

*Introductory instruction*

**Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdicts. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to facts as you find them from the evidence.**

**The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence, and all facts that may be admitted or agreed to by the parties.**

**In determining the facts, you may draw reasonable inferences from the evidence. You may make deductions and reach conclusions which reason and common sense lead you to draw from the facts shown by the evidence in this case. But you should not speculate on any matters outside the evidence.**

*Interpretation of instructions*

The instructions you will be given are meant to describe the law accurately in terms readily understandable to all of you. Words are to be given their ordinary meaning, and any terms with special legal meaning will be explained to you. The instructions are to be considered as a whole, and your verdict should be consistent with all the instructions. If, during the course of your deliberations, you are uncertain as to the law set forth in the instructions, you may request clarification or additional instruction before reaching your verdict.

***All Persons Equal Before the Law – Organizations***

**This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. A corporation is entitled to the same fair trial at your hands as a private individual. All persons, including corporations, partnerships, unincorporated associations, and other organizations, stand equal before the law, and are to be dealt with as equals in a court of justice.**

***Multiple Claims or Parties***

**In your deliberations, you are to consider two distinct claims.**

**II - Whistleblower Action (Fla. Stat. § 448.102), Plaintiff Akre**

**III - Whistleblower Action (Fla. Stat. § 448.102), Plaintiff Wilson**

**Although these claims have been tried together, each is separate from the other, and each party is entitled to have you separately consider each claim as it affects that party. Therefore, in your deliberations, you should consider the evidence as it relates to each claim separately, as you would had each claim been tried before you separately.**

*(Fla. Stat. § 448.102)*

In this case, the Plaintiffs have alleged that they had a reasonable, good faith belief that the defendant's conduct in connection with editing the plaintiffs' proposed news report on artificial BGH violated the Federal Communications Act of 1934, which prohibits the deliberate falsification or distortion of the news. This has also been called a prohibition against "rigging", "slanting", or "staging" the news. Whatever word is used, however, proof of a violation requires that the Plaintiffs establish that WTVT's station or news management acted intentionally and deliberately to falsify or distort the Plaintiffs' proposed news report on BGH. In addition, the alleged falsification or distortion must have involved a significant event or matter that affected the basic accuracy of the news report and not merely a minor or incidental aspect of the report.

Defendant WTVT contends that it terminated plaintiffs under the no-cause provision of plaintiffs' employment contracts and not in retaliation for protected whistleblower activity.

You must determine whether the Defendant WTVT terminated the employment of Ms. Akre and Mr. Wilson because they objected to or refused to participate in an activity or practice of the Defendant that violated a federal law, as described above.

If you determine that this was the reason for Defendant's termination of Plaintiffs' employment, then your verdict should be for Plaintiffs. If you

**determine that WTVT did not terminate plaintiffs' employment in retaliation for protected whistleblower activity, then your verdict should be for WTVT.**

***Standard of proof***

**Plaintiffs must prove every element of each of their claims for discharge in violation of Fla. Stat. §448.102 by the greater weight of the evidence. "Greater weight of the evidence" means the more persuasive and convincing force and effect of the entire evidence in the case. In other words, to establish the claim for violation of Fla. Stat. §448.102, plaintiffs must each prove that each element of their claim is more likely so than not so. If the greater weight of the evidence does not support plaintiffs' claims, then your verdict should be for defendant WTVT.**

*Florida Private Whistleblower Statute*

Plaintiffs' claim is for wrongful retaliatory personnel action in violation of Florida Statute § 448.102, which provides in relevant part:

An employer may not take any retaliatory personnel action against an employee because the employee has:

Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice;

or

Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.

***Florida Private Whistleblower Statute - Definitions***

A "retaliatory personnel action," as used in Florida Statutes § 448.102, means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment.

