Agenda
Advisory Committee on
Model Civil Jury Instructions

October 9, 2012
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

Welcome and approval of minutes	Tab 1	John Young
Design professional instructions	Tab 2	Craig Mariger

Committee Web Page

Published Instructions

Meeting Schedule: Matheson Courthouse, Judicial Council Room, 4:00 to 6:00 unless otherwise stated.

November 13, 2012 (Tuesday)
December 10, 2012
January 14, 2013
February 11, 2013
March 11, 2013
April 8, 2013
May 13, 2013
September 9, 2013
October 15, 2013 (Tuesday)
November 12, 2013 (Tuesday)
December 9, 2013

Tab 1

MINUTES
Advisory Committee on Model Civil Jury Instructions
September 10, 2012
4:00 p.m.

Present: John L. Young (chair), Diane Abegglen, Francis J. Carney, Marianna Di Paolo, Phillip S. Ferguson, Honorable Ryan Harris, John R. Lund, Timothy M. Shea, Paul M. Simmons, Peter W. Summerill, David E. West

Excused: Tracy H. Fowler

Mr. Young welcomed Judge Harris to the committee and noted that Judge Andrew Stone has also been added to the committee.

1. *Vicarious Liability Instructions*. The committee continued its review of the vicarious liability instructions:

a. *CV2814. Independent contractor defined*. Mr. Shea noted that the subcommittee added a new subparagraph: "(4) who was actually directing the work." On Mr. Lund's motion (Messrs. Carney and Summerill 2d), the committee approved the instruction as amended.

b. *CV2815. Liability for independent contractor*. Mr. Shea noted that the approach taken in CV2815 follows that taken in the trespass instructions: the court should give CV2815 followed by CV2815A, B, and/or C, as the claims and evidence require.

c. *CV2815B. Principal may remain liable despite delegating duty*. The committee approved CV2815B.

d. *CV2815C. Inherently dangerous work*. Mr. West questioned the definition of "special danger" in the last paragraph. He noted that it could apply to just about any activity. It was taken from CACI 3708. Mr. Lund suggested leaving the term undefined, since there is no Utah case defining the term. He and other committee members thought that the instructions should state what Utah law is rather than advocating or suggesting what the law should be. At Mr. Young's suggestion, the third paragraph of CV2815C was removed. Mr. Carney questioned whether any instruction should be given. He thought that it did not fit cleanly into negligence law.

Dr. Di Paolo joined the meeting.

Mr. Lund suggested leaving the instruction in, since *Thompson v. Jess,* 1999 UT 22, 979 P.2d 322, at least implies that Utah recognizes the doctrine, and clarify in the committee note the holding of *Thompson*. Mr. Shea revised the committee note to say: "The committee has no guidance on the definition of a special danger from the Utah Supreme Court, although the Supreme Court has recognized the

> principle. This provision has no application when the injured person is an employee of the independent contractor undertaking the allegedly dangerous work [citing *Thompson v. Jess].*" The committee approved the instruction as modified.

2. *CV1005. Industry standard.* The committee deferred discussion of CV1005 until Mr. Fowler could be present.

3. *CV2016. Survival claim.* Mr. Shea noted that the Utah survival statute, Utah Code Ann. § 78B-3-107, was amended in 2009 to provide that, if an injured person dies from an unrelated cause before judgment or settlement, his or her personal representatives or heirs may still recover special damages and general damages "not to exceed $100,000, which resulted from the injury caused by the wrongdoer and which occurred prior to death of the injured party from the unrelated cause," unless the death occurred more than six months after the incident and the claimant did not give written notice of intent to hold the wrongdoer responsible or the claim was not the subject of ongoing negotiations. Before the amendment, the plaintiff in such a case could not recover general (noneconomic) damages, and CV2016 so provides. The committee discussed whether the jury should be instructed on the $100,000 limit or on the notice provisions of the statute and concluded that those were matters for the court to consider and apply and did not present jury questions in the typical case. Mr. Simmons asked whether the jury needed to be instructed to find whether or not the death was related to the wrongdoing giving rise to the action. Judge Harris thought the question for the jury was whether the death was caused by the defendant's fault. Messrs. Lund and Ferguson thought that that question was adequately presented in the wrongful death instructions and that CV2016 did not serve any purpose. Mr. Lund moved to delete CV2016 and keep CV2015. Dr. Di Paolo suggested revising CV2015 to cover cases where the death was caused by the tortious conduct and where it was unrelated. The committee considered various proposals and finally settled on the following language for CV2015:

