Agenda
Advisory Committee on Model Civil Jury Instructions

January 12, 2009
4:00 to 6:00 p.m.

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

Approval of minutes	Tab 1	John Young
Deliberation instructions	Tab 2	Tim Shea
Construction Contracts	Tab 3	Kent Scott John Young

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

Published Instructions: http://www.utcourts.gov/resources/muji/

Meeting Schedule: Matheson Courthouse, 4:00 to 6:00 p.m.

January 12, 2009	Construction Contracts
February 9, 2009	Eminent Domain
March 9, 2009	Premises Liability
April 13, 2009	Insurance Obligations
May 11, 2009	Probate
June 8, 2009	Professional Liability
July 13, 2009	Employment

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions
December 8, 2008
4:00 p.m.

Present: John L. Young (chair), Juli Blanch, Francis J. Carney, Dr. Marianna Di Paolo, Phillip S. Ferguson, L. Rich Humpherys, Colin P. King, Stephen B. Nebeker, Timothy M. Shea, Paul M. Simmons, and David E. West

1. *Fraud Instructions*. The committee continued its review of the fraud instructions.

a. *CV 1703. Recovery for misrepresentation of fact*. Mr. Shea asked whether "representation" in the first line should be "misrepresentation." The committee thought it should not; the instruction is meant to distinguish between representations of fact and opinions, not between representations and misrepresentations. The committee revised the instruction to read:

> You must decide whether the defendant's statement was a representation of fact as opposed to an opinion. Generally, a plaintiff may recover for fraud only if the defendant's statements were misrepresentations of facts.

The committee approved the instruction as revised.

b. *CV 1704. Recovery for statement of opinion*. Dr. Di Paolo suggested adding the following introductory language: "[Name of plaintiff] alleges that [name of defendant] stated an opinion as a fact. [Name of defendant] claims it was just a statement of opinion." At Mr. Young's suggestion, the first paragraph was replaced with the following: "Generally, a plaintiff may not recover for fraud if the defendant's statements were opinions. However, an opinion is treated as a representation of fact if:" The committee asked whether each of the subparagraphs has to be proved or only one of them. Citing the Restatement (Second) of Torts, Mr. Carney said that only one had to be proved. Messrs. King and Nebeker suggested adding a committee note to the effect that one or more conditions may apply in a given case. Mr. Humpherys noted that a given case may involve both a representation of fact and a statement of opinion. Each of the paragraphs after the new introductory paragraph was bracketed, to suggest that only those that have evidentiary support should be included. If more than one is included, they should be separated by "or." Dr. Di Paolo and Mr. Simmons thought that the instruction did not make it clear that the other elements of a fraud claim must also be met. They suggested that the instruction be clearly linked to CV 1701. Mr. Simmons also thought that the instruction was misleading because it implied that an opinion is fraudulent if it turns out to be wrong. He thought that an opinion is not fraudulent if it is honestly held. Dr. Di Paolo asked whether the requirement that the representation be made in a way that implies it is true rather than just an expression of belief applied to each of the

other bracketed paragraphs. Mr. Young noted that it is not the committee's position to argue over what the law is. At his suggestion, the committee sent the instruction back to the subcommittee to answer the committee's questions.

c. *CV 1710. Compensatory damages.* The committee noted that the difference between Alternative A and Alternative B is that the former applies to cases involving property, whereas the latter appears to apply to all other fraud cases. Mr. West asked whether the law is different for fraud cases involving property than for other fraud cases. Mr. Simmons questioned whether consequential damages should be available under Alternative A as well as Alternative B. At the suggestion of Messrs. Humpherys and King, the following language from Alternative A was added to Alternative B, and Alternative A was eliminated: "[(1) the difference between the value of the property that [name of plaintiff] [bought/sold] and the value the same property would have had if [name of defendant]'s statements about it had been true.]" The second paragraph of the committee note was also deleted. At Mr. West's suggestion, the committee deleted former subparagraph (4) ("prejudgment interest"), on the grounds that determining prejudgment interest is a job for the judge and not the jury. The subparagraphs were renumbered accordingly. Dr. Di Paolo thought that "expenditures in mitigation of damages" should be explained. Mr. Nebeker noted that there is a separate instruction on mitigation of damages. The committee deleted the second paragraph (beginning "In deciding how much money . . ."). Mr. Young noted that we need a special verdict form that itemizes the categories of damages. He will ask George Haley, the chair of the fraud subcommittee, to have the subcommittee prepare a suggested verdict form.

d. *Other instructions.* Mr. Humpherys thought there needed to be other fraud instructions, such as an instruction that says once one undertakes to speak, he has a duty to speak the whole truth, and an instruction telling the jury it can infer intent from the circumstances. Mr. Young asked whether there should be a "puffing" instruction. Mr. Ferguson noted that he and Mr. Johnson were in favor of including one but had been voted down. Mr. Young asked the committee members to get any suggestions for additional instructions to Mr. Shea, who can pass them on to the subcommittee. The committee suggested that the instructions also cover negligent misrepresentation.

2. *CV 1057. Safety risks.* Mr. Young reported that he was prepared to break the tie vote on CV 1057, but the matter was continued until the February 9, 2009, meeting, when both Mr. Fowler and Mr. King can be present.

3. *CV 1052. Learned intermediary.* Mr. Carney proposed adding a citation to the recent decision of *Downing v. Hyland Pharmacy,* 2008 UT 65. The committee

approved the recommendation. The medical malpractice subcommittee will consider whether there should be a separate instruction on *Downing*.

4. *Committee Membership*. Mr. Young reported that Mr. Carney would like to resign from the committee. Mr. Carney noted that he is no longer doing medical malpractice cases. He suggested that Jack Ray take his place on the committee and on the medical malpractice subcommittee. The committee approved Mr. Ray to take Mr. Carney's place on the medical malpractice subcommittee, but the committee prevailed on Mr. Carney to remain as a member of the committee, at least for the time being. Mr. Young proposed that John Lund take Mr. Johnson's place on the committee. The committee approved the proposal.

