

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

Case No. 2:04-cv-47-FtM-29 SPC

WHITNEY INFORMATION  
NETWORK, INC., a Colorado corporation,

Plaintiffs,

v.

XCENTRIC VENTURES, LLC., an  
Arizona limited liability company;  
BADBUSINESSBUREAU.ORG, an  
Arizona limited liability company; and  
ED MAGEDSON, an individual,

Defendants.

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**COURT’S INSTRUCTIONS TO THE JURY**

Members of the Jury:

I will now explain to you the rules of law that you must follow and apply in  
deciding this case.

When I have finished you will go to the jury room and begin your discussions - -  
what we call your deliberations.

Given	_____
Given as Modified	_____
Denied	_____
Withdrawn	_____

Authorities: 11<sup>th</sup> Cir. Pattern Jury Instruction No. 1 (1999).

PLAINTIFF'S  
PROPOSED INSTRUCTION NO. 2

**Consideration Of The Evidence  
Duty To Follow Instructions**

In deciding the case you must follow and apply all of the law as I explain it to you, whether you agree with that law or not; and you must not let your decision be influenced in any way by sympathy, or by prejudice, for or against anyone.

The fact that a corporation is involved as a party must not affect your decision in any way. A corporation and all other persons stand equal before the law and must be dealt with as equals in a court of justice. When a corporation is involved, of course, it may act only through people as its employees; and, in general, a corporation is responsible under the law for any of the acts and statements of its employees that are made within the scope of their duties as employees.

In your deliberations you should consider only the evidence - -that is, the testimony of the witnesses and the exhibits I have admitted in the record - - but as you consider the evidence, both direct and circumstantial, you may make deductions and reach conclusions which reason and common sense lead you to make. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances tending to prove, or disprove, any fact in dispute. The law makes no distinction between the weight you may give to either direct or circumstantial evidence.

Remember that anything the lawyers say is not evidence in the case. And, except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your decision concerning the facts. It is your own

recollection and interpretation of the evidence that controls.

Given

Given as Modified

Denied

Withdrawn

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Authorities: 11<sup>th</sup> Cir. Pattern Jury Instruction No. 2.2 (1999).

PLAINTIFF'S  
PROPOSED INSTRUCTION NO. 3

**Credibility Of Witnesses**

Now, in saying that you must consider all of the evidence, I do not mean that you must accept all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding whether you believe or do not believe any witness I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of the case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things he or she testified about? Did the witness appear to understand the questions clearly and answer them directly? Did the witness' testimony differ from other testimony or other evidence?

Given	_____
Given as Modified	_____
Denied	_____
Withdrawn	_____

Authorities: 11<sup>th</sup> Cir. Pattern Jury Instruction No. 3.0 (1999).

PLAINTIFF'S  
PROPOSED INSTRUCTION NO. 4

**Impeachment Of Witnesses Inconsistent Statement**

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony the witness gave before you during the trial.

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was simply an innocent lapse of memory or an intentional falsehood; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

Given	_____
Given as Modified	_____
Denied	_____
Withdrawn	_____

Authorities: 11<sup>th</sup> Cir. Pattern Jury Instruction No. 4.1 (1999).

PLAINTIFF'S  
PROPOSED INSTRUCTION NO. 5

**Defamation: Private Claimant,  
Nonmedia Defendant With Or Without Qualified Privilege**

The issues for your determination on the claim of WHITNEY INFORMATION NETWORK, INC. (“WIN”) against defendants, XCENTRIC VENTURES, LLC (“XCENTRIC”), BADBUSINESSBUREAU.ORG (“BBB”), and/or ED MAGEDSON are:

Whether XCENTRIC, BBB and/or MAGEDSON made a false statement concerning WIN as WIN contends; and, if so, whether the statement tended to expose WIN to hatred, ridicule, or contempt or tended to injure WIN in its business, reputation, or occupation.

If the greater weight of the evidence does not support the claim of WIN on these issues, then your verdict should be for XCENTRIC, BBB and/or MAGEDSON. However, if the greater weight of the evidence does support the claim of WIN on these issues, then your verdict should be for WIN.