> If you decide that [name of defendant]'s fault was a cause of [name of decedent]'s harm, you must award economic and noneconomic damages for the period of time that [name of decedent] lived after the injuries, regardless of whether the death was caused by [name of defendant]'s fault.

Mr. Carney questioned whether the verb should be "must," "should," or "may." Mr. Lund suggested that the instruction use the same verb as other damages instructions. Dr. Di Paolo thought that if the jury has to award damages if it finds causation, then "must" is the proper verb. On Mr. Lund's motion (Mr. Simmons 2d), the committee approved the revised instruction.

4. *Liquidated Damages*. Mr. Ferguson noted that the Utah Supreme Court had recently issued an opinion addressing liquidated damages (*Commercial Real Estate Investment, L.C. v. Comcast of Utah II, Inc.,* 2012 UT 49). He noted that the instructions do not include a liquidated damages instruction and questioned whether one should be added. Mr. West thought it should go in the Commercial Contracts section. Mr. Ferguson thought that the case did not change the law of substantive unconscionability or mitigation of damages. Judge Harris noted that the holding of the case is that liquidated damages are not subject to heightened scrutiny. Mr. Lund asked what the jury would have to decide in a liquidated damage case. Mr. Ferguson thought that the questions for the jury would be whether a liquidated damage provision was unenforceable for one of the typical contract defenses, such as mistake, procedural or substantive unconscionability, or fraud. Mr. Lund questioned whether these were fact questions for the jury or legal questions for the court. Mr. Ferguson thought that in some cases, such as where there was a question of the parties' intent, they could present fact questions. At Mr. Young's suggestion, the committee decided to have the contract subcommittee, headed by Bruce Badger, look at the issue and recommend a jury instruction if they think one is appropriate.

5. *Next Meeting*. The next meeting will be Tuesday, October 9, 2012, at 4:00 p.m.

The meeting concluded at 5:40 p.m.

Tab 2

Professional Liability: Design Professionals

CV 501. Standard of care for design professionals.

A~~[n] [architect] [landscape architect] [engineer] [land surveyor]~~ [design professional] is required to ~~possess and use the same degree of skill and care that other [architects] [landscape architects] [engineers] [land surveyors]~~ use the same degree of learning, care, and skill ordinarily used by other ~~qualified~~ [design professionals] under like circumstances. ~~practicing in the same community or in a similar community would use under similar circumstances and during the same period of time.~~ This is known as the "standard of care." The standard of care may change over time and may be different in different localities. If the standard of care has changed over time or does vary by locality, the "applicable standard of care" is the standard of care existing at the time of [Defendant's] services at issue in this matter in the same or similar community as where [Defendant's] services were performed[MSOffice2].

~~An [architect] [landscape architect] [engineer] [land surveyor] is not required by the standard of care to be perfect or to use extraordinary judgment, skill or care. An [architect] [landscape architect] [engineer] [land surveyor] may make an error in judgment or a mistake in the performance of professional services, or may disagree with other [architects] [landscape architects] [engineers] [land surveyors], without failing to follow the standard of care.~~

The possibility of error is inherent in the professional services of [design profession], and for this reason, the law does not require perfect results. The law requires the degree of skill and care that can be reasonably expected from similarly situated professionals.[MSOffice3]

The failure to follow the standard of care is a form of fault known as "professional malpractice." [Name of defendant] is an [architect] [landscape architect] [engineer] [land surveyor]. To establish professional malpractice of [name of defendant], [name of plaintiff] has the burden of proving three things:

(1) first, what the standard of care is;

(2) second, that [name of defendant] failed to follow this standard of care; and

(3) third, that this failure to follow the standard of care was the cause of [name of plaintiff]'s injury.

