### IDJI 4.84.5 - Libel or slander per se – presumed damages (media defendants)

INSTRUCTION NO. \_\_\_\_\_

 If in this case, the plaintiff proves by clear and convincing evidence that the defendant knew the information was false, or acted with reckless disregard for its truth, at the time the information was communicated to another, the law deems the plaintiff to have been injured by the defamation, and the plaintiff need not prove actual injury in order to recover damages.

Comment:

Gertz v. Robert Welch, Inc., 418 U.S. 232, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974); Wiemer v. Rankin,117 Idaho 566, 790 P.2d 347 (1990).

NOTE: The issue of whether a defamatory communication rises to the level of libel *per se* is ordinarily a question of law, dependent upon whether the alleged libel is evident on its face, without need for resort to innuendo, implication or extrinsic interpretation. *See*, Gough v. Tribune-Journal Co.*,* 73 Idaho 173, 249 P.2d 192 (1952). The categories of slander *per se* are somewhat differently defined under Idaho law and are compartmentalized, unlike libel *per se*. In addition, Idaho case law seems to suggest that some types of slander *per se* are issues of law for the court to decide, while other types are issues of fact for jury determination. *See*, Barlow v. International Harvester, Co., 95 Idaho 881, 522 P.2d 1102 (1974).