Agenda
Advisory Committee on Model Civil Jury Instructions

December 11, 2006
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

Product Liability.	Tracy Fowler

Meeting Schedule: Matheson Courthouse, 4:00 to 6:00, Education Room or Judicial Council Room

January 8, 2007
February 12, 2007
March 12, 2007
April 9, 2007
May 14, 2007
June 11, 2007
July 9, 2007
August 13, 2007
September 10, 2007
October 15, 2007 (3d Monday)
November 19, 2007 (3d Monday)
December 10, 2007

Committee Web Page: http://www.utcourts.gov/committees/muji/
Published Instructions: http://www.utcourts.gov/resources/muji/

MINUTES

Advisory Committee on Model Civil Jury Instructions
November 13, 2006
4:00 p.m.

Present: Honorable William W. Barrett, Jr., Juli Blanch, Kamie F. Brown (member of the Products Liability subcommittee), L. Rich Humpherys, Tracy H. Fowler, Jathan Janove (by telephone), Jonathan G. Jemming, Colin P. King, Stephen B. Nebeker, Timothy M. Shea, Paul M. Simmons, David E. West, Robert H. Wilde, and John L. Young (chair)

Excused: Paul M. Belnap, Francis J. Carney, Ralph L. Dewsnup, Marianna Di Paolo, Phillip S. Ferguson.

Draft Instructions

The committee continued its review of the employment instructions.

1. *1911. Breach of employment contract. Just cause.* Mr. Wilde drafted a committee note in accordance with the discussion at the October meeting. Mr. Simmons pointed out that the instruction did not track the note. The instruction says that the defendant has the burden of proof to show that the termination was for just cause, whereas the note sets out a burden-shifting approach similar to that used in disparate treatment discrimination cases under *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973). Mr. Young suggested drafting an instruction applying the *McDonnell Douglas* approach and including it as 1911A. Mr. Simmons did not think that would solve the problem. Mr. Wilde thought that 1911 is a proper instruction in cases involving direct evidence of a dismissal for other than just cause and that the burden-shifting approach is proper where there is only indirect evidence of the employer's intent. Mr. Simmons thought that if there was unrebutted, direct evidence of the employer's bad intent, then the issue should not go to the jury and that in all other cases the burden-shifting approach would apply.

Mr. Janove and Ms. Brown joined the meeting.

The committee discussed whether alternatives should be included in the same instruction, whether they should be separate instructions designated "A" and "B," or whether they should be given separate, consecutive numbers, as in MUJI 1st. Mr. Shea pointed out that in other instructions alternatives have been listed in the same instruction, as "A" and "B," and that the numbering of the instructions cannot be changed once the instructions are approved, because they are then published on the courts' website.

Mr. Jemming joined the meeting.

Mr. Nebeker asked whether "objective good faith reason" had to be defined. Mr. Wilde thought not. Mr. Young read the comparable California instruction (CACI 2405).

Mr. Wilde will draft an instruction explaining the *McDonnell Douglas* burden-shifting approach, and the committee will revisit the issue at a later meeting.