5. *Introduction*. Mr. Carney proposed adding language to the introduction to say that when a section of MUJI 2d appears, MUJI 1st should no longer be used. Mr. Shea recommended against the change. He noted that the introduction already says that MUJI 2d is intended to replace MUJI 1st. He thought that attorneys should be able to argue for a particular instruction based on whatever authority they can find for it. The committee thought that a statement that MUJI 1st should no longer be used would need to be approved by the Utah Supreme Court. Mr. Nebeker suggested that, where MUJI 1st instructions have not been carried over to MUJI 2d, the committee include a note explaining the reasons. Mr. Carney noted that the medical malpractice subcommittee did that with respect to the medical malpractice instructions. Mr. Young suggested a similar approach be taken in each section. As an alternative, he suggested that MUJI 2d include tables cross-referencing MUJI 1st and explaining why some MUJI 1st instructions have been omitted.

6. *CV 104. Order of trial. CV 101. General admonitions.* Mr. Humpherys proposed changes to CV 104 and 101, based on a recent trial he had. The committee approved his suggestions.

7. *CV 128. Objections and rulings on evidence and procedure.* At Dr. Di Paolo's suggestion, the last sentence of the first paragraph was revised to read: "And if a lawyer objects and I sustain the objection, you should disregard the question and any answer."

8. *Vicarious liability*. The committee approved John Lund to chair a subcommittee to draft instructions on vicarious liability.

9. *Verdict forms*. Mr. Young noted that special verdict forms are needed for each section. He suggested that the committee approve special verdict forms for the negligence section that can then be used as a template for preparing special verdict forms for other sections. Mr. Carney noted that the medical malpractice subcommittee

drafted special verdict forms. He suggested that the committee agree on the style and noted common issues, such as, how should the forms deal with the burden of proof and with special damages? He noted various ways of asking the jury whether the defendant was at fault, such as:

- Was the defendant at fault?
- Did the evidence establish that the defendant was at fault?
- Do you find by a preponderance of the evidence that the defendant was at fault?
- Did the plaintiff prove by a preponderance of the evidence that the defendant was at fault?

Mr. Humpherys cautioned against including long prefaces to the verdict forms. Mr. King thought the forms should focus on the process of arriving at a verdict rather than on the substantive law, which will be covered in the instructions.

10. The next meeting will be Monday, January 12, 2009, at 4:00 p.m. The next two meetings will focus on construction contract instructions.

The meeting concluded at 6:00 p.m.

Tab 2

(1) CV137. Selection of jury foreperson and deliberation.

When you go into the jury room, your first task is to select a foreperson. The foreperson will preside over your deliberations and sign the verdict form when it's completed. The foreperson should not dominate the discussions. The foreperson's opinions should be given the same weight as the opinions of the other jurors.

After you select the foreperson you must discuss with one another—or deliberate—with a view to reaching an agreement. Your attitude and conduct during discussions are very important.

As you begin your discussions, it is not helpful to say that your mind is already made up. Do not announce that you are determined to vote a certain way or that your mind cannot be changed. Each of you must decide the case for yourself, but only after discussing the case with your fellow jurors.

Do not hesitate to change your opinion when convinced that it is wrong. Likewise, you should not surrender your honest convictions just to end the deliberations or to agree with other jurors.

(2) CV138. Do not speculate or resort to chance.

When you deliberate, do not flip a coin, speculate or choose one juror's opinions at random. Evaluate the evidence and come to a decision that is supported by the evidence.

If you decide that a party is entitled to recover damages, you must then agree upon the amount of money to award that party. Each of you should state your own independent judgment on what the amount should be. You must thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence, and reach an agreement on the amount. You must not agree to average the estimates.

(3) CV139. Agreement on special verdict.

I am going to give you a form called the Special Verdict that contains several questions. You must answer the questions based upon the evidence you have seen and heard during this trial.

Because this is not a criminal case, your verdict does not have to be unanimous. At least six jurors must agree on the answer to each question, but they do not have to be the same six jurors on each question.

As soon as six or more of you agree on the answer to each question, the foreperson should sign and date the verdict form and tell the bailiff you have finished. The bailiff will escort you back to this courtroom; you should bring the completed Special Verdict with you.

Tab 3

Construction Contracts

Table of Contents

(1) CV2201A. Committee Notes to Construction Contract Instructions.

The Advisory Committee has produced the first set of Utah jury instructions for construction contract cases.

The Advisory Committee chose to focus its work in seven basic areas: (1) public bidding, (2) contract terms, (3) contract changes (4) suspension and termination, (5) claims, (6) defenses and (7) damages.

The Advisory Committee considered but did not include instructions dealing with mechanic's lien and payment and performance bond claims. These claims are fact intensive and governed by specific statutes which the courts, rather than juries, are called upon to interpret and apply.

The Advisory Committee determined that it would be best not to address certain areas of law dealing with risk shifting clauses such as paid if paid and paid when paid clauses due to the novel and legal character of these concepts.

The Advisory Committee expects that these instructions will evolve as a work in progress and expand as the courts further define the governing legal principals of construction contract law.

(2) CV2201B. Compliance with public bidding instructions.

[Name of contractor] claims that [name of governmental entity] was required by law to award [him] the construction contract. [Name of governmental entity] is not required to accept any bid. However, if [name of governmental entity] did accept a bid, it was required to accept the bid of the lowest "responsive responsible" bidder. The lowest responsive responsible bidder is the lowest bidder who:

(1) submitted a bid that complies with the invitation to bid;

(2) submitted a bid that satisfies the plans and specifications of the invitation to bid;

(3) satisfies [name of owner governmental entity]'s requirements for financial strength, capacity to perform, integrity, and/or reliability;

(4) provides a bid bond or equivalent money as a condition of the construction contract; and

(5) provides a payment and performance bond as required by law.

If you find that [name of contractor] was the lowest responsive responsible bidder and that [name of governmental entity] accepted a different bid, you must find that [name of governmental entity] was required to accept [name of contractor]'s bid.

References

Utah Code Sections 11-39-101(10), 11-39-103 and 11-39-107.

Cal Wadsworth Const. v. City of St. George, 898 P.2d 1372, 1375 (Utah 1995).

Rapp v. Salt Lake City, 527 P.2d 651, 654 (Utah 1974).

Thatcher Chem. Co. v. Salt Lake City Corp., 445 P.2d 769, 771 (Utah 1968).

Schulte v. Salt Lake City, 10 P.2d 625, 628 (Utah 1932).

(3) CV2202. "Responsive bid" defined.

A bid is "responsive" if it provides all information and documentation required by the invitation to bid.