***Florida Private Whistleblower Statute – Elements.***

**On the plaintiffs' claim of retaliatory personnel action in violation of Florida Statutes § 448.102, each plaintiff has the burden of proving each and every one of three elements, each of which I will read you now:**

***Florida Private Whistleblower Statute – First Element.***

**The first element that each plaintiff must prove is that he or she:**

**(a) threatened to disclose to the Federal Communications Commission, under oath, in writing, an activity, policy, or practice of WTVT in connection with the editing of the plaintiffs' proposed news report on artificial bovine growth hormone (BGH), and the plaintiff, in writing, brought the activity, policy, or practice of WTVT to the attention of a supervisor or the employer and afforded the employer a reasonable opportunity to correct the activity, policy, or practice; and, or in the alternative,**

**(b) objected to, or refused to participate in, WTVT's activity, policy, or practice in connection with the editing of the plaintiffs' proposed news report on artificial BGH.**

*Florida Private Whistleblower Statute – Second Element.*

The second element that each plaintiff must prove is that he or she had a reasonable good faith belief that defendant's conduct in connection with the editing of the news report was in violation of the FCC's prohibition against the deliberate falsification or distortion of the news, which has also been called the FCC's prohibition against rigging, slanting, or staging the news, which I will define for you shortly.

*Florida Private Whistleblower Statute - Third Element.*

The third element that each plaintiff must prove is that the defendant took a retaliatory personnel action against the plaintiff because of the plaintiff's threat to disclose, and, or in the alternative, an objection to or refusal to participate in, an activity policy or practice of the defendant which the plaintiff had a reasonable and good-faith belief constituted a violation of the FCC prohibition against the deliberate falsification or distortion of the news. For shorthand, we will refer to a reasonable, good faith threat by a plaintiff to disclose conduct, or an objection or refusal to participate in an action of the employer, as "statutorily protected activity."

An employee may not recover in any action brought under the private whistleblower statute if the retaliatory personnel action was predicated upon a ground other than the employee's exercise of a right protected by the whistleblower statute.

***Florida Private Whistleblower Statute - No Impairment of Employer's Rights***

Nothing in the private whistleblower statute diminishes the rights, privileges or remedies of WTVT under the employment contracts with plaintiffs. Provided, however, that an employer may not retaliate against an employee because the employee has engaged in statutorily protected activity. So far as you are concerned in this case, an employer may suspend, nonrenew, or otherwise adversely affect an employee for any other reason, good or bad, fair or unfair (including but not limited to the employer's right to nonrenew an employment contract for no cause), and you must not second guess that decision or permit any sympathy for the employee to lead you to substitute your own judgment for that of the defendant even though you personally may not approve of the action taken and would have acted differently under the circumstances.

If you find that WTVT terminated plaintiffs under the no-cause provision of plaintiffs' employment contracts and not in retaliation for protected whistleblower activity, then you should find in favor of WTVT on plaintiffs' claims. If you find that WTVT terminated plaintiffs in retaliation for protected activity, then you should find in favor of plaintiffs.

***Florida Private Whistleblower Statute – Reasonable good faith belief***

You have been instructed that for each plaintiff's activities to be protected under Florida Statutes § 448.102, each plaintiff must prove that he or she had a reasonable, good-faith belief that the defendant's conduct in connection with the editing of the plaintiffs' proposed news report on artificial bovine growth hormone (BGH) constituted a violation of the FCC prohibition against the deliberate falsification or distortion of the news.

You are further instructed that to establish "good faith" it is insufficient for the plaintiff merely to allege that his or her belief in this regard was honest and bona fide; the allegations and the evidence must establish that the belief was reasonable.

"Reasonable" in this context means that a reasonable person would have believed that the conduct of WTVT's station management or news management constituted efforts to intentionally falsify or distort the plaintiffs' proposed news report on artificial BGH in a significant respect so as to distort the accuracy of the report in favor of Monsanto or the proponents of BGH.

***Florida Private Whistleblower Statute – Burden of proof.***

The burden of proof that each plaintiff must carry with regard to each element of his or her claim of retaliatory personnel action in violation of Florida Statutes § 448.102 is proof by the greater weight of the evidence. The “greater weight of the evidence” means the more persuasive force and effect of the entire evidence in the case.