2. *1913. Fiduciary duty.* Mr. Simmons suggested separating the jury's determination of the existence of a duty from its determination of a breach of the duty. Mr. Humpherys questioned whether the jury finds the existence of a fiduciary duty. The existence of a duty is a question of law for the court; the jury just finds whether the factual predicate for the existence of a fiduciary duty exists. The committee discussed how best to instruct the jury on its proper role. Mr. Young suggested that the matter be handled through the special verdict form. Mr. Humpherys suggested that the jury be instructed that, if it finds certain facts, then they give rise to a fiduciary duty, that is, to an extraordinary duty of confidentiality, etc. Then the jury must decide whether that duty has been breached. The jury would not have to deliberate twice, but can be guided through the two-step process by the special verdict form, just as they are guided through the necessary determinations in a negligence case, where they are required to determine, first, whether the defendant was negligent and, second, whether the defendant's negligence was a proximate cause of the plaintiff's injuries. Mr. Humpherys suggested that the jury be instructed first on when a fiduciary duty arises and second on what constitutes a breach of the duty. Mr. Janove noted that the claim usually arises as a contract claim or a trade secret claim and that the line for when an employee breaches a fiduciary duty may not be clear; it may depend on such things as the employee's position and the way the allegedly confidential information the employee took was compiled, which could involve disputed issues of fact. The committee agreed that the instruction needed to be modified so that the jury is not asked to determine the existence of a duty. Mr. King suggested deleting the phrase "both had and" from the third line. He and Mr. Young also suggested adding a comment to the effect that in some cases the jury may have to be instructed to find the necessary facts giving rise to a duty, but that such an instruction should be case specific. Mr. Young thought that the instruction itself should presuppose that the court has found that a fiduciary duty exists and should just instruct the jury to determine whether or not the duty has been breached. Mr. Young also thought that the instruction should include three elements–(1) a breach of duty, (2) harm, and (3) causation. Mr. King questioned whether the duty should be described as an "extraordinary" duty, and he and Mr. Young questioned whether it needs to be defined at all. The committee thought that the duty needs to be defined because most jurors will not know what "fiduciary" means. Ms. Blanch questioned whether the duty should be defined in the disjunctive ("confidentiality, honor, . . . *or* dependability"), rather than the conjunctive (*"and").* Mr. Humpherys asked whether it is a breach for an employee to fail to "honor" his employer if he does not breach a duty of confidentiality, loyalty, or trust. Mr. Wilde noted that an employment relationship without more does not create a fiduciary duty. Mr. Humpherys suggested that the instruction be more generic, with blanks for the court and counsel to fill in based on the facts of the case, for example: "[Name of defendant] claims that [name of plaintiff] breached a duty of [insert specific duty, e.g., confidentiality, loyalty, or trust]. . . ." Mr. Young compared California's instruction on breach of

fiduciary duty in an attorney-client context (CACI 605). Mr. West suggested rewriting the instruction to read: "A fiduciary duty exists in this case if [insert the relevant factual predicate that the jury must find]."

Mr. Wilde will rewrite the instruction in light of the committee's comments.

Mr. Simmons noted that the last paragraph of the committee note was misplaced. It belongs in instruction 1914. The committee made that change.

3. *1914. Contract damages.* Mr. Humpherys questioned the sentence "The level of evidence required to prove the *amount* of damages is not as high as what is required to prove the *occurrence* of damages." He thought a jury would not understand the concepts "level of evidence" and "high." Mr. Young suggested deleting the sentence. Mr. Fowler asked whether the same change needed to be made in the comparable tort damage instruction (no. 2002). Mr. Young suggested incorporating instruction 2002 into 1914. Mr. Wilde thought that the last paragraph of the instruction should be included.

Mr. Humpherys was excused.

Mr. Simmons noted that the comment refers to statutory damages under title VII and asked whether we needed instructions covering title VII claims. Mr. Young checked the California instructions and noted that they apparently do not include instructions on federal statutory causes of action. Mr. Young thought that if federal law governs a claim, the court should use federal instructions. Mr. Simmons noted that there is no single approved set of federal instructions.

Mr. Nebeker was excused.

4. *1917. Damages for wrongful termination in violation of public policy.* Mr. Shea noted that he had revised the instruction to incorporate the instruction on noneconomic damages in tort actions but that some of the elements of noneconomic damages in a personal injury case may not apply in a wrongful termination case. Judge Barrett suggested that noneconomic damages in a termination case may be limited to item (2) (mental and physical pain and suffering). Mr. Fowler suggested that damage to reputation might also be included, although some of that damage may be economic. Mr. Young thought that item (1) (the nature and extent of injuries) covered damage to reputation. The committee decided to leave that part of the instruction as written, on the grounds that it was broad enough to cover any noneconomic damages that might arise in such a case. At Mr. Simmons's suggestion, the first part of the instruction was revised to read:

> If you find that [name of defendant] wrongfully terminated [name of plaintiff], then you may award [name of plaintiff] both economic and noneconomic damages. Economic damages are damages--
>
> (1) for the salary and other benefits . . . ; and
>
> (2) for [list other items of damage].
>
> Noneconomic damages are the amount of money that will fairly and adequately compensate [name of plaintiff] for losses other than economic losses. . . .

