) divulging its terms to Clear Channel; (b) discussing and negotiating with Clear Channel, during the letter of intent's exclusivity period, regarding the promotion of the 2003-2009 AMA supercross series; and (c) failing to negotiate in good faith with JamSports to enter into a final promotion agreement. JamSports claims it was damaged as a result of AMA Pro's breaches of the letter of intent.

AMA Pro denies that it breached the letter of intent in any manner other than by failing to advise JamSports of its receipt of Clear Channel's supercross proposal. AMA Pro also denies

that JamSports was damaged as a result of any claimed breach of the letter of intent.

Claim against AMA Pro - definition of duty to negotiate in good faith

One aspect of JamSports' claim against AMA Pro is its contention that AMA Pro breached its obligation under the November 2, 2001 letter of intent to negotiate in good faith to enter into a final promotion agreement.

The obligation to negotiate in good faith to enter into a final promotion agreement required the parties to negotiate honestly and with the intention and purpose of reaching a final promotion agreement. This obligation was not, however, a guarantee that a final promotion agreement would be reached.

You may find that AMA Pro breached the obligation to negotiate in good faith only if you find that JamSports has proven both of the following propositions:

1. AMA Pro engaged in misconduct in connection with its negotiations with JamSports. "Misconduct," for purposes of this instruction, means abandoning the negotiations or deliberately insisting on conditions that did not conform to or were outside the terms and conditions stated in the letter of intent. In this regard, I have ruled that approval of a final promotion agreement by the AMA was not a requirement of the letter of intent.

2. AMA Pro acted with the intent to avoid making a final promotion agreement with JamSports.

Claim against AMA Pro - elements

To succeed on its claim against AMA Pro, JamSports must prove each of the following propositions:

1. JamSports performed all obligations required of it under the letter of intent.
2. AMA Pro breached the letter of intent in one or more of the ways claimed by JamSports. As stated earlier, I have already ruled that AMA Pro breached the letter of intent by failing to advise JamSports of its receipt, during the 90 day exclusivity period, of Clear Channel's proposal for supercross promotion. You must also consider whether AMA Pro breached the letter of intent in one or more of the other ways claimed by JamSports.
3. As a direct result of AMA Pro's breach or breaches, JamSports sustained damages.

If you find that JamSports has proved each of these propositions, you must find for JamSports on this claim, and go on to consider the question of damages. The instructions regarding the question of damages begin at page 34.

If you find that JamSports has failed to prove any one of these propositions, you must find for AMA Pro on this claim, and you will have no occasion to consider the question of damages on this claim.

First claim against Clear Channel defendants

JamSports' first claim against Clear Channel is that it unlawfully monopolized the market for promoting supercross races in the United States, in violation of the antitrust laws.

To put in context my instructions regarding this claim, I will start with a few words about the nature and purpose of our antitrust laws.

The purpose of the antitrust laws is to encourage free and open competition in our economy so that consumers may receive better goods and services at lower cost. To this end, the antitrust laws prohibit anticompetitive conduct that prevents firms from competing with each other on the merits of the products or services that they offer. The antitrust laws do not, however, protect individual firms from the effects of vigorous competition by others and do not guarantee that every firm will be successful. Competition is a contest that sometimes results in winners and losers.

First claim against Clear Channel - elements

To succeed on its first claim against Clear Channel, JamSports must prove each of the following propositions by a preponderance of the evidence:

1. Promotion of supercross is a relevant market.
2. Clear Channel had monopoly power in that market.
3. Clear Channel willfully maintained its monopoly power by engaging in anticompetitive conduct, that is, conduct that did not have a legitimate business purpose.
4. Clear Channel's anticompetitive conduct harmed consumers.
5. JamSports was injured in its business or property by Clear Channel's anticompetitive conduct.

(In the following instructions, I will define these terms for you.)

If you find that JamSports has proved each of these propositions, you must find for JamSports on this claim, and go on to consider the question of damages. The instructions regarding the question of damages begin at page 34.

If you find that JamSports has failed to prove any one of these propositions, you must find for Clear Channel on this claim, and you will have no occasion to consider the question of damages on this claim.

First claim against Clear Channel - definition of “relevant market”

A “relevant market” for purposes of this claim is a market in which the products compete with each other in a particular geographic area. In this case, the relevant geographic area is the United States as a whole.