In this action, [name of plaintiff] alleges that [name of defendant] failed to follow the standard of care in the following respects:

(1)

(2)

(3)

If you decide that [name of defendant] failed to follow the standard of care in any of these respects, then you must determine whether that failure was the cause of [name of plaintiff]'s injury.

References

SME Industries, Inc. v. Thompson, Ventulett, Stainback and Assoc., Inc., 2001 UT 54, &&25-29, 28 P.3d 669.

"The undertaking of an architect implies that he possesses skill and ability, including taste, sufficient to enable him to perform the required services at least ordinarily and reasonably well; and that he will exercise and apply, in the given case, his skill and ability, his judgment and taste, reasonably and without neglect." SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc., 2001 UT 54, ¶ 25, 28 P.3d 669, 678[MSOffice4].

And, shedding light on the true meaning of 'best judgment,' the court goes on to explain that 'best judgment' is the same thing as the judgment 'reasonably expected from similarly situated professionals.'

"Because of the inescapable possibility of error which inheres in these services, the law has traditionally required, not perfect results, but rather the exercise of that skill and judgment which can be reasonably expected from similarly situated professionals." SME

Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc., 2001 UT 54, ¶ 27, 28 P.3d 669, 679 (quotations and citations omitted).

Of course, 'similarly situated' does not mean, nor should it be extended to included a 'locality rule.' Building codes and standards are virtually nationwide at this point[MSOffice6].

"One who undertakes to render professional services is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as men in that profession ordinarily exercise under like circumstances." SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc., 2001 UT 54, ¶ 27, 28 P.3d 669, 679[MSOffice7].

Erickson Landscaping Co. v. Wessel, 711 P. 2d 250, 253 (Utah 1985).

Nauman v. Harold K. Beecher & Assocs., 24 Utah 2d 172, 178-80, 467 P.2d 610, 614-15 (1970).

Whitman v. W.T. Grant Co., 16 Utah 2d 81, 83, 395 P.2d 918, 920 (1964).

Klein v. Catalano, 437 N.E.2d 514 (Mass. 1982).

Borman's, Inc. v. Lake State Dev. Co., 230 N.W.2d 363 (Mich. Ct. App. 1975).

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Committee Notes

The requirement that design professionals use their **best judgment** in exercising the standard of care of their profession is found in Nauman v. Harold K. Beecher & Associates, 24 Utah 2d 172, 179, 467 P.2d 610, 615 (1970) and SME Industries v. Thompson, Ventulett, Stainback & Assoc., Inc., 2001 UT 54, §26, 28 P.3d 669, 679. This stated requirement is the consequence of a quotation from Bayne v. Everham, 197 Mich 181, 163 N.W. 1002, 1008 (Mich 1917). The Committee notes t**he same requirement does not appear in Utah case law** or jury instruction forms regarding other professions. This **requirement** appears to be **more confusing than helpful** in instructing the jury on the applicable standard of care of design professionals.

So, (1) there is no Utah case law supporting 'best judgment;' (2) other Utah cases explicitly recognize such language as improperly containing a 'subjective' component; and, (3) the 'best judgment' is 'more confusing than helpful.' Obviously, that language cannot stay.

MUJI 1st

7.30

CV 502. More than one recognized practice.

A[n] [architect] [landscape architect] [engineer] [land surveyor] who uses a practice or technique recognized by the [architect] [landscape architect] [engineering] [land surveying] profession does not fail to follow the standard of care if the [architect] [landscape architect] [engineer] [land surveyor] uses his/her best judgment when selecting that practice or technique, even if the practice or technique selected turns out to be the wrong choice or another [architect] [landscape architect] [engineer] [land surveyor] would not have selected that practice or technique in the same situation.