References

Utah Code Sections 63G-6-103(25) and 63G-6-401(7)(a).

Cal. Wadsworth Const. v. City of St. George, 898 P.2d 1372 (Utah 1995).

Taylor Bus Service, Inc. v. San Diego Bd. of Education, 195 Cal.App.3d 1331 (Cal. Ct. App. 1987).

Konica Business Machines U.S.A., Inc. v. Regents of Univ. of California, 206 Cal.App.3d 449 (Cal. Ct. App. 1988).

(4) CV2203. "Responsible bid" defined.

A "responsible bid" is a bid made by a party who has the capability to fully perform the contract requirements in all respects and that has the integrity and reliability that will support its good faith performance. In other words, a responsible bidder is one who can perform the contract as required.

References

Utah Code Sections 63G-6-103(24) and 63G-6-401(7).

Cal. Wadsworth Const. v. City of St. George, 898 P.2d 1372 (Utah 1995).

Rapp v. Salt Lake City, 527 P.2d 651 (Utah 1974).

Taylor Bus Service, Inc. v. San Diego Bd. of Education, 195 Cal.App.3d 1331 (Cal. Ct. App. 1987).

City of Inglewood-L.A. County Civic Ctr. Auth. v. Superior Court, 500 P.2d 601 (Cal. 1972).

(5) CV2204. Owner's duty to inform.

[Name of contractor] claims that [name of owner] had a duty to disclose the following material information before the bid was submitted: [describe information.] To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) [name of owner] did not disclose the above-described information to [name of contractor].

(2) The undisclosed information was vital to [name of contractor]'s ability to perform the contract.

(3) [name of owner] had knowledge about the undisclosed information that was not otherwise made available to [name of contractor].

If you find that [name of contractor] has proved these points, then [name of owner] breached its contract with [name of contractor].

S. Stein, Construction Law ¶ 5.07[2][iii] (1999)

J.F. Shea Co., Inc. v. U.S., 4 Cl. Ct. 46, 53 (1983)

(6) CV2205. Contractor's duty to investigate.

[Name of owner] claims that even if [describe material information] was not disclosed, [name of contractor] ~~learned of facts that imposed~~ had a duty to inquire further.

~~Before entering into a construction contract, a party may~~ To succeed on this claim, [name of owner] must prove by a preponderance of the evidence that [name of contractor] learned that [describe facts], which required ~~it~~ [name of contractor] to investigate the terms and information disclosed in the contract documents.

If you find that [name of contractor] learned of ~~such additional~~ these facts, ~~you must find that~~ then [name of contractor] had notice of all information that an investigation would have revealed.

References

Johnson v. Higley, 1999 UT App 278, ¶ 26, 989 P.2d 61.

Salt Lake, Garfield & W. Ry. Co. v. Allied Materials Co., 291 P.2d 883, 885 (Utah 1955).

Frontier Foundations, Inc., 818 P.2d 1040, 1041 (Utah App. 1991).

Guarantee State Bank v. Farm Service Agency, 68 Fed.Appx. 134, 137 (10th Cir. 2003).

Rapid Demolition Co., Inc. v. New York, 49 A.D.3d 844 (N.Y.A.D. 2008).

Barsotti's, Inc. v. Consolidated Edison Co. of New York, Inc., 245 A.D.2d 178, 179 (N.Y.A.D. 1997).

Servidone Constr. Corp. v. United States, 19 Cl.Ct. 346, 373 (1990)

4 Bruner & O'Connor Construction Law § 14:55 (2008).

1 Bruner & O'Connor Construction Law § 3:25 (2002).

(7) CV2206.Contractor's right to rely on owner-furnished information.

[Name of contractor] claims that [he] should recover the costs of extra work caused by inaccurate or misleading information provided by [name of owner]. [Describe information.] To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) [name of owner] provided the information to [name of contractor];

(2) the information was inaccurate or misleading;

(3) [name of contractor] reasonably relied on the information; and

(4) the work added to [name of contractor]'s [time/costs].

References

United States v. Spearin, 248 U.S. 132, 39 S. Ct. 59, 63 L.Ed. 166 (1918).

Jack B. Parson Const. Co. v. State By and Through Dept of Transp., 725 P2d 614 (Utah 1986).

Thorn Const. Co. v. Utah Dept. of Transp., 598 P.2d 365, 368 (Utah 1979).

Hensel Phelps Const. Co., 413 F.2d 704 (10th Cir. 1969).

Wunderlich Contracting Co. v. U.S., 240 F.2d 201, 205 (10th Cir. 1957).

Railroad Waterproofing Corp. v. U.S., 137 F.Supp. 713, 715 (Ct. Cl. 1956).

(8) CV2207.Contractor's right to withdraw bid.

[Name of contractor] claims that [he] had the right to withdraw the bid even though the [statute/invitation to bid] states that a bid may not be revoked. To succeed on this claim, [name of contractor] must prove that:

(1) the bid contains a substantial clerical or arithmetical mistake, as opposed to an error in judgment;

(2) [name of contractor]'s mistake was unintentional; and

(3) [name of contractor] communicated the mistake to [name of owner] before the contact was awarded.

References

Union Tank Car Co. v. Wheat Bros., 387 P.2d 1000 (Utah 1964).

Sulzer v. Bingham Pumps, Inc. v. Lockheed Missiles & Space Co., 947 F.2d 1362 (9th Cir. 1991).

First Baptist Church v. Barber Contracting Co., 377 S.E.2d 717 (Ga. Ct. App. 1989).

M.J. McGough Co. v. Jane Lamb Memorial Hosp., 302 F.Supp. 482 (S.D.Iowa 1969).

ABA Model Instruction 3.03.

Restatement (Second) of Contracts § 153 (illustration 1).

Corbin on Contracts §609.

(9) CV2208. Mutual mistake.

[Name of owner] claims that the contract is not enforceable because neither party understood that [describe mistake].

To succeed on this claim, [name of owner] must prove by clear and convincing evidence that:

(1) at the time the contract was entered into neither party understood that [describe mistake], and

(2) the mistake was a material mistake.

References

Deep Creek Ranch, LLC v. Utah State Armory Bd., 2008 UT 3, ¶¶17-18, 178 P.3d 886.

Arnell v. Salt Lake county Bd. of Adjustment, 2005 UT App 165, ¶¶ 41-42.