Products are considered to be in the same market if they are reasonable substitutes for each other, from the point of view of buyers or producers. Products need not be identical to be in the same market. For example, butter and margarine would be considered reasonable substitutes for most buyers and thus would be considered to be in the same market. On the other hand, most buyers would not consider bicycles and automobiles to be reasonable substitutes for each other, even though both of them can be used to go to the grocery store.

The basic test for whether products are reasonable substitutes is whether changes in the price of one product cause a considerable number of consumers to switch to another product. If so, the products are in the same market. You may consider how the public and people in the industry, including producers, view the products; whether the products have similar characteristics or uses; whether the products have similar prices; whether changes in the price of one product are followed by changes in the price of the other; whether the products are sold to similar consumers; and whether they are distributed and sold by the same kinds of distributors or dealers.

First claim against Clear Channel - definition of “monopoly power”

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

A firm has the power to control prices when it can set significantly higher prices for its products than those charged by competitors for equivalent goods without suffering a substantial loss of business to competitors. The fact that a firm charges high prices for its products or makes a high level of profits does not necessarily mean that it has monopoly power. A firm ordinarily may charge as high a price for its product as the market will accept.

A firm has the power to exclude competition when it has the ability to dominate a relevant market by eliminating existing competition or preventing new competition from entering the market. By this I mean the power to exclude competition from the relevant market generally, not just to exclude a particular competitor.

In determining whether a firm has monopoly power, you may consider, among other things, the firm’s share of the relevant market, whether its market share was increasing or declining, the number and size of its competitors, and whether other firms have been able to enter the relevant market.

**First claim against Clear Channel - definition of
“willfully maintaining monopoly power by engaging in anticompetitive conduct”**

As I stated, one of the propositions that JamSports must prove is that Clear Channel willfully maintained monopoly power by engaging in anticompetitive conduct.

The mere possession of monopoly power is not unlawful. Firms sometimes are monopolies because they compete successfully, because they offer better products or services, because they have superior business judgment, or even because of accident or chance. In addition, all firms, including monopolies, are entitled to compete vigorously, and in doing so they may act to advance their own interests at the expense of their competitors. A monopoly is not required to share with other potential competitors the advantages it has acquired.

Under the antitrust laws, it is improper for a firm to maintain monopoly power only if it willfully engages in anticompetitive conduct. JamSports is required to show both that Clear Channel engaged in anticompetitive conduct, and that it did so willfully.

A firm engages in “anticompetitive conduct” when it engages in conduct without a legitimate business purpose. To put it another way, anticompetitive conduct is conduct that does not have a justification other than excluding competitors or limiting competition.

A firm engages in anticompetitive conduct “willfully” when it acts with the purpose of furthering its dominance in the relevant market, or when this is the necessary direct consequence of its actions.

In considering whether Clear Channel willfully engaged in anticompetitive conduct, you must consider their conduct as a whole, rather than viewing in isolation each particular act claimed to be wrongful.

First claim against Clear Channel - definition of “harm to consumers”

Consumers are harmed by anticompetitive conduct when the conduct reduces the supply or quality of goods or services below what would have existed absent the anticompetitive conduct, or when the conduct increases the price for the goods or services above what they would have been absent the anticompetitive conduct.

First claim against Clear Channel - definition of “injury to business or property”

As I stated, one of the propositions that JamSports must prove is that it was injured in its business or property by Clear Channel’s anticompetitive conduct. In this case, to prove that it was injured in its business or property, JamSports must show that it would have entered a new business as the promoter of the AMA Pro supercross series had it not been for Clear Channel’s alleged violation of the antitrust laws. To prove this, JamSports must establish that it intended to enter that business and had taken the necessary steps to prepare to do so. In deciding this question, you may consider the background and experience of JamSports’ management and employees; JamSports’ ability to finance the business and purchase the necessary supplies and equipment; whether, and the extent to which, JamSports took any affirmative steps to prepare to conduct the new business; and any other factors that you determine, based on the evidence, have a bearing on the question of JamSports’ intention and preparedness to enter the business.