Mr. Wilde noted that the explanatory note was missing something.

Mr. Wilde will look for his original note and resend it to Mr. Shea.

Mr. Simmons noted that the comments to instructions 1914 and 1917 were inconsistent. The former says that punitive damages are not available for breach of contract, and the latter says that they are. The comment to 1917 was revised to say that punitive damages are available for termination in violation of public policy (a tort). Mr. Young asked whether a separate instruction on punitive damages should be added.

5. *1918. Duty to mitigate damages.* At Mr. Simmons's suggestion, the committee struck "comparable" from the first line of the third paragraph, on the grounds that the plaintiff is not entitled to recover damages to the extent he has actually earned other income, regardless of whether the other employment was comparable or not. The instruction was approved as modified.

6. *1919. Special damages.* At Mr. Jemming's suggestion, "payment" was struck from the fourth line. Mr. Young questioned whether the instruction was necessary, since evidence of collateral sources should not come into evidence. Messrs. King, Wilde, and Simmons thought the instruction was necessary to prevent the jury from speculating on the effect of unemployment or workers' compensation, even where there is no evidence of such benefits. At Mr. Young's suggestion, an advisory committee note was added that says: "The collateral source rule normally prohibits the introduction of such evidence." As modified, the instruction was approved.

The hour being late, the committee reserved discussion of the products liability instructions for its next meeting, which Mr. Fowler will conduct. Remaining issues with the employment instructions were reserved for the January 2007 meeting.

The meeting concluded at 5:50 p.m.

Next Meeting. The next meeting will be Monday, December 11, 2006, at 4:00 p.m.

Model Utah Jury Instructions
Second Edition
Working Draft
December 5, 2006

1001. Introduction.

[Name of plaintiff] seeks to recover damages based upon a claim of a defective product.

A product may be defective because of a defect in [manufacture] [or] [design] [or] [a failure to adequately warn the consumer of a hazard involved in the foreseeable use of the product].

MUJI 1st References.

References.

House v. Armour of Am., 929 P.2d 340 (Utah 1996).

Advisory Committee Notes.

Utah's Product Liability Act is codified at Utah Code Ann. §§ 78-15-1 to -7. Section 78-15-3 of the Utah Product Liability Act was declared unconstitutional in Berry ex rel. Berry v. Beech Aircraft Corp., 717 P.2d 670 (Utah 1985). Following the Berry decision, the Utah legislature repealed former sections 78-15-2 (legislative findings) and -3 (the unconstitutional statute of repose), and enacted a new section 78-15-3 (statute of limitations). The legislature did not repeal, amend or otherwise change sections 78-15-1, -4, or -6, which were held to be not severable from the portions of the statute declared unconstitutional in Berry. Although Utah courts have consistently cited and relied upon the Product Liability Act as codified since the legislature's action, some subcommittee members believe those sections are invalid. This argument has been rejected by the Utah Federal District Court. See Henrie v. Northrop Grumman Corp., 2006 U.S. LEXIS 23621 (D. Utah 2006) (rejecting Plaintiffs' argument that §78-15-3 is unconstitutional).

In crafting instructions for a particular case, note that when the term "manufacturer" is used, the terms "retailer," "designer," "distributor," may be substituted, if appropriate, as the circumstances of the case warrant.

Staff Notes.

Status.

1002. Strict liability. Elements of claim for manufacturing defect.

[Name of plaintiff] claims that the product contained a manufacturing defect that made it unreasonably dangerous.

A defect in the manufacture of a product exists if the product differs from the manufacturer's design or manufacturing specifications, or if the product differs from products intended to be identical from the same manufacturer.