Mostrong v. Jackson, 866 P.2d 573, 579-80 (Utah Ct. App. 1993).

Mooney v. BR & Associates, 746 P.2d 1174, 1178 (Utah Ct. App. 1987).

See Instruction CV2129, Mutual mistake.

(10) CV2209. Unilateral mistake.

[Name of contactor] claims that the contract should not be enforced because [he] did not understand that [describe mistake]. To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) [name of contractor] did not understand that [describe mistake];

(2) the mistake was a material mistake;

(3) the mistake occurred even though [name of contactor] made reasonable efforts to avoid the mistake; and

(4) [name of contractor]'s mistake would have serious consequences that make enforcing the contact unconscionable;

(5) [name of owner] won't be damaged by canceling the contract, other than losing the benefit of the bargain.

References

John Call Engineering, Inc. v. Manti City Corp., 743 P.2d 1205 (Utah 1987).

Mostrong v. Jackson, 866 P.2d 573 (Utah Ct. App. 1993).

Grahn v. Gregory, 800 P.2d 320 (Utah Ct. App. 1990).

See Instruction CV2130, Unilateral mistake.

See href=http://www.utcourts.gov/resources/muji/inc_list.asp?action=showRule&id=21#2127 >Instruction CV2127, Substantive unconscionability.

(11) CV2210. "Material mistake" defined.

A mistake is "material" if it concerns a fact that exists or is assumed to exist at the time the parties enter into the contract and is important to fulfilling the purpose of the contract.

References

Deep Creek Ranch, LLC v. Utah State Armory Bd., 2008 UT 3, ¶¶17-18, 178 P.3d 886.

Arnell v. Salt Lake county Bd. of Adjustment, 2005 UT App 165, ¶¶ 41-42.

Mooney v. BR & Associates, 746 P.2d 1174, 1178 (Utah Ct. App. 1987).

ABA Model Instruction 3.02.

(12) CV2211. Promissory estoppel.

[Name of party] claims that [name of other party] must perform as promised even though there was no contract between them. To succeed on this claim, [name of party] must prove by a preponderance of the evidence that:

(1) [name of other party] was aware of all material facts;

(2) [name of other party] promised to [describe promise];

(3) [name of other party] knew or should ~~reasonably~~ have expected that [his] promise would induce action or inaction by [name of party];

(4) [name of party] reasonably relied on the promise;

(5) [name of party]'s action or inaction resulted in a loss.

References

Youngsblood v. Auto-Owners Ins. Co., 2007 UT 28.

Tolboe Const. Co. v. Staker Paving & Const. Co., 682 P.2d 843 (Utah 1984).

Union Tank Car Co. v. Wheat Bros., 387 P.2d 1000 (Utah 1964).

Hess v. Johnston, 2007 UT App. 213.

See Instruction CV2114, Promissory estoppel.

(13) CV2212. Owners duty not to interfere with construction.

[Name of contractor] claims [name of owner] interfered with [name of contractor]'s work. To succeed on this claim, [name of contractor] must prove that:

(1) [name of owner] interfered with [name of contractor]'s ability to perform the contract;

(2) the interference was unreasonable under the circumstances

(3) the interference caused [name of contractor] damages or delays.

References

Lester N. Johnson v. City of Spokane, 588 P.2d 1214 (WA App. 1985).

Steven G.M. Stein, Construction Law, 5.03[2][c][ii].

(14) CV2213. Implied warranty of fitness of plans and specifications.

If [name of contractor] proves that [he] acted reasonably in following [describe the specific plans and specifications] provided by [name of owner], then [name of contractor] is not liable for damages caused by deficiencies in the plans and specifications.

References

United States v. Spearin, 248 U.S. 132, 39 S. Ct. 59, 63 L.Ed. 166 (1918).

Melissa is going to provide added legal references.

(15) CV2214. Duty to provide for suitable working conditions.

[Name of contractor] claims [he] is entitled to [describe damages] from [name of owner] for [describe work/materials] because [name of owner] did not provide suitable working conditions. To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) [name of owner] did not provide suitable working conditions;

(2) suitable working conditions were necessary for [name of contractor] to complete [his] work; and

(3) [name of contractor] incurred additional costs because of the unsuitable working conditions.

References

Steven G.M. Stein, Construction Law, 5B.02[4][e].

(16) CV2215. Duty to provide access to the worksite.

[Name of contractor] claims [he] is entitled to additional compensation from [name of owner] for [describe work/materials] because [name of owner] failed to provide access to the worksite. To succeed on this claim, [name of contractor] must prove that:

(1) [he] was prepared to work on [dates];

(2) [his] failure to perform the work was exclusively because [name of owner] failed to [describe lack of access]; and

(3) [name of owner] had responsibility for [describe lack of access].

References

Steven G.M. Stein, Construction Law, 5.03[2][c][ii].

(17) CV2216. Claim for extra work.

[Name of contractor] claims additional [time/compensation] for work that [name of owner] required but that was not part of the original contract. To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) the work was not in the parties' original contract;

(2) [name of owner], by words or conduct, directed [name of contractor] to perform the work;

(3) [name of contractor] informed [name of owner] that the work would require additional [time/compensation];

(4) [name of contractor] performed the work; and

(5) the work added to [name of contractor]'s [time/costs].

References

Highland Const. Co. v. Union Pacific R. Co., 683 P.2d 1042 (Utah 1984).

Thorn Const. Co., Inc. v. Utah Dept. of Transp., 598 P.2d 365 (Utah 1979).

Richards Contracting Co. v. Fullmer Bros., 417 P.2d 755 (Utah 1966).

Campbell Bldg. Co. v. State Road Commission, 70 P.2d 857 (Utah 1937).

Hoth v. White, 799 P.2d 213 (Utah App. 1990).

Brixen & Christopher, Architects v. Elton, 777 P.2d 1039 (Utah App. 1989).

(18) CV2217. Notice of changes.

The contract requires [name of contractor] to notify [name of owner] of any changes in the work that affect the contract schedule or price. [Describe notice requirement in contract.] To recover for contract changes, [name of contractor] must prove by a preponderance of the evidence that:

(1) [name of contractor] notified [name of owner] of [describe changes];

(2) [name of contractor] performed the changes in the work; and

(3) the changes added to [name of contractor]'s [time/costs].