Second claim against Clear Channel

To succeed on its second claim against Clear Channel, JamSports must prove each of the following propositions by a preponderance of the evidence:

1. Clear Channel was aware that the November 2, 2001 letter of intent required a period of exclusive negotiations between JamSports and AMA Pro.
2. Clear Channel intentionally and unjustifiably induced AMA Pro to breach its agreement to negotiate exclusively.
3. As a result of Clear Channel's inducement, AMA Pro breached the agreement to negotiate exclusively.
4. JamSports was damaged by AMA Pro's breach of its agreement to negotiate exclusively.

If you find that JamSports has proved each of these propositions, you must find for JamSports on this claim, and go on to consider the question of damages. The instructions regarding the question of damages begin at page 34.

If you find that JamSports has failed to prove any one of these propositions, you must find for Clear Channel on this claim, and you will have no occasion to consider the question of damages on this claim.

Third claim against Clear Channel

To succeed on its third claim against Clear Channel, JamSports must prove each of the following propositions by a preponderance of the evidence:

1. JamSports had a reasonable expectation of entering into a valid business relationship with AMA Pro.
2. Clear Channel knew of JamSports' expectation.
3. Clear Channel intentionally and unjustifiably interfered with JamSports' expectation. (I will define this term in the next instruction.)
4. Clear Channel's interference caused a termination of JamSports' expectation.
5. JamSports was damaged by Clear Channel's interference.

If you find that JamSports has failed to prove any one of the five propositions listed above, you must find for Clear Channel on this claim. In that event, you will have no occasion to consider the question of damages on this claim, and you need not consider the remainder of this instruction.

If, on the other hand, you find that JamSports has proved all five of the propositions listed above, then you must go on to consider another proposition: whether Clear Channel's actions constituted competing with a competitor for prospective business. A firm is entitled to compete for prospective business, so long as it acts with the intention, at least in part, of furthering its own business, and is not motivated by spite or ill will. I will refer to this as the "competition privilege."

If you find that Clear Channel has failed to prove the "competition privilege" by a preponderance of the evidence, then you must find for JamSports on this claim. In that event,

you will go on to consider the question of damages, and you need not consider the remainder of this instruction.

If, on the other hand, you find that Clear Channel has proved the “competition privilege” by a preponderance of the evidence, then you must go on to consider another question: whether Clear Channel employed wrongful means in its actions. A firm employs wrongful means when it violates the antitrust laws, as discussed with regard to JamSports’ first claim against Clear Channel. I will refer to this as “wrongful means.”

If you find that JamSports has proved “wrongful means” by a preponderance of the evidence, then you must find for JamSports on this claim, and go on to consider the question of damages. If you find that JamSports has failed to prove “wrongful means” by a preponderance of the evidence, then you must find for Clear Channel on this claim, and you will have no occasion to consider the question of damages.

Third claim against Clear Channel - definition of “intentional and unjustifiable”

For purposes of JamSports’ third claim against Clear Channel, a defendant’s interference in a plaintiff’s reasonable expectation of a business relationship is “intentional” if the defendant knows that interference is substantially certain to occur as a result of his actions. Interference in a plaintiff’s reasonable expectation of a business relationship is “unjustifiable” if the defendant acts for the sole or primary purpose of interfering with the plaintiff’s expectation.

Instruction applicable to claims against Clear Channel

You have heard evidence regarding press releases issued by Clear Channel. Because the First Amendment to the United States Constitution guarantees freedom of speech and the press, the issuance of press releases cannot be considered “anticompetitive” conduct for purposes of JamSports’ first claim against Clear Channel or “unjustifiable” conduct for purposes of JamSports’ second and third claims against Clear Channel. You may consider the press releases for any other purpose in the case that you find to be supported by the evidence.

Damages (1)

Now I will instruct you on how to determine the amount of money damages to award to JamSports if you find it has proven one or more of its claims. You will have no occasion to consider the question of damages on any claim that you find JamSports has failed to prove.

Damages (2)

JamSports is seeking compensatory damages on each of its claims. The purpose of compensatory damages is to put the plaintiff in the position it would have been in if the defendant's conduct that is in question had not occurred. On each of its claims, JamSports is seeking to recover out of pocket expenses and lost profits.

I will use the term "proximate cause" several times in this instruction. Conduct is said to "proximately cause" a loss if, in natural or probable sequence, it produces the particular loss that is claimed. It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause acting at the same time, which in combination with it, causes the loss.

Claim against AMA Pro: If JamSports prevails on its claim against AMA Pro, it is entitled to be compensated for any losses that you find were proximately caused by the particular breach or breaches of the November 2, 2001 letter of intent that you find AMA Pro committed.