References

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MUJI 1st

7.31

In the absence of some Utah case authority supporting this instruction, it violates the duty owed by the design professional to "exercise such care, skill, and diligence as men in that profession ordinarily exercise under like circumstances." SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc., 2001 UT 54, ¶ 27, 28 P.3d 669, 679. This instruction is a wholly subjective standard[MSOffice8].

CV 503. Standard of care of a specialist.

A[n] [architect] [landscape architect] [engineer] [land surveyor] who says that he/she is a specialist in a particular field must have the same knowledge and skill ordinarily possessed by others who are specialists in that field.

The standard of care for a specialist can only be proved through the testimony of another specializing in that particular field.

References

Basic Civil Jury Instructions, District of Utah.

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MUJI 1st

7.32

This instruction seems plain odd in the design professional context.[MSOffice9]

CV 504A. Evidence of standard of care where expert is required.

You must decide whether [name of defendant] complied with the standard of care. I have determined that, due to the advanced learning and skill involved in [architecture] [landscape architecture] [engineering] [land surveying], you must rely on expert

testimony to decide whether [name of defendant] complied with the standard of care. Thus, you may not rely on your own ideas of what the standard of care should be in this case. Rather, you must determine the standard of care solely from the evidence presented in this trial by [architects] [landscape architects] [engineers] [land surveyors] called as expert witnesses, who testified about the skill and care ordinarily exercised by other [architects] [landscape architects] [engineers] [land surveyors] under like circumstances.

You should consider each expert witness's opinions, his or her qualifications, and the reasons given for his or her opinions. If you find that an expert witness has relied on a fact that has not been proved, or has been disproved, you must consider that in determining the value of the expert witness' opinion. Give each opinion the weight that you believe it deserves.

When the testimony of the expert witnesses is conflicting, you must determine who to believe by considering all of the following factors:

(1) the reasons given for the opinions;

(2) the facts relied upon by the expert witnesses; and

(3) the relative credibility, special knowledge, skill, experience, training and education of the expert witnesses.

References

Preston & Chambers, P.C. v. Koller, 943 P.2d 260, 263 (Utah Ct. App. 1997).

Wyaclis v. Guardian Title of Utah, 780 P.2d 1989, 726 n. 8 (Utah Ct. App. 1989).

Groen v. Tri-O-Inc., 667 P.2d 598, 603 (Utah 1983).

Dixon v. Stewart, 658 P.2d 591, 597 (Utah 1982).

Nauman v. Harold K. Beecher & Assocs., 24 Utah 2d 172, 467 P.2d 610 (1970).

Committee Notes

This instruction should not be given ~~if~~unless the court has previously determined that expert testimony is required to establish the standard of care. It may be the case that lay persons are competent to decide whether the defendant breached the standard of care without relying on expert testimony. See Instruction CV504B, Evidence of standard of care where expert is not required.

"Utah courts have held that expert testimony may be helpful, and in some cases necessary, in establishing the standard of care required in cases dealing with the duties owed by a particular profession. See Wycalis v. Guardian Title, 780 P.2d 821, 826 n. 8 (Utah.Ct.App.1989). Expert testimony is required '[w]here the average person has little understanding of the duties owed by particular trades or professions,' as in cases

involving medical doctors, architects, and engineers." Preston & Chambers, P.C. v. Koller, 943 P.2d 260, 263 (Utah Ct. App. 1997).

This instruction will require modification if experts in other disciplines than the defendant's were found competent by the trial court to testify to the applicable standard of care. See Wessel v. Erickson Landscaping Company, 711 P.2d 250 (Utah 1985).

In cases where expert testimony is required to establish the element of causation, this instruction may be modified to address that issue at well. See Bowman v. Kalm, 2008 UT 9, 179 P.3d 754.

MUJI 1st

7.33

CV 504B. Evidence of standard of care where expert is not required.

You must decide whether [name of defendant] complied with the standard of care. I have determined that you do not need to rely on the evidence presented in this trial by [architects] [landscape architects] [engineers] [land surveyors] called as expert witnesses, who testified about the skill and care ordinarily used by other [architects] [landscape architects] [engineers] [land surveyors] under like circumstances. You may choose to rely on the expert testimony, but are not required to do so. You may give each opinion the weight that you believe it deserves.