To prevail on a claim for manufacturing defect, [name of plaintiff] must prove each the following:

(1) that a defect made the product unreasonably dangerous;

(2) that the defect was present at the time [name of defendant] [manufactured/distributed/sold] the product; and

(3) that the defect caused the plaintiff's injuries.

MUJI 1st References.

12.1; 12.2.

References.

Schaerrer v. Stewart's Plaza Pharmacy, Inc., 2003 UT 43, 16, 79 P.3d 922 (citing Interwest Constr. v. Palmer, 923 P.2d 1350, 1356 (Utah 1996)).
Ernest W. Hahn, Inc. v. Armco Steel Co., 601 P.2d 152 (Utah 1979).
Restatement (Second) of Torts § 402A (1963 & 1964).

Advisory Committee Notes.

This instruction tracks the Utah Supreme Court's statement of the elements of a claim for strict products liability. Section 402A of the Restatement (Second) of Torts, which the Utah Supreme Court adopted in Ernest W. Hahn, Inc., also requires that the defendant be engaged in the business of selling such a product. The subcommittee thought that this rarely presents a jury question. In most cases, there will be no dispute as to whether the defendant was engaged in the business of selling the product. If the defendant was not, the court will generally dismiss any strict products liability claim before trial. If there is evidence from which reasonable minds could disagree, however, the court should tailor the instruction to require the jury to also find that the defendant was engaged in the business of selling the product.

1003. Strict liability. Elements of claim for design defect.

[Name of plaintiff] claims that the product contained a design defect that made it unreasonably dangerous.

A product is defective in design if, as a result of the design, it fails to perform as safely as an ordinary consumer or user would expect when used in an intended or reasonably foreseeable manner.

To prevail on a design defect claim, [name of plaintiff] must prove each of the following:

(1) that a defect made the product unreasonably dangerous;

(2) that the defect was present at the time [name of defendant] [manufactured/distributed/sold] the product;

(3) that the defective condition caused the plaintiff's injuries; and

[(4) that at the time the product was [designed and manufactured/sold], a safer alternative design existed that was technically and economically feasible, practicable under the circumstances, and available.]

MUJI 1st References.

12.1; 12.3.

References.

Schaerrer v. Stewart's Plaza Pharmacy, Inc., 2003 UT 43, 16, 79 P.3d 922 (citing Interwest Constr. v. Palmer, 923 P.2d 1350, 1356 (Utah 1996)).
Ernest W. Hahn, Inc. v. Armco Steel Co., 601 P.2d 152 (Utah 1979).
Allen v. Minnstar, Inc., 8 F.3d 1470, 1472 (10th Cir. 1993).
Brown v. Sears, Roebuck & Co., 328 F.3d 1274, 1280 (10th Cir. 2003).
Wankier v. Crown Equipment Corp., 353 F.3d 862, 867-68 (10th Cir. 2003).
Restatement (Second) of Torts § 402A (1963 & 1964).
Restatement (Third) of Torts § 2, notes.

Advisory Committee Notes.

Some members of the subcommittee disagree that the element of safer alternative design is an element of a design defect claim under Utah law, as noted by the brackets in element number four. No Utah state appellate court has discussed the necessity of proving the existence of a safer alternative design, the federal district courts in Utah and the Tenth Circuit have recognized this element as essential to a design defect claim.

See Allen v. Minnstar, Inc., 8 F.3d 1470, 1472 (10th Cir. 1993); Brown v. Sears, Roebuck & Co., 328 F.3d 1274, 1280 (10th Cir. 2003); Wankier v. Crown Equipment Corp., 353 F.3d 862, 867-68 (10th Cir. 2003). On the issue of availability, the court in Allen v. Minnstar recognized that plaintiff must prove the safer alternative design was "commercially available" or "commercially feasible." However, later pronouncements by the Tenth Circuit in Brown v. Sears, Roebuck & Co., and Wankier v. Crown Equipment Corp. have simply used the term "available." Whether the timeframe for the safer alternative design is at the time of design or manufacture or the date of sale will be determined by the particular facts of the case.

Staff Notes.

Status.

