

## ***MINUTES***

Advisory Committee on Model Civil Jury Instructions

October 26, 2020

4:00 p.m.

Present: Honorable Andrew H. Stone (chair), Nancy J. Sylvester (staff), Marianna Di Paolo, Joel Ferre, Honorable Keith A. Kelly, Alyson McAllister, Douglas G. Mortensen, Ruth A. Shapiro, Lauren A. Shurman, , Samantha Slark, Ruth Shapiro, Randy Andrus, Ricky Shelton.  
Also present: Tracy Fowler. Paul M. Simmons

Excused:

### *1. Welcome.*

Judge Stone welcomed everyone to the meeting and asked all committee members to introduce themselves.

### *2. Approval of Minutes.*

Judge Stone asked for a motion on the February meeting minutes. The minutes were unanimously approved.

### *3. Subcommittees and Subject Area Timelines.*

Judge Stone suggested creating subcommittees for the subject areas of easements and boundary lines and asked for names of those who have handled these issues and who could join these subcommittees. Preferably a committee of four evenly split between plaintiffs and defendants. These issues go to trial occasionally and are to be decided by the jury. Judge Kelly agreed that these issues should be clarified via jury instructions.

Judge Stone suggested instructions on civil jury trials during the pandemic. We might need short instructions re distancing, mask wearing, etc. We could look to other jurisdictions who have already prepared these types of instructions.

Still no timeline on when criminal jury trials can start. Civil jury trials will follow.

### *4. Discussion of Product Liability Instructions.*

## **CV1001**

Mr. Simmons spoke to the plaintiff group's proposal and Mr. Fowler spoke to the defense group's proposal.

Mr. Fowler recognized the fundamental differences in opinion on proposed instructions between plaintiffs and defendants. As a result, the most recent version of the

instructions were not shortened much and included alternative definitions to allow for both perspectives.

Mr. Shelton asked whether it would be helpful to first inform the jury of the difference between negligence and strict liability. Mr. Fowler opined that the more language you add on the issue, the less clear it becomes. He argued that the difference is spelled out sufficiently throughout the instructions.

Mr. Fowler clarified that the plaintiff group's introduction in CV1001 is consistent with the court's ruling in *Bylsma v. R.C. Willey*, but objected to its use in the instructions as unnecessary. He argued that the leaner the instruction, the better.

Judge Kelly argued that it is important for the jury to understand the difference between strict liability claims and that the introduction language in the plaintiff's proposal outlined out a fairly clear road marker. If this introduction paragraph does not contradict the court's decision in *Blysm v. R.C. Willey*, 2017 UT 85, 416 P.3d 595, he suggested it may be helpful to the jury. Mr. Fowler responded that there are words in the introduction that could create confusion on the part of the jury.

Ms. Di Paolo stated her concern about the necessity of the plaintiff group's introduction paragraph and the use of language that may confuse a jury. She argued that if we keep the introduction paragraph, it should be restructured to be more easily understandable. She argued that it is too dense as written. If it is *not* necessary language, she opined that it should be omitted. Mr. Fowler agreed. Mr. Simmons offered to re-write the introduction paragraph to make it simpler because clarification is, he argued, necessary. Ms. McAllister agreed. Ms. Sherman suggested that perhaps one or two simple sentences explaining the difference between strict liability and negligence may be helpful, but not much more than that. She further recommended citing directly to relevant court precedent. Mr. Simmons agreed to make amendments to the introduction paragraph in consideration of the committee's concerns.

Judge Stone stated his preference for an introduction paragraph similar to that spelled out in the plaintiff group's version as, he argued, the difference between negligence and strict liability is not intuitive. Ms. Slark agreed that an introduction would be helpful and noted that breaking out the different types of defects would help with clarity.

The committee discussed whether to cite Tenth Circuit precedent in the instructions. Mr. Mortensen contended that it should be omitted as it is not binding. Mr. Fowler countered that it is nevertheless relevant and should be made available to practitioners. Judge Stone expressed no concern with citing federal precedent interpreting Utah law.

Mr. Fowler suggested that he and Mr. Simmons re-work the language of CV1001 since the plaintiff and defense groups may be close to agreement. Mr. Simmons agreed. The committee determined to discuss any such changes at a later date.

5. *Adjournment.*

The meeting concluded at 5:47 P.M.

6. *Next Meeting.*

To be determined.