

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

	:	
DAVID RUDOVSKY and	:	CIVIL ACTION
LEONARD SOSNOV,	:	
Plaintiffs,	:	NO. 09-CV-727
	:	
v.	:	
	:	
WEST PUBLISHING CORPORATION,	:	
WEST SERVICES INC., AND	:	
THOMSON LEGAL AND REGULATORY	:	
INC. t/a THOMSON WEST,	:	
Defendants.	:	
	:	

WEST’S SUPPLEMENTAL PROPOSED JURY INSTRUCTIONS

Pursuant to the Court’s orders and individual practices, defendants West Publishing Corporation, West Services Inc., and Thomson Reuters (Legal) Inc. (formerly known as Thomson Legal and Regulatory Inc.) d/b/a Thomson West (together “West”), by their attorneys Satterlee Stephens Burke & Burke LLP and Klehr Harrison Harvey Branzburg LLP, respectfully submit the following supplemental proposed instructions to charge the jury in the trial of this matter. West reserves the right to request additional or different instructions based on the evidence presented at trial.

Dated: New York, New York
December 15, 2010

SATTERLEE STEPHENS BURKE & BURKE LLP

By: /s/ James F. Rittinger
James F. Rittinger, Esq. (admitted *pro hac vice*)
Aaron M. Zeisler, Esq. (admitted *pro hac vice*)
SATTERLEE STEPHENS BURKE & BURKE LLP
230 Park Avenue, 11th Floor
New York, NY 10169-0079
Tel: (212) 818-9200
Email: jrittinger@ssbb.com
azeisler@ssbb.com

/s/ Matthew J. Borger
Matthew J. Borger, Esq.
KLEHR HARRISON HARVEY BRANZBURG LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103
Tel: (215) 568-6060
Email: mborger@klehr.com

CLEAR AND CONVINCING EVIDENCE

In a civil case, the plaintiff has the burden of proof. The burden of proof as to certain issues in this case must be established by clear and convincing evidence. In this case, the clear and convincing burden of proof applies to plaintiff's claim for presumed or punitive damages for their claims of defamation and false light. In order to be entitled to presumed or punitive damages for their claims of defamation and false light, plaintiffs must prove by clear and convincing evidence that West published the Pocket Part with actual malice.

To satisfy the burden of proof as to this issue, the plaintiffs must prove every element of this claim by clear and convincing evidence. For evidence to be clear and convincing, the witnesses must be found credible; the facts to which they testify must be distinctly remembered, and the testimony must be so clear, direct, weighty, and convincing that you can reach a clear conviction, without hesitancy, of the truth of the precise facts in issue. Although this is a significant burden of proof, it is not necessary that the evidence be uncontradicted, as long as the evidence leads you to a clear conviction of its truth.

Source: Pennsylvania Suggested Standard Civil Jury Instructions, § 5.50A.

ALL PERSONS EQUAL BEFORE THE LAW

The Defendants in this case are corporations. You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations and other organizations stand equal before the law, and are to be treated as equals.

Source: O'Malley, Grenig and Lee, Federal Jury Practice and Instructions, § 103.12.

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. “Credibility” means whether a witness is worthy of belief. You may believe everything a witness says or only part of it or none of it. In deciding what to believe, you may consider a number of factors, including the following:

- (1) the opportunity and ability of the witness to see or hear or know the things the witness testifies to;
- (2) the quality of the witness’s understanding and memory;
- (3) the witness’s manner while testifying;
- (4) whether the witness has an interest in the outcome of the case or any motive, bias or prejudice;
- (5) whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence;
- (6) how reasonable the witness’s testimony is when considered in the light of other evidence that you believe; and
- (7) any other factors that bear on believability.

Source: Third Circuit Pattern Civil Jury Instructions, § 1.7.