Whether or not you choose to rely on the expert testimony, you may rely on your own knowledge and experience to determine whether [name of defendant] complied with the standard of care.

This instruction should not be given. For purposes of consistency, there should simply be a reference to the general 'experts' instruction[MSOffice10].

References

Bowman v. Kalm, 2008 UT 9, 179 P.3d 754.

Nixdorf v. Hicken, 612 P.2d 348, 352 (Utah 1980).

Committee Notes

This instruction should not be given if lay persons are not competent to decide whether the defendant breached the standard of care without relying on expert testimony. See MUJI 2d 504A. See Instruction CV504A, Evidence of standard of care where expert is required. This instruction assumes the plaintiff is not legally required to present expert testimony in order to reach the jury, but that expert testimony is nevertheless presented.

CV 505. Damages. Entitlement to damages.

You must determine the amount of damages to give to [name of plaintiff], but only if you decide (1) that [name of defendant]'s professional services were not performed using the standard of care of [architects] [landscape architects] [engineers] [land surveyors], and (2) that [name of plaintiff] has been injured by [name of defendant]'s failure to provide professional services meeting the standard of care. If [name of defendant]'s professional services were not performed using the standard of care of [architects] [landscape architects] [engineers] [land surveyors], we call this a "breach of the standard of care."

If you decide both that [name of defendant] breached the standard of care and [name of plaintiff] was injured by [name of defendant]'s breach of the standard of care, then you must give to [name of plaintiff] as damages the amount of money that will reasonably compensate [name of plaintiff] for the injury caused to [name of plaintiff] by the breach of the standard of care.

CV505A. Damages. Measure of property damages.

If [name of plaintiff]'s property has been damaged by [name of defendant]'s breach of the standard of care, the amount of money that will reasonably compensate [name of plaintiff] for the injury will be either (1) a "repair measure of damages" or (2) a "loss in property value measure of damages."

Repair Measure of Damages: If repair of the property is possible and repair of the property would not be unreasonably wasteful, you must give [name of plaintiff] the reasonable costs to repair the property to the condition it would have been in if [name of defendant] had not breached the standard of care. This is called the "repair measure of damages."

Loss in Property Value Measure of Damages: If repair to the property is not possible or if [name of defendant] proves that the costs of repair of the property are sufficiently more than the loss in the value of the property caused by the breach of the standard of care that it would be unreasonably wasteful to repair the property, then you cannot give [name of plaintiff] a repair measure of damages. If repair is not possible or if [name of defendant] proves that the costs of repair would be unreasonably wasteful, you must give [name of plaintiff] damages equal to the difference between the value that the property would have had if [name of defendant] had not breached the standard of care and the value of the property received by [name of plaintiff] following [name of defendant]'s breach of the standard of care. This is called the "loss in property value measure of damages."

~~For example, consider the case of a designer of an office building who was proven to have breached the standard of care by designing the building with non-reflective glass panels that caused the building owner to pay more per year in air conditioning costs than if the design had included reflective glass panels. Assume the evidence~~

~~proved that the material costs and installation costs of the reflective glass panels and the non-reflective glass panels are the same and that the cost to repair the building to replace all non-reflective glass panels with reflective glass panels is $200,000. Also assume the evidence proved the value of the building delivered to the building owner with non-reflective glass panels was $4,000,000, but the value of the building would have been $4,100,000 if reflective glass panels had been included in the design and installed. In this case you would consider whether the cost to repair ($200,000) was sufficiently greater than the loss in value of the property ($100,000) that it would be unreasonably wasteful to repair the building. If you decided that it would be unreasonably wasteful to repair the building, you would give the building owner $100,000, the loss in property value measure of damages. If you decided that it would not be unreasonably wasteful to repair the building, you would give the building owner $200,000, the cost of repair measure of damages.~~[MSOffice11]

Needs a lot of work. Too long, not clear. Can the regular damages instructions provide any help here[MSOffice12]?