1004. Definition of "unreasonably dangerous."

Alternative A.

A product is unreasonably dangerous if:

(1) it is more dangerous than an ordinary user of the product would expect considering the product's characteristics, its intended and foreseeable uses and any instructions or warnings (or lack of instructions or warnings); and

(2) [name of plaintiff] did not have actual knowledge, training, or experience sufficient to know the risks of the product.

Alternative B.

A product is unreasonably dangerous if it is more dangerous than an ordinary user of the product would expect considering:

(1) the product's characteristics, propensities, risks, dangers, and uses; and

(2) any actual knowledge, training, or experience [name of plaintiff] had.

MUJI 1st References.

12.14.

References.

Utah Code Section 78-15-6(2).
Brown v. Sears, Roebuck & Co., 328 F.3d 1274, 1281-82 (10th Cir. 2003).

Advisory Committee Notes.

Section 78-15-6(2) of the Utah Code defines "unreasonably dangerous" in terms of consumer expectations. Based on section 78-15-6(2), the Tenth Circuit has concluded that the Utah Supreme Court would apply a consumer expectation test and not a risk-utility test in a strict products liability design defect case. Brown v. Sears, Roebuck & Co., 328 F.3d 1274, 1278-81 (10th Cir. 2003). Some subcommittee members disagree with the Brown decision, and believe that a risk-utility test is an appropriate way to define "unreasonably dangerous." Under the risk-utility test, the plaintiff bears the burden of showing that the product's risks outweigh its utility. Some subcommittee members assert that the following risk-utility factors ought to be considered in determining whether a product is unreasonably dangerous:

(1) how serious of a danger the design poses;

(2) how likely it is that the danger would occur or cause injury;
(3) how useful and desirable the product is to the plaintiff and to the public in general;
(4) whether another product or design is available that would do the same thing but would not be as dangerous;
(5) how easily the defendant could eliminate the danger from the product without making it less useful or too expensive; and
(6) whether a different design would create disadvantages to the public or the product.

See CACI 1204.

In addition, some members of the subcommittee disagreed on the application and interpretation of the second prong of the unreasonably dangerous test. Some members of the subcommittee believe that the second factor of the unreasonably dangerous test -- the actual knowledge, training, and experience of the plaintiff -- is just one factor for the jury to consider in deciding whether the product was unreasonably dangerous, as opposed to a complete defense as set forth in Brown v. Sears, Roebuck & Co., 328 F.3d 1274 (10th Cir. 2003). Alternative B was meant to reflect the "one factor" approach.

Staff Notes.

Status.

1005. Strict liability. Elements of claim for failure to warn.

[Name of plaintiff] claims that [name of defendant] failed to adequately warn of a hazard involved in the foreseeable use of the product, rendering the product defective and unreasonably dangerous.

To prevail on a failure to warn claim, plaintiff must show:

(1) that [name of defendant] failed to provide an adequate warning at the time the product was [manufactured/distributed/sold], rendering the product defective and unreasonably dangerous; and

(2) that [name of defendant]'s failure to provide an adequate warning caused [name of plaintiff]'s injury.

[If the event that produced the injury would have occurred regardless of the alleged failure to warn, then the failure to provide a warning is not the cause of the harm, and the plaintiff's claim must fail.]

MUJI 1st References.

12.6; 12.7.

References.

House v. Armour of Am., 929 P.2d 340 (Utah 1996).
Ernest W. Hahn, Inc. v. Armco Steel Co., 601 P.2d 152 (Utah 1979).
Restatement (Second) of Torts § 402A (1963 & 1964).

Advisory Committee Notes.

Some subcommittee members thought that the last paragraph was redundant and unnecessary.

Staff Notes.

Status.

1006. Definition of "unreasonably dangerous" for failure to warn claim.

Where a manufacturer knows or should know of a dangerous risk associated with the product's foreseeable use beyond that which would be contemplated by a reasonable consumer or user, the absence or inadequacy of warnings renders that product unreasonably dangerous. However, if the danger posed by the use of a product is generally known and recognized, then the seller is not required to warn about that danger.

