

CV2119 Implied covenant of good faith and fair dealing.

All contracts contain an ~~implied (unwritten unstated) or implied~~ promise that the parties will deal with each other fairly and in good faith. This means that [name of plaintiff] and [name of defendant] have promised not to intentionally do anything to injure each other's right to receive the benefits of the contract. ~~To decide if [name of defendant] violated this unwritten promise,~~ you should consider whether [~~his~~name of defendant's] actions were consistent with the ~~parties'~~ agreed ~~common~~ purpose and justified expectations of [name of plaintiff] in light of the contract language and the dealings between ~~and conduct of~~ the parties.

There are some limits to this unwritten promise that you need to keep in mind.

~~First, this unwritten promise between the parties to deal fairly with each other and in good faith does not establish new, independent rights or duties that [name of plaintiff] and [name of defendant] did not agree to.~~

~~Second, t~~This ~~unwritten implied~~ promise does not create ~~new, independent~~ rights ~~and or~~ duties that are inconsistent with the actual terms of the contract. ~~Finally, y~~In other words, you cannot use use this unwritten implied promise to achieve an outcome that you believe is fair but is not inconsistent with the actual contract's terms of the contract.

~~Third, t~~This ~~unwritten implied~~ promise does not require either party to ~~use exercise~~ a contract right in a way that will be harmful to themselves simply to benefit the other party.

~~Finally, you cannot use this unwritten promise to achieve an outcome that you believe is fair but is inconsistent with the actual terms of the contract.~~

If you find that [name of defendant] violated this ~~unwritten implied~~ promise ~~to deal fairly and in good faith~~, then [name of defendant] breached the contract.

References

Young Living Essential Oils, LC, v. Marin, 2011 UT 64, 266 P.3d 814.

Mark Technologies Corp. v. Utah Resources International, Inc., 2006 UT App 418, ~~para.~~¶ 7, 147 P.3d 509, 512.

St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194, 199 (Utah 1991).

Oakwood Village, LLC v. Albertsons, Inc., 2004 UT 101, ~~para.~~¶ 45, 104 P.3d 1226, 1240.

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MUJI 1st Instruction

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Committee Notes

The duty of good faith and fair dealing as it applies to insurance contracts is addressed in MUJI 2d, 2400 series.

The committee notes that there has been no judicial definition of "justified expectations."