If you find that the plaintiff has established all the elements of his or her claim by the greater weight of the evidence, then your verdict on this claim should be for the plaintiff. If, on the other hand, you find that the plaintiff has failed to establish at least one of the other elements of his or her claim by the greater weight of the evidence, then your verdict on this claim should be for the defendant.

*Effect of instruction as to damages*

The fact that I will instruct you as to the proper measure of damages should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of either or both of the plaintiffs in accordance with the other instructions.

*Damages – Whistleblower claim*

If you find for WTVT on plaintiffs' claim for retaliatory personnel action in violation of Florida Statute § 448.102, you will not consider the matter of damages. But if you find for either plaintiff on this claim, you may award that plaintiff compensation for lost wages for the time period remaining on the contract, mental anguish, and lost earning capacity, if you find that the plaintiff has proved by the greater weight of the evidence that such damages exist and were caused by the wrongful conduct of WTVT.

***Damages – Whistleblower claim – damages – mental anguish***

If you find for either plaintiff on the claim for wrongful discharge in violation of Florida Statute § 448.102, you may award that plaintiff damages for his or her mental pain and suffering that has been proximately caused by the wrongful act of WTVT, if any.

For a plaintiff to recover damages for mental anguish, you must find that as a result of WTVT's wrongful conduct, the plaintiff has suffered mental anguish or is reasonably certain to suffer it in the future. That is, WTVT's conduct must be the legal cause of the plaintiff's mental anguish, if any. WTVT's conduct was a legal cause of the injury if it was a substantial factor in bringing about the injury.

The compensation for a plaintiff is not measured by a fixed market price, and it cannot be exactly or accurately determined by any objective standard. Rather it is determined by what you find to be a fair, just, and reasonable compensation for such injury as suffered by the plaintiff. You should consider the facts and circumstances that are in evidence in this case in light of your own observations, knowledge, and experience.

***Damages – Whistleblower claim – damages – lost earning capacity***

**If you find for either plaintiff on the claim for wrongful discharge in violation of Florida Statute § 448.102, you may award that plaintiff damages for lost earning capacity, which is the loss of ability to earn money in the future, as opposed to the actual loss of future earnings. You may not award damages for lost future earnings.**

**In determining whether a plaintiff has sustained loss of earning capacity, you should consider the plaintiff's earning capacity at the time of injury and the extent to which that capacity to work has been diminished by the injury. You may also consider the future effect of the injury on the plaintiff's employment and the plaintiff's capacity to earn money in the future.**

**Any amount of damages which you allow for loss of ability to earn money in the future should be reduced to its present money value and only the present money value of these damages should be included in your verdict. The present money value of future economic damages is the sum of money needed now which, together with what that sum will earn in the future, will compensate the plaintiff for these losses as they are actually experienced in future years.**

*Mitigation of damages – all claims*

If you determine that WTVT wrongfully terminated either plaintiff in violation of the private whistleblower statute, the court instructs you that the plaintiff had the duty to take advantage of any reasonable opportunity to minimize his or her losses resulting from WTVT's wrongful termination of his or her employment. A person who is wrongfully terminated cannot recover for losses that he or she could have prevented by making reasonable efforts to find other employment. "Reasonable efforts" means the efforts and expenditures that an average person in that plaintiff's circumstances would have made at that time and place to obtain, accept, and retain other employment. The next issue for your determination is whether plaintiffs made reasonable efforts to minimize their losses by seeking substantially similar employment following termination by WTVT.