References

F.C. Stangl, III v. Todd, 554 P.2d 1316, 1320 (Utah 1976).

Rex T. Fuhriman, Inc. v. Jarrell, 21 Utah 2d 298, 302-03, 445 P.2d 136, 139 (Utah 1968).

Restatement (First) of Contracts § 346(1) (1932).

CV 506. Betterment or value added.

The damages you give to [name of plaintiff] cannot place [him] in a better position than the position that [he] would have been in had [name of defendant] not breached the standard of care.

You must reduce from the damages you give to [name of plaintiff] any additional amount of money that [name of plaintiff] would have paid in designing and constructing the [facility name] if [name of defendant] had provided services meeting the standard of care. You must make this reduction only if [name of defendant] proves that [name of plaintiff] would have completed the [facility name] if [name of defendant] had provided services meeting the standard of care. For example, consider the case of a designer of a mountain ski cabin that was proven to have breached the standard of care by designing the cabin without the number of roof supports necessary to safely carry the weight of the snow. Assume it was proven that the cost to repair the cabin is $30,000 and that it would have cost the cabin owner $10,000 more to construct the cabin with the design containing the additional roof supports required by the standard of care. In this case, you must reduce from the $30,000 repair measure of damages the $10,000 the cabin owner would have paid if the design had met the standard of care, but only if

the designer proves that the cabin owner would have constructed the cabin if the designer had provided a design meeting the standard of care.

For the same reasons, you must reduce from the damages you give to [name of plaintiff] using a cost of repair measure of damages the costs of any repairs that better or add value to the [facility name] beyond the value it would have had if [name of defendant] had not breached the standard of care. For example, consider a designer of a retaining wall that collapses after five years of its intended 20-year life because of a design that is proven to have breached the standard of care. Assume it is proven that the cost to replace the retaining wall with a 20-year design life retaining wall is $50,000, and that this cost includes $10,000 to construct a landscape planter on top of the retaining wall that was not included in the retaining wall that collapsed. In this case, the $10,000 to construct the added landscape planter and an amount for the added value the retaining wall owner will receive because the replacement retaining wall will last an additional 20 years (not an additional 15 years as would the collapsed retaining wall had it been designed meeting the standard of care), must be reduced from the repair measure of damages given to the retaining wall owner.

References

Lochrane Engineering, Inc. v. Willingham Realgrowth Inv. Fund, Ltd., 552 So. 2d 228, 232-33 (Fla. App. 1989).

St. Joseph Hosp. v. Corbetta Constr. Co., 21 Ill. App. 3d 925, 936-941,316 N.E. 2d 51, 59-62 (1974).

Henry J. Robb, Inc. v. Urdahl, 78 A. 2d 387, 388-89 (D.C. App. 1951).

Reiman Construction Co. v. Jerry Hiller Co., 709 P.2d 1271, 1277 (Wyo. 1985).

Pingree v. Continental Group of Utah, Inc., 558 P.2d 1317, 1319-20 (Utah 1976)(mentions the word ‘betterment,’ but unclear from the case whether that doctrine is adopted as law).

Ogden Livestock Shows, Inc. v. Rice, 108 Utah 228, 233-34, 159 P.2d 130, 132-33 (Utah 1945). Held that admission of testimony regarding cost of new bridge vs. value of old bridge not error. Did not expressly adopt ‘betterment’ as a doctrine. Instead, recognized that “"There is no universal test for determining the value of property injured or destroyed" Ogden Livestock Shows v. Rice, 108 Utah 228, 233, 159 P.2d 130, 132 (1945). In the absence of some compelling argument that Utah has singled out ‘betterment’ as the factor to be used, it seems inappropriate to focus a jury on this issue to the exclusion of all other factors. This may be an instruction that the lawyers themselves seek to use through motion, but is not an instruction so clearly grounded in Utah law as to require its formal adoption by this committee[MSOffice13].