MUJI 1st References.

References.

Restatement (Second) of Torts § 402A & comment j (1965).
House v. Armour of Am., 929 P.2d 340 (Utah 1996).

Advisory Committee Notes.

Some members of the subcommittee thought that the definition of "unreasonably dangerous" is the same regardless of the type of product defect claimed and that House v. Armour of America, 929 P.2d 340 (Utah 1996), did not create a new definition of "unreasonably dangerous" in failure-to-warn cases. Those members thought that only instruction 1004 and not instruction 1006 should be given in failure-to-warn cases.

Staff Notes.

Status.

1007. Failure to warn. Heeding presumption.

If you find that [name of defendant] did not provide an adequate warning regarding the use of [the product], you can presume that had [name of defendant] provided an adequate warning, [name of plaintiff] would have read and heeded it. However, if the evidence shows that [name of plaintiff] would not have read and/or heeded any warning, you may not make that presumption.

MUJI 1st References.

References.

House v. Armour of Am., Inc., 929 P.2d 340, 347 (Utah 1996).

Advisory Committee Notes.

Some members of the subcommittee do not believe this instruction is appropriate when an injured party is available to testify. See House v. Armour of Amer., 929 P.2d 340, 346-47 (Utah 1996). In such case, the injured party retains the burden to prove by a preponderance of the evidence the likelihood he or she would have complied with a different instruction or warning.

Some members of the subcommittee also do not believe this instruction is appropriate in cases where the "learned intermediary doctrine" applies. See Schaerrer v. Stewart's Plaza Pharmacy, Inc., 2000 Utah 43, 16, 79 P.3d 922 (citation omitted). While the FDA regulates the labeling of prescription pharmaceuticals and medical devices, it does not regulate the practice of medicine, including the prescribing practices of physicians. See 59 FR 59820-04, 1994 WL 645925 (1994). A physician may, for example, prescribe a medication for an unapproved use or use a medical device in an unapproved manner. Id. Accordingly, warnings accompanying pharmaceuticals and medical devices must be evaluated from the perspective of the learned intermediary rather than that of an average consumer. More important, no heeding presumption should apply because the learned intermediary, in exercising his or her professional judgment, may choose to ignore, entirely or in part, a warning accompanying a pharmaceutical or medical device.

Staff Notes.

Status.

1008. Failure to warn. Presumption that warning will be read and heeded.

Alternative A.

If you find that [name of defendant] gave a warning, you are instructed that [he] could reasonably assume that the warning would be read and followed.

You can presume that if a product contains a warning, and would be safe if the warning were followed, it is not defective or unreasonably dangerous.

Alternative B.

If you find that [name of defendant] gave an adequate warning regarding the use of [the product], [he] could reasonably assume that the warning would be read and followed.

[A product that contains an adequate warning and that would be safe if the warning were followed is not defective or unreasonably dangerous.]

MUJI 1st References.

12.6; 12.7.

References.

Restatement (Second) of Torts § 402A comment j (1963 & 1964).
CACI 1205.

Advisory Committee Notes.

Some subcommittee members thought that the last paragraph of Alternative B is unnecessary and is subsumed in the elements of a failure-to-warn claim stated in instruction 1005.

Staff Notes.

Status.

1009. Failure to warn. Open and obvious danger.

[Name of defendant] cannot be liable for injuries that result from a failure to warn about obvious dangers inherent in [the product] that a reasonable user should recognize and that [name of defendant] cannot economically eliminate.

MUJI 1st References.

References.

House v. Armour of Am., Inc., 929 P.2d 340, 344 (Utah 1996).

Advisory Committee Notes.

Staff Notes.

Status.

1010. Strict liability. Component part manufacturer. Part defective only as incorporated into finished product.

[Name of defendant] [designed/manufactured/distributed/sold] a component part of [the product]. If you find that the component part was not defective as [designed/manufactured/distributed/sold] but only became defective as a result of the way it was [installed/incorporated/used] in the finished [product], then [name of defendant] can only be liable to [name of plaintiff] if:

(1) [Name of defendant] knew enough about the design or operation of the finished [product] that [he] could have reasonably foreseen that an injury could occur because of the way the component part would be used in the [product], and

(2) [Name of defendant] did not warn the [final assembler of the product] of that danger.