***Mitigation of damages – measure of damages***

**If you find for one or both plaintiffs, you must subtract from that plaintiff's damages any amounts that you find that plaintiff earned from other employment for unexpired term of his or her employment contract with WTVT, regardless of whether such other employment is substantially similar to that plaintiff's employment with WTVT.**

**If, in addition, you determine that either plaintiff or both plaintiffs failed to make reasonable efforts to obtain other employment that is the same or similar to that plaintiff's employment with WTVT, you must also subtract from plaintiff's damages any amounts that you find the plaintiff could have earned from such other employment for the unexpired term of his or her employment contract with WTVT if the plaintiff had made such efforts.**

**If you find that the amount either plaintiff or both plaintiffs did earn or could have earned from other employment for the unexpired term of the plaintiff's employment contract are as much as or greater than the amounts that the plaintiff would have earned under his or her contract with WTVT for the unexpired term, then you should award the plaintiff nominal damages only as to the claim for lost wages; this does not affect other damages remedies described elsewhere.**

*Damages must be reasonably certain*

A plaintiff is entitled to recover damages for a particular loss or type of harm only if it is reasonably certain that the plaintiff has suffered or will suffer such a loss or type of harm as a result of a violation by WTVT of Fla. Stat. § 448.102, even though the exact amount of that loss or harm cannot be determined.

If you find that it is reasonably certain that a plaintiff has suffered or will suffer a particular loss or type of harm as a result of a violation by WTVT of Fla. Stat. § 448.102, that plaintiff is entitled to recover damages for that loss or harm as long as plaintiff has met his burden of showing there is some reasonable basis for estimating or approximating the amount of the loss or harm. A plaintiff may not be denied damages merely because the amount of the loss or harm is uncertain or difficult to determine. You are not permitted, however, to award speculative damages.

*Believability of witnesses*

In determining the believability of any witness and the weight to be given the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

***Testimony of Expert Witnesses***

**You have heard opinion testimony on certain subjects from persons referred to as expert witnesses. Some of the testimony before you was in the form of opinions about certain technical subjects.**

**You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.**

*Expert witnesses – Hypothetical questions*

Sometimes expert witnesses are asked to assume that certain facts are true and to give an opinion based on the assumed facts. In order to determine the value of an opinion given in response to such a question, you should consider whether those assumed facts have been established by the evidence. If the expert's opinion is based on any fact not shown to be true by the evidence, you should consider this as you weigh the value of the opinion.

***Lay witness testimony***

Some of the testimony that you have heard was in the form of opinions about facts perceived by the witness. You may accept such opinion testimony, reject it, or give it the weight it deserves, considering the reasons given by the witness for the opinion expressed and all the evidence in the case.

*Impeachment of witnesses*

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something which is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

*Prejudice and sympathy*

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy or any other sentiment for or against any party.

*Limiting or Excluding Evidence*

Certain evidence, testimony, or statements of counsel was introduced in your presence but was stricken from the trial record. At the time that you heard it, you were instructed to disregard the evidence. You are not to consider that evidence for any purpose whatsoever in this case; it is to be treated as though you had never heard it.

*Issues in this case do not involve the debate over the merits or safety of artificial BGH or the jury's opinion of any nonparty to this case.*

You have heard testimony regarding the views of scientists on the subject of artificial BGH. You have also heard testimony about the company Monsanto. You are instructed that this case concerns only plaintiffs' claim that the defendant took retaliatory personnel action against the plaintiffs in violation of Fla. Stat. § 448.102. This case does not concern the merits of artificial BGH or the extent to which it may or not pose a health risk, or whether it has or has not been tested sufficiently, or whether any of Monsanto's actions should be criticized or praised.

The duty of this court is to instruct the jury as to the law which applies to the facts of this case. It is not the court's duty, but rather, it is your duty, and yours alone, to decide what the facts of this case are, and to reach your verdict based on the facts that you find to be true and the law that the court instructs you to apply to those facts. It is your duty to make your decision based on your own evaluation of the testimony and evidence presented. You must not rely on any interpretation or guess about the personal opinions of the judge in this case.

*Election of Foreman or Forewoman and Explanation of Verdict Forms*

When you retire to the jury room, you should select one of your number to act as foreman or forewoman to preside over your deliberations and sign your verdicts. Your verdicts must be unanimous, that is, your verdicts must be agreed to by each of you.

You will be given two forms of verdict, which I shall now read to you:

When you have agreed on your verdicts, the foreman or forewoman, acting for the jury, should date and sign the appropriate forms of verdict. You may now retire to consider your verdicts.