References

Highland Const. Co. v. Union Pacific R. Co., 683 P.2d 1042 (Utah 1984).

Allen-Howe Specialties Corp. v. U. S. Const., Inc., 611 P.2d 705 (Utah 1980).

Thorn Const. Co., Inc. v. Utah Dept. of Transp., 598 P.2d 365 (Utah 1979).

Procon Corp. v. Utah Dept. of Transp., 876 P.2d 890 (Utah App. 1994).

(19) CV2218. Additional time or compensation for extra work.

If extra work was performed, you must award [name of contractor] the additional [time/compensation] that the parties agreed to. If you determine the parties did not agree on an amount of additional [time/compensation] for extra work performed, you must award [name of contractor] a reasonable amount of [time/compensation].

References

Allen-Howe Specialties Corp. v. U. S. Const., Inc., 611 P.2d 705 (Utah 1980).

Campbell Bldg. Co. v. State Road Commission, 70 P.2d 857 (Utah 1937).

Wilson v. Salt Lake City, 52 Utah 506, 174 P. 847 (Utah 1918).

Salt Lake City v. Smith, 104 F. 457 (C.A.8 Dist. Utah 1900)

(20) CV2219. "Waiver" defined.

A "waiver" is the intentional release of a known [right, benefit, advantage]. To decide whether a party has waived a contract [right, benefit, advantage], you must determine that all of the following have been proved:

(1) a party has a contract [right, benefit, advantage];

(2) the party knew of the [right, benefit, advantage]; and

(3) the party intended to release that [right, benefit, advantage].

The intent to release a right may be express or implied and may be determined by considering all relevant circumstances.

References

United Park City Mines Co. v. Stichting Mayflower Mountain Fonds, 140 P.3d 1200 (Utah 2006).

Jensen v. IHC Hospitals, Inc., 82 P.3d 1076, (Utah 2003).

Soter's Inc. v. Deseret Federal Sav. & Loan Ass'n, 857 P.2d 935 (Utah 1993).

(21) CV2220. Waiver of change notice.

[Name of contractor] claims that [name of owner] waived the right to require [name of contractor] to notify [name of owner] in writing of changes to the contract. To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that [name of owner], by words or by conduct:

(1) understood that the work performed by [name of contractor] was extra; and

(2) agreed or acknowledged that the extra work would require a change to the contract [time/costs].

References

Darrell J. Didericksen & Sons, Inc. v. Magna Water and Sewer Imp. Dist., 613 P.2d 116 (Utah 1980).

Campbell Bldg. Co. v. State Road Commission, 70 P.2d 857 (Utah 1937).

Uhrhahn Const. & Design, Inc. v. Hopkins, 179 P.3d 808 (Utah App. 2008).

(22) CV2221. Extra work due to site conditions different from contract terms (Type 1 differing site condition).

[Name of contractor] claims additional [time/compensation] for extra work caused by site conditions different from those described in the contract documents. To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) the contract documents described certain site conditions;

(2) [name of contractor] reasonably relied on the description;

(3) [name of contractor] encountered site conditions different from those described; and

(4) the different site conditions added to [name of contractor]'s [time/costs].

References

Jack B. Parson Const. Co. v. State By and Through Dept. of Transp., 725 P.2d 614 (Utah 1986).

Thorn Const. Co., Inc. v. Utah Dept. of Transp., 598 P.2d 365 (Utah 1979).

L. A. Young Sons Construction Co. v. County of Tooele, 575 P.2d 1034 (Utah 1978).

Frontier Foundations, Inc. v. Layton Const. Co., Inc., 818 P.2d 1040 (Utah App. 1991).

(23) CV2222. Extra work due to unusual site conditions unknown to the parties. (Type 2 differing site condition).

[Name of contractor] claims additional [time/compensation] for extra work caused by site conditions that were unknown to the parties. To succeed on this claim, [name of contractor] must prove that the site conditions differ materially from those usually encountered.

References

Youngdale & Sons Const. Co., Inc. v. U.S., 27 Fed. Cl. 516 (1993)

Servidone Const. Corp. v. U.S., 19 Cl. Ct. 346 (1990)

Bruner and O'Connor On Construction Law § 14:53 (2002)

(24) CV2223. Implied contract or unjust enrichment.

[Name of contractor] claims additional [time/compensation] for extra work even though the contract does not provide for it. To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) [name of owner] requested [name of contractor] to perform extra work; and

(2) [name of contractor] expected additional [time/compensation] for the extra work;

(3) [name of owner] knew or should have known that [name of contractor] expected additional [time/compensation];

(4) [name of contractor] performed the extra work that benefited [name of owner]; and

(5) it would be unjust for [name of owner] to benefit from the extra work without providing [name of contractor] additional [time/compensation].

References

Uhrhahn Const. & Design, Inc. v. Hopkins, 179 P.3d 808 (Utah App. 2008).

Gary Porter Const. v. Fox Const., Inc., 101 P3d 371 (Utah App. 2004).

ProMax Development Corp. v. Mattson, 943 P3d 247 (Utah App. 1997).

Davies v. Olson, 746 P2d 264 (Utah App. 1987).

(25) CV2224. Cardinal changes.

[Name of contractor] claims that [he] should be paid the reasonable value of the work [he] performed instead of the contract price because [name of owner] made changes that were so excessive or unreasonable that the general character and purpose of the original contract was changed. In making your determination, you may consider the nature and total effect of all the changes.

References

Highland Const. Co. v. Union Pacific R. Co., 683 P. 2d 1042 (Utah 1984).

Allen-Howe Specialties Corp. v. U. S. Const., Inc., 611 P.2d 705 (Utah 1980).

Wilson v. Salt Lake City, 174 P. 847 (Utah 1918).

Wunderlich Contracting Co. v. U.S. ex re Reischel & Cottrell, 240 F.2d 201 (C.A.10 Dist. Utah 1957).

Salt Lake City v. Smith, 104 F. 457 (C.A.8 Dist. Utah 1900).

(26) CV2225. Excusable delay.

[Name of contractor] claims that [he] is entitled to an extension of the contract time to complete the work as a result of a delay that is beyond [name of contractor]'s control.

In order for [name of contractor] to be entitled to an extension of time [name of contractor] must prove by a preponderance of the evidence that:

(1) The delay was beyond [name of contractor]'s control.