First claim against Clear Channel: If JamSports prevails on its first claim against Clear Channel, it is entitled to be compensated for any damage to its business or property that you find was proximately caused by Clear Channel's violation of the antitrust laws.

Second claim against Clear Channel: If JamSports prevails on its second claim against Clear Channel, it is entitled to be compensated for any losses that were proximately caused by AMA Pro's breach of its agreement to negotiate exclusively with JamSports.

Third claim against Clear Channel: If JamSports prevails on its third claim against Clear Channel, it is entitled to be compensated for any losses that were proximately caused by its loss of a prospective business relationship with AMA Pro.

Damages (3)

If you find in favor of JamSports on its claim against AMA Pro *and* on one or more of its claims against Clear Channel, then you must consider the question of damages against AMA Pro separately from the question of damages as to Clear Channel. This does not mean that you are to apportion damages as between AMA Pro and Clear Channel. Rather, I mean simply that any award of damages that you make against AMA Pro should not be influenced by any award of damages you make against Clear Channel, and vice-versa. Any amount of damages that you award against a particular defendant should represent the total amount of damages for which you find that defendant responsible in accordance with these instructions.

Damages (4)

With regard to JamSports' three claims against Clear Channel, JamSports is seeking the same lost profits and out of pocket expenses on each of these claims. JamSports may recover lost profits and out of pocket expenses only once against Clear Channel. For this reason, the verdict form will ask you to make only a single damage award as to Clear Channel, even if you find in favor of JamSports on more than one of its claims against Clear Channel.

Damages (5)

JamSports must prove its damages by a preponderance of the evidence. Sometimes it is difficult to determine the precise amount of loss that a plaintiff suffered. JamSports' right to be fairly compensated should not be affected by any difficulty you may have in determining the precise amount to award, so long as there is a reasonable basis in the evidence for your award. On the other hand, your award must be based on evidence, and not speculation or guesswork.

If you are unable to determine damages on a particular claim without engaging in speculation or guesswork, or if you find that JamSports has failed to prove damages on a particular claim by a preponderance of the evidence, you may decline to award JamSports damages on that claim, or may award a nominal amount, such as \$1.00.

Damages (6)

JamSports is seeking compensatory damages in the form of lost profits for the period 2003 through 2013. Damages of this type can be awarded only if the evidence provides a reasonable basis to compute lost profits. Lost profits cannot be awarded based on conjecture or speculation. Lost profits may be based on assumptions regarding what will occur in the future, so long as those assumptions are reasonable in light of the evidence.

If you determine that JamSports is entitled to recover lost profits, the measure of damages is the amount by which JamSports' gross revenues would have exceeded all the costs and expenses necessary to produce those revenues. You must make a reasonable estimate of both the amount of profits that JamSports would have earned from promoting supercross and the length of time it would have earned those profits. In making these determinations, you should consider the various uncertainties that could affect the future profitability of JamSports' promotion of supercross, including competition that it would face in the future, as well as general market and economic conditions.

You have heard evidence of Clear Channel's net profits from promoting supercross. You may use this evidence as a guide to determine what JamSports' net profits would have been only if you first determine that there is a reasonable basis to conclude that JamSports would have achieved comparable results.

If you determine to award profits for years in the future, you must reduce the amount of damages you award to the present value of that amount. The right to receive a certain amount of money in the future is worth less than having the same amount of money in hand today. The "present value" of an amount to be obtained at a date in the future is the amount of money

needed now that, when added to the interest it may be expected to earn in the future, will equal the amount to be obtained at the future date.

Damages (7)

JamSports may not recover damages for any portion of its losses that it could have avoided through the exercise of reasonable care and prudence. The law requires an injured party to take all reasonable steps it can to avoid further injury and thereby reduce its loss.

The defendants have the burden of proof on this issue. The defendants must prove by a preponderance of the evidence that JamSports acted unreasonably in failing to take steps to limit its losses, that JamSports' failure to take those steps resulted in its losses being greater than they would have been if it had taken those steps, and the amount by which JamSports' losses would have been reduced if it had taken those steps. The law requires a plaintiff to use only those measures that are reasonably practicable under the circumstances as they appeared to the plaintiff at the time.