Committee Notes

The value added or betterment defense recognized in St. Joseph Hosp. v. Corbetta Constr. Co., 21 Ill. App. 3d 925, 316 N.E. 2d 51 (1974) has been held inapplicable in the

absence of proof that the owner would have gone forward with the project using a design that met the standard of care. L.L. Lewis Const., LLC v. Adrian, 142 S.W. 3d 255, 264 (Mo. App. 2004); Skidmore, Owings & Merrill v. Intrawest I, LP, 87 Wash. App. 1054, 1997 WL 563159 (Wash. App., 1997).

CV 507. Transition instruction.

[Name of plaintiff] claims that [name of defendant] is responsible for damages under breach of warranty. To establish breach of warranty, [name of plaintiff] does not also have to prove that the [name of defendant] was negligent.

MUJI 1st

7.35

References

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CV508. Breach of warranty essential elements.

[Name of plaintiff] must prove the following elements to prove breach of warranty:

(1) [name of defendant] made a warranty of the work [name of defendant] performed for [name of plaintiff]; and

(2) [name of defendant] reasonably expected that [name of plaintiff] would rely on the warranty; and

(3) The work of [name of defendant] was not as { name of defendant] warranted; and

(4) [name of plaintiff] was injured and incurred damages as a consequence of the breach of warranty by [name of defendant]; and

It was reasonably foreseeable at the time that [name of defendant] warranted the work that [name of plaintiff] would incur the injuries and damages suffered by [name of plaintiff] if the work was not as warranted by [name of defendant].

MUJI 1st

7.36.

References

Management Comm. of Graystone Pines Homeowners Ass'n v. Graystone Pines, Inc., 652 P.2d 896 (Utah 1982).

Basic Civil Jury Instructions, District of Utah.

CV509. Creation of a warranty.

You must decide whether [name of defendant] made a warranty of the work of [name of defendant] to [name of plaintiff]. A warranty is made by [name of defendant] of the work of [name of defendant] if you must find that [name of defendant] gave [name of plaintiff] an assurance or promise of a certain fact or condition regarding the work of [name of defendant].

A warranty that is expressed in written or oral words is an express warranty. A warranty that is made by the actions of [name of defendant] or by operation of law is known as an implied warranty.

MUJI 1st

7.37.

References

See MUJI § 26 passim.

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CV 510. Implied warranties. Accuracy and fitness for purpose.

A[n] [architect] [engineer] [land surveyor] does not impliedly warrant or guarantee that the professional services rendered will be performed accurately, that is, without errors or defects, or that the professional services will be fit or suitable for the intended purpose or for the needs of the party employing the [architect] [engineer] [land surveyor]. However the [architect] [engineer] [land surveyor] does warrant that his performance of services will not fall below the ordinary skill and care exercised by others engaged in the same profession in the same locality.

Committee Notes

This instruction may require modification if used in conjunction with MUJI 7.39.

References

Nauman v. Harold K. Beecher & Assocs., 24 Utah 2d 172, 467 P.2d 610 (1970).

Mississippi Meadows, Inc. v. Hodson, 299 N.E.2d 359 (Ill. App. Ct. 1973).

Klein v. Catalano, 437 N.E.2d 514 (Mass. 1982).

Borman's, Inc. v. Lalm State Dev. Co., 230 N.W.2d 363 (Mich. Ct. App. 1975).

John Cruet, Jr. v. Robert Carroll, 2001 Conn. Super. Lexis 3336.

SME Industries v. Thompson, 28 P.3d 669 (Utah 2001).

CV 511. Implied warranties. Compliance with building code.

A[n] [architect] [engineer] [land surveyor] engaged to prepare plans and specifications for the construction of a building or other structure, in the absence of an expressed disclaimer, impliedly warrants and guarantees that the plans and specifications conform to the applicable building codes. This implied warranty of compliance with applicable building codes may be eliminated by express language which, in common understanding, calls attention to the elimination of the warranty and makes it clear that there is no implied warranty of compliance with applicable building codes. If you find that the defendant eliminated the implied warranty of compliance with applicable building codes, a failure of the defendant's plans or specifications to conform to the applicable building codes is not a breach of implied warranty.

References

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