(2) The delay was caused by events that were not foreseeable by either the [name of contractor] or the [name of owner] at the time the contract was made.

(3) The delay is not the responsibility of either [name of contractor] or [name of owner].

(4) The delay was not assumed waived or assumed by [name of contractor].

(5) The delay required [name of contractor] to incur more time in performing the contract work.

References

Higgins v. City of Fillmore, 639 P.2d 192, 193 (Utah 1981).

Steenberg Construction Co. v. Prepakt Concrete Co., 381 F.2d 768 (10th Cir. 1967).

Rapp v. Mountain States Telephone and Telegraph Company, 606 P.2d 1189 (Utah 1980).

S. Stein, Construction Law § 6.09 (1999).

Bruner & O'Connor on Construction Law, § 15:42 (2002).

CJS Contracts § 391.

CJS Contracts § 580.

(27) CV2226. Inexcusable delay.

[Name of owner] claims that [name of contractor] is not entitled to an extension of the contract time or additional compensation to complete the work as a result of a delay that was the responsibility of [name of contractor].

In order for [name of owner] to be entitled to a determination that [name of contractor] is not entitled to an extension of the contract time or additional compensation [name of owner] must prove by a preponderance of the evidence that:

(1) The delay was caused by [name of contractor] and not [name of owner].

(2) The delay was not beyond [name of contractor]'s control.

(3) The delay was reasonably foreseeable by the [name of contractor].

(4) The delay was not assumed or waived by [name of owner].

References

Corporation of President of Church of Jesus Christ of Latter-Day Saints v. Hartford Accident & Indemnity Co., 95 P.2d 736, 747 (Utah 1939).

Bruner & O'Connor on Construction Law, § 15:30 (2002).

(28) CV2227. Compensable delay.

[Name of contractor] claims that he is entitled to extra compensation and extra time to perform the contract work because [name of owner] [describe events attributed to the claim] that adversely impacted [name of contractor's] performance of the work.

In order for [name of contractor] to recover extra compensation and extra time to perform the contract work, [name of contractor] must prove the following by a preponderance of the evidence:

(1) The delay was caused by [name of owner] and not [name of contractor].

(2) The delay was not beyond [name of owner]'s control.

(3) The delay was reasonably foreseeable by the [name of owner].

(4) The delay was not assumed or waived by [name of contractor].

(5) The delay required [name of contractor] to incur more costs and time in performing the work.

References

Burgess Construction Company v. M. Morrin & Son Company, Inc., 526 F.2d 108, 114 (10th Cir. 1975).

Higgins v. City of Fillmore, 639 P.2d 192, 193 (Utah 1981).

Steenberg Construction Co. v. Prepakt Concrete Co., 381 F.2d 768 (10th Cir. 1967).

Rapp v. Mountain States Telephone and Telegraph Company, 606 P.2d 1189 (Utah 1980).

Allen-Howe Specialties Corporation v. U.S. Construction, Inc., 611 P.2d 705, 709 (Utah 1980).

Corporation of President of Church of Jesus Christ of Latter-Day Saints v. Hartford Accident & Indemnity Co., 95 P.2d 736, 747 (Utah 1939).

S. Stein, Construction Law § 6.11 (1999).

Bruner & O'Connor on Construction Law, § 15:50 (2002).

CJS Contracts § 580.

(29) CV2228. Concurrent delay.

In this case, you have heard evidence that both [name of contractor] and [name of owner] contributed to the construction delay(s). If you find that both parties contributed to the delay(s), then neither party is entitled to recover damages as a result of the delay.

References

Higgins v. City of Fillmore, 639 P.2d 192, 194 n.2 (Utah 1981).

S. Stein, Construction Law § 6.10[3] (1999).

Bruner & O'Connor on Construction Law, § 15:67 (2002).

(30) CV2229. Acceleration.

[Name of contractor] claims that he is entitled to damages for extra costs incurred because [name of owner] required [name of contractor] to perform the work within a time period which was less than the performance time required under the contract [or the owner increased the scope of work and did not increase the contract time].

In order for [name of contractor] to recover damages for acceleration, [name of contractor] must prove by a preponderance of the evidence that:

(1) [name of contractor] is not at fault for any delay related to his claim;

(2) [name of owner] either:

(a) ordered [name of contractor] to complete the work in less time than required by the contract; OR

(b) increased the scope of the work, but did not to grant [name of contractor] an extension of time.

(3) [name of contractor] incurred extra costs that were the result of either:

(a) [name of owner]'s direction to [name of contractor] to complete the work in less time than required by the contract; OR

(b) [name of owner]'s directing [name of contractor] to increase the scope of the work, and refusing to grant [name of contractor]an extension of time.

References

Procon Corp. v. Utah Dep't of Trans., 876 P.2d 890, 894 (Utah Ct. App. 1994).

Bruner & O'Connor on Construction Law, § 15:89 (2002).

CJS Contracts § 391.

(31) CV2230. No damages for delay.

The contract provides that if [name of owner/owner's agent] delays [name of contractor], [name of contractor] is entitled to extra time to complete the work but is not entitled to recover damages caused by the delay. However, [name of contractor] claims damages for delays caused by [name of owner/owner's agent]'s unreasonable interference with [name of contractor]'s opportunity to proceed with work in the manner provided by the contract.

To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence either:

(1) that the parties did not contemplate the delay at the time they entered into the contract and the delay was so excessive and unreasonable that it falls outside of the contract; or

(2) that [name of owner/owner's agent] caused the delay by direct, active, or willful interference with [name of contractor]'s work.

If you find neither of the above, you must find that [name of contractor] cannot recover damages for delay and is entitled only to extra time for the delay. If you find either of the above, you must also award [name of contractor] damages caused by the delay.

References

Allen-Howe Specialties Corp. v. U.S. Const., Inc., 611 P.2d 705 (Utah 1980).

W. Eng'rs, Inc. v. State By and Through Rd. Comm'n, 437 P.2d 216 (Utah 1968).

Acret, James, Construction Litigation Handbook. § 7.8.

(32) CV2231. Right to suspend work for non-payment.

[Name of contractor] claims [he] suspended the work because [name of owner] failed to make required progress payments. To succeed on this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) [name of owner]'s failure to make the payments was a material breach of the contract; and

(2) [name of owner] had no reasonable excuse to withhold the payments.