Damages (8) - second and third claims against Clear Channel only

JamSports also seeks an award of punitive damages on its second and third claims against Clear Channel. You may not consider the question of punitive damages on any of JamSports' claims other than these.

If you find for JamSports on its second and/or its third claim, and if you further find that Clear Channel's conduct was willful and wanton and proximately caused injury to JamSports, and you further find that justice and the public good require it, you may award, in addition to any other damages that you award to JamSports, an amount that will serve to punish Clear Channel and deter Clear Channel and others from similar conduct. This is called "punitive damages." Willful and wanton conduct is defined as a course of action that shows actual or deliberate intention to harm or that shows an utter indifference to or conscious disregard for the rights or interests of another.

Punitive damages, if you decide to award them, should be in an amount sufficient to fulfill the purposes of punitive damages that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages that you decide to award, you should consider the following factors:

- the nature and degree of reprehensibility of the defendant's conduct;
- the impact of the defendant's conduct on the plaintiff;
- the relationship between the plaintiff and the defendant;
- the likelihood that the defendant would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm inflicted

on the plaintiff;

- the defendant's financial condition.

Upon retiring to the jury room, select one of your number as your presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you. [Read and explain the verdict forms.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, the presiding juror will fill in and date the appropriate form, and each of you will sign it.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer.

If any communication is made, it should not indicate your numerical division.

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which is consistent with the individual judgment of each juror. You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.

Verdict Form

We, the jury, unanimously find as follows on the claims of the plaintiff JamSports against the defendants AMA Pro and Clear Channel:

	For plaintiff	For defendant
Claim against AMA Pro:	_____	_____
First claim against Clear Channel:	_____	_____
Second claim against Clear Channel:	_____	_____
Third claim against Clear Channel:	_____	_____

Damages - against AMA Pro

We award JamSports compensatory damages against AMA Pro as follows (to be considered only if you have found for JamSports on its claim against AMA Pro):

Out of pocket expenses:	\$ _____
Lost profits:	\$ _____
TOTAL	\$ _____

Damages - against Clear Channel

We award JamSports compensatory damages against Clear Channel as follows (to be considered only if you have found for JamSports on one or more claim against Clear Channel):

Out of pocket expenses:	\$ _____
Lost profits:	\$ _____
TOTAL	\$ _____

We award JamSports punitive damages against Clear Channel as follows (to be considered only if you have found for JamSports on its second and/or third claims against Clear Channel):

\$ _____

Presiding juror

Date: _____

Supplemental Verdict Form 1

Please answer the following questions 1 and 2 if, and only if, you find in favor of JamSports on its claim against AMA Pro.

1. Has JamSports proved that AMA Pro breached the November 2, 2001 letter of intent by discussing and negotiating with Clear Channel, during the letter of intent's exclusivity period, regarding the promotion of the 2003-2009 AMA supercross series?

Yes _____

No _____

2. Has JamSports proved that AMA Pro breached the November 2, 2001 letter of intent by failing to negotiate in good faith with JamSports to enter into a final promotion agreement?

Yes _____

No _____

Presiding juror

Date: _____

Supplemental Verdict Form 2

Please answer the following questions 1, 2, 3, and 4 if, and only if, you find in favor of JamSports on its first claim (antitrust) against Clear Channel. Each of the questions concerns the third proposition that JamSports must prove to prevail on that claim, specifically, the following proposition:

Clear Channel willfully maintained its monopoly power by engaging in anticompetitive conduct, that is, conduct that did not have a legitimate business purpose.

1. Has JamSports proved that Clear Channel willfully maintained monopoly power by excluding JamSports from necessary venues for supercross, without a legitimate business purpose?

Yes _____

No _____

2. Has JamSports proved that Clear Channel willfully maintained monopoly power by offering incentives to original equipment manufacturers and riders to participate in a Clear Channel supercross series, without a legitimate business purpose?

Yes _____

No _____

3. Has JamSports proved that Clear Channel willfully maintained monopoly power by obtaining sanctioning of a supercross series by FIM/Dorna, without a legitimate business purpose?

Yes _____

No _____

4. Has JamSports proved that Clear Channel willfully maintained monopoly power by preventing AMA Pro's deal with Speed Channel for live television broadcasting of supercross races, without a legitimate public purpose?

Yes _____

No _____

Presiding juror

Date: _____