Given \_\_\_\_\_  
Given as Modified \_\_\_\_\_  
Denied \_\_\_\_\_  
Withdrawn \_\_\_\_\_

Authorities: Florida Standard Jury Instruction Miscellaneous 4.3

PLAINTIFF'S  
PROPOSED INSTRUCTION NO. 6

**Defamation: Causation And Damages**

If you find for XCENTRIC, BBB, MAGEDSON, you will not consider the matter of damages. But, if you find for WIN, you should award WIN an amount of money that will fairly and adequately compensate WIN for such loss, injury or damage that were naturally, proximately and necessarily the result from the publication of the defamation. WIN is entitled to these damages since the immediate result is to impair WIN's reputation, even if no actual pecuniary loss is demonstrated. A statement is a cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury or damage. If you find for WIN, you shall consider the following elements of damage:

Any injury to reputation or health and any shame, humiliation, mental anguish, and hurt feelings experienced in the past or to be experienced in the future. There is no exact standard for fixing the compensation to be awarded on account of such elements of damage. Any award should be fair and just in the light of the evidence.

Any earnings, lost in the past and any loss of ability to earn money in the future.

Any amounts which you allow in damages for loss of ability to earn money in the future should be reduced to their present money value and only the present money value of such amounts should be included in your verdict and you should state in the verdict form provided to you both the total of such future damages and their present value.

Given \_\_\_\_\_  
Given as Modified \_\_\_\_\_  
Denied \_\_\_\_\_  
Withdrawn \_\_\_\_\_

Authorities: Florida Standard Jury Instruction Miscellaneous 4.4; Bovenhausen v. Cassat Avenue Mobile Homes, Inc., 344 So.2d 279, 281 (Fla. 1<sup>st</sup> DCA 1977).



PLAINTIFF'S  
PROPOSED INSTRUCTION NO. 7

**Attorneys Fees And Court Costs**

If you find for the Plaintiff you must not take into account any consideration of attorneys fees or court costs in deciding the amount of Plaintiff's damages. The matter of attorney's fees and court costs will be decided later by the Court.

Given	_____
Given as Modified	_____
Denied	_____
Withdrawn	_____

Authorities: 11<sup>th</sup> Cir. Pattern Jury Instruction No. 6.1 (1999).

PLAINTIFF'S  
PROPOSED INSTRUCTION NO. 8

**Duty To Deliberate  
When Only The Plaintiff Claims Damages**

Of course, the fact that I have given you instructions concerning the issue of Plaintiff's damages should not be interpreted in any way as an indication that I believe that the Plaintiff should, or should not, prevail in this case.

Any verdict you reach in the jury room must be unanimous. In other words, to return a verdict you must all agree. Your deliberations will be secret; you will never have to explain your verdict to anyone.

It is your duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case do not hesitate to re-examine your own opinion and change your mind if you become convinced that you were wrong. But do not give up your honest beliefs solely because the others think differently or merely to get the case over with.

Remember, that in a very real way you are judges - - judges of the facts. Your only interest is to seek the truth from the evidence in the case.

Given	_____
Given as Modified	_____
Denied	_____
Withdrawn	_____

Authorities: 11<sup>th</sup> Cir. Pattern Jury Instruction No. 7.1 (1999).

PLAINTIFF'S  
PROPOSED INSTRUCTION NO. 9

**Election Of Foreperson**  
**Explanation Of Verdict Form(s)**

When you go to the jury room you should first select one of your members to act as your foreperson. The foreperson will preside over your deliberations and will speak for you here in court. A form of verdict has been prepared for your convenience.

[Explain verdict]

You will take the verdict form to the jury room and when you have reached unanimous agreement you will have your foreperson fill in the verdict form, date and sign it, and then return to the courtroom.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send, that you should not tell me your numerical division at the time.

Given	_____
Given as Modified	_____
Denied	_____
Withdrawn	_____

Authorities: 11<sup>th</sup> Cir. Pattern Jury Instruction No. 8.0 (1999).