References

Darrell J. Didericksen & Sons v. Magna Water & Sewer Improv. Dist., 613 P.2d 1116, 1119 (Utah 1980).

(33) CV2232. Right to suspend work for interference.

~~[Name of contractor] claims that [name of owner], or events within [his] control, unreasonably interfered with [name of contractor]'s performance of the work, which entitled [name of contractor] to suspend the work and seek recovery of damages.~~ If [name of contractor] proves by a preponderance of the evidence that [name of owner] or events within [his] control interfered with [name of contractor]'s performance of [his] work for an unreasonable period of time, ~~you must find that~~ then [name of contractor] had the right to suspend work.

References

Bruner & O'Connor Construction Law §§ 15:83-84.

(34) CV2235. Bad faith termination for convenience.

In terminating the contract for convenience, [name of owner] cannot act in bad faith. If [name of contractor] proves that [name of owner]

(1) acted with malicious or wrongful intent towards [name of contractor] by terminating the contract or

(2) entered into the contract without intending to honor its terms,

then you must find that [name of owner] acted in bad faith.

References

Flynn v. W.P. Harlin Constr. Co., 509 P.2d 356, 358 (Utah 1978).

Lantec, Inc. v. Novell, Inc., 2001 WL 1916256 (D. Utah 2001).

ABA Model Jury Instructions: Construction Litigation § 6.16.

Bruner & O'Connor Construction Law §§ 5:272.

12 ALR Fed.2d 551.

64 Am.Jur. 2d Public Works and Contracts § 164.

(35) CV2237. Termination for cause.

[Name of terminating party] claims [he] had the right to terminate the contract because of an alleged breach of the contract by [name of other party]. [Name of terminating party] must prove by a preponderance of the evidence that [he]:

(1) gave timely and adequate notice to [name of other party];

(2) gave [name of other party] reasonable time to cure the breach as required by the contract;

(3) was not in material default of the contract at the time of termination; and

(4) [name of other party] had not already substantially performed the contract].

In determining whether [name of terminating party] has met these requirements, you must strictly apply the termination provisions of the contract against [name of terminating party].

References

S. Stein, Construction Law § 4.13 at 4-75, 4-97-98.

ABA Model Jury Instructions: Construction Litigation § 6.18.

(36) CV2239. Mitigation of damages.

[Name of contractor] had a duty to ~~mitigate, that is, to~~ avoid or minimize ~~or avoid,~~ the damages caused by the breach. [Name of contractor] may not recover damages that [he] could have avoided without undue risk, burden or humiliation. Likewise, [name of contractor] may not recover the damages for losses that were caused by or made worse by [his] own action or inaction.

References

Mahmood v. Ross (In re Estate of Ross), 1999 UT 104, ¶ 31.

Angelos v. First Interstate Bank of Utah, 671 P.2d 772 (Utah 1983).

Restatement (Second) of Contracts § 350.

See Instruction CV2139, Mitigation and avoidance.

MUJI 1st Instruction

(37) CV2240. Impossibility

In this case, [name of contractor] claims that the contract was impossible to perform and that he is excused from performing work because [insert description of circumstances].

[Name of contractor] is excused from performing the contract work if [name of contractor] proves by a preponderance of the evidence that:

(1) The main purpose of the contract is no longer possible.

(2) [name of contractor] did not create the events that made the performance of the contract impossible.

(3) The cause of the impossibility are beyond [name of contractor]'s control.

(4) The events causing the impossibility were not foreseeable by either the [name of contractor] or the [name of owner] at the time the contract was made.

References

Holmgren v. Utah-Idaho Sugar Co., 582 P.2d 856, 861 (Utah 1978).

Quagliana v. Exquisite Home Builders, Inc., 538 P.2d 301, 305-06 (Utah 1975).

Western Properties v. Southern Utah Aviation, Inc., 776 P.2d 656, 658-59 (Utah Ct. App. 1989).

See Instruction CV2125, Impossibility/Impracticability.

(38) CV2241. Impracticability

In this case, [name of contractor] claims that the contract was impracticable to perform, and that he is excused from performing work because [insert description of circumstances].

[Name of contractor] is excused from performing the contract work if he proves by a preponderance of the evidence that:

(1) The main purpose of the contract could only be achieved at an excessive and unreasonable cost.

(2) [name of contractor] did not create the events that made the performance of the contract impracticable.

(3) The cause of the impracticability are beyond [name of contractor]'s control.

(4) The events causing the impracticability were not foreseeable by either the [name of contractor] or the [name of owner] at the time the contract was made.

References

Commercial Union Associates v. Clayton, 863 P.2d 29, 38 (Utah App. 1993).

Western Properties v. Southern Utah Aviation, Inc., 776 P.2d 656, 658-59 (Utah Ct. App. 1989).

See Instruction CV2125, Impossibility/Impracticability.

(39) CV2242. Frustration of purpose

In this case, [name of contractor] claims that he is excused from performing the contract work because the purpose of the contract was frustrated due to [insert description of circumstances].

[Name of contractor] is excused from performing the contract work if he proves by a preponderance of the evidence that:

(1) The main purpose of the contract was totally or nearly totally destroyed.

(2) [name of contractor] did not create the events that destroyed the main purpose of the contract.

(3) The cause of the events are beyond [name of contractor]'s control.

(4) The events causing the impracticability were not foreseeable by either the [name of contractor] or the [name of owner] at the time the contract was made.

References

Diston v. EnviroPak Medical Products, Inc., 893 P.2d 1071, 1077 (Utah Ct. App. 1995).

Quagliana v. Exquisite Home Builders, Inc., 538 P.2d 301, 305-06 (Utah 1975).

See Instruction CV2126, Frustration of purpose.

(40) CV2243. Extraordinary events.

[Name of contractor] claims that [his] [damages/failure to perform] was caused by an event that was so extraordinary that ~~prudent~~ careful parties would not have anticipated its occurrence. To succeed in this claim, [name of contractor] must prove by a preponderance of the evidence that:

(1) [his] [damages/failure to perform], was caused solely by such an extraordinary event; and

(2) human action did not contribute to the damage.

(41) CV2244. Implied waiver of breach.