MUJI 1st References.

12.8.

References.

Advisory Committee Notes.

Staff Notes.

Status.

1011. Strict liability in tort. Component part manufacturer. Defective part incorporated into finished product.

[Name of defendant] [designed/manufactured/distributed/sold] a component part of [the product]. If you find that the component part was defective as [designed/manufactured/distributed/sold] and that the defective part made the finished product unreasonably dangerous, then you may apportion fault to [name of defendant], the manufacturer of the component part, and [name of co-defendant or third party], the manufacturer of the finished product.

MUJI 1st References.

References.

Utah Code Sections 78-27-37 to 78-27-43.

Advisory Committee Notes.

Some subcommittee members believe that whether the liability of the component part manufacturer and the manufacturer of the finished product is joint and several, or apportioned under the Liability Reform Act, is an open issue under Utah law. Therefore, these members disagree with the language of this instruction indicating liability is to be apportioned. These members proposed that the second sentence of the instruction read: "If you find that the component part was defective as [designed/manufactured/distributed/sold] and that the defective part made the finished product unreasonably dangerous, then you may find both [name of defendant], the manufacturer of the component part, and [name of co-defendant or third party], the manufacturer of the finished product, liable to [name of plaintiff]."

Staff Notes.

Status.

1012. Defective condition of FDA approved drugs.

If a drug product was in conformity with United States Food and Drug Administration (FDA) standards in existence at the time the product was sold, the product is presumed to be free of any defect. [Name of plaintiff] may still recover by proving that the product was defective and unreasonably dangerous due to an inadequate warning or a manufacturing defect.

MUJI 1st References.

12.13.

References.

Grundberg v. Upjohn Co., 813 P.2d 89 (Utah 1991).

Advisory Committee Notes.

In Grundberg v. Upjohn Co., 813 P.2d 89 (Utah 1991), the Utah Supreme Court exempted claims for misrepresentation on the FDA from the operation of this rule. However, in the subsequent decision of Buckman Co. v. Plaintiffs' Legal Committee, 531 U.S. 341, 121 S.Ct. 1012, 69 USLW 4101, the United States Supreme Court held that state law fraud on the FDA claims conflict with and are preempted by federal law. 531 U.S. at 348, 121 S.Ct. at 1017. Accordingly, the committee has not included claims of misrepresentation on the FDA in this instruction. At the time of the drafting of this instruction, there was an unresolved split among federal district courts regarding preemption of warnings claims for FDA approved pharmaceuticals. The language of this instruction may, therefore, require amendment depending upon the resolution of that conflict.

Staff Notes.

Status.

1013. Defect not implied from injury alone.

The fact that an accident or injury occurred does not support a conclusion that the [product] was defective.

MUJI 1st References.

References.

Burns v. Cannondale Bicycle, Co., 876 P.2d 415, 418 (Utah 1994).

Advisory Committee Notes.

Some subcommittee members thought the instruction was substantially similar to the "unavoidable accident" and "mere fact of an accident" instructions that the Utah Supreme Court has held should not be given. See Green v. Louder, 2001 UT 62, ¶ 18, 29 P.3d 638; Randle v. Allen, 862 P.2d 1329, 1334-36 (Utah 1993). Some subcommittee members thought that such instructions are not necessary and create a potential for confusing and misleading the jury by suggesting to the jury that the plaintiff has an additional hurdle to get over. These members believe such instructions circumvent proper application of instructions on the elements of a claim and burden of proof and allow the jury to reach a result without following the principles set out in those instructions. These members also believe that such instructions tend to reemphasize the defendant's theory of the case and, to that extent, constitute an inappropriate judicial comment on the evidence. See Randle, 862 P.2d at 1335-36.

Staff Notes.

Status.