[Name of contractor] claims that [name of owner] waived [his] rights to recover damages for [describe]. To succeed on this claim, [name of contractor] must prove that:

(1) [name of owner] knew or should have known of the defective [work/materials] supplied by [name of contractor];

(2) [name of owner] did not object to the [work/materials]; and

(3), [name of owner] accepted or paid for the [work/materials].

~~[Name of owner]'s act of o~~Occupying the project is not sufficient to waive [name of owner]'s claim.

References

See Ryan v. Curlew Irrigation & Reservoir Co., 36 Utah 382 (1909). (A superintendent may accept the work pursuant?.)

(42) CV2245. Estoppel.

[Name of owner] claims that it would be unfair to enforce the contract because of [name of contractor]'s previous [statement/admission/act/failure to act]. To succeed on this defense, [name of owner] must prove that:

(1) [name of contractor] [describe statement/admission/act/failure to act];

(2) [name of owner] reasonably relied on [name of contractor]'s [statement/admission/act/failure to act];

(3) it would be unfair to enforce the contract against [name of owner] because of [name of contractor]'s [statement/admission/act/failure to act].

References

See Instruction CV2114, Promissory estoppel.

Committee Notes

(1) Use the bracketed words that are appropriate to the evidence in the case.

(2) The subject matter of this instruction is a matter of affirmative defense on which the party asserting it has the burdens of pleading and proof. Utah R. Civ. Pro. 8(c).

(3) This instruction is applicable to the situation where it is claimed that the plaintiff, by words or conduct, induced the defendant to take, or refrain from taking, a course of action and thereby caused the defendant to breach the contract. See CECO Corp. v. Concrete Specialists, Inc., 772 P.2d 967 (Utah 1989).

(43) CV2246. Accord and satisfaction.

[Name of owner] claims that [he] did not have to perform [his] [describe old contract obligations] because [he] and [name of contractor] had a disagreement about the contract that they resolved by entering into a new contract that replaced the first

contract. [Name of owner] claims that the new contract required [describe the new obligation(s)] and that [he] has fully performed or is performing these obligations.

To succeed on this claim, [name of owner] must prove that:

(1) [name of contractor] and [name of owner] had a dispute about the original contract that they resolved by entering into a new contract; and

(2) [name of owner] fully performed or is performing [his] obligations under the new contract.

If you decide that [name of owner] has proved both of these things, then [name of owner] is released from performing [describe obligations] under the original contract.

References

Cannon v. Stevens School of Business, Inc., 560 P.2d 1383 (Utah 1977).

Stratton v. West States Constr., 440 P.2d 117 (Utah 1968).

Restatement (Second) of Contracts § 281(1981).

See Instruction CV2120, Accord and satisfaction.

MUJI 1st Instruction

26.44

(44) CV2247. Industry standards. Customs and usage.

[Name of owner] claims [insert] Even if there is no express contractual agreement about workmanship, the law implies a promise by [name of contractor] that [he] will perform in a good and workmanlike manner.

“Good and workmanlike" means that quality of work performed by one who has the knowledge, training, or experience necessary for the successful practice of a trade or occupation and performed in a manner generally considered proficient by those capable of judging such work. [REALLY? CHECK LAW]

[Name of owner] must prove that [name of contractor]'s work failed to meet the standard and that this failure was a cause of harm suffered by [name of owner].

NOTE: “good usage and accepted trade practices” and “resulting in a merchantable structure” are not defined. And there seem to be 3 definitions of “reasonably good and workmanlike.”

Melissa will re-work.

(45) CV2248. Defenses generally.

If you find that [name of contractor] has proved all the elements of any claim, then [name of owner] is liable for damages unless you find that [name of owner] has proved all the elements of any defenses.

References

ABA Model Jury Instructions: Construction Litigation, § 9.02 (American Bar Association 2001).

Move to general instructions.

(46) CV2233. Damages for suspension of work.

If you find that [name of contractor] had the right to suspend work, the [he] is entitled to recover:

(1) the percentage of the costs to maintain a home office during the suspension that are reasonably attributed to this project; and

(2) the fixed, periodic costs of maintaining an office and/or equipment at the construction site; and

(3) other reasonable expenses.

References

Acret, James, Construction Litigation Handbook. § 7.16.

(47) CV2234. Damages for termination for convenience.

The contract allows [name of owner] to terminate the contract for any reason at any time. If [name of owner] proves by a preponderance of the evidence that [he] acted properly in terminating the contract, then [name of contractor] is entitled to recover the following damages:

(1) the cost of preparations made before the termination;

(2) the value of work completed;

(3) a reasonable profit on the work performed;

(4) the cost to de-mobilize from the job site; and

(5) the cost to prepare a termination settlement proposal.

References

Termination instructions. Melissa will confirm citations.

Flynn v. W.P. Harlin Constr. Co., 509 P.2d 356, 358 (Utah 1978).

Bruner & O'Connor Construction Law §§ 5:272.

12 ALR Fed.2d 551.

64 Am.Jur. 2d Public Works and Contracts § 164.

Committee Notes

If the contract expressly excludes any item of damages, do not include it when instructing the jury. If the contract provides for additional damages, include these additional categories when instructing the jury.

(48) CV2236. Damages for bad faith termination for convenience.

If you find that [name of owner] acted in bad faith in terminating the contract for convenience, then you must decide what damages [name of contractor] can recover~~terminating the contract for convenience in bad faith~~. The proper calculation of damages is:

(1) the contract price less the reasonable cost to complete the work;

(2) plus the profit [name of contractor] would have made had [he] been allowed to complete the work.

[Name of contractor] must prove the costs [he] would have necessarily incurred to complete the contract. [Name of contractor] must also prove that the profit [he] would have earned was reasonably foreseeable and within the contemplation of the parties at the time of entering onto the contract.

NOTE: Is the highlighted text correct? It seems that it would be in contractor's interest to minimize the remaining costs.

Committee Note

Melissa will draft comment.

References

Flynn v. W.P. Harlin Const. Co., 29 Utah 2d 327, 509 P.2d 356 (1973).

Flynn v. Schocker Const. Co., 23 Utah 2d 140, 459 P.2d 433 (1969).

Keller v. Deseret Mortuary Co., 23 Utah 2d 1, 455 P.2d 197 (1969).

Matthew Bender, 3-11 Construction Law P 11.02(2)(a)(ii) (2007).

(49) CV2238. Liquidated damages

From Melissa.