

Judicial Council Standing Committee on  
Model Utah Civil Jury Instructions

# Agenda

April 13, 2026  
4:00 to 6:00 p.m.  
Via [Webex](#)

Welcome and Introductions to Robert Fuller		Alyson McAllister
Approval of February Minutes	Tab 1	Alyson McAllister
CV2003 (Econ. Dmg.); CV2005 (Econ. Dmg. Med. Care); CV2119 (Impl. Cov. GFFD) - Back from comment (none)		Alyson McAllister
SB211 re <i>Gardner v Norman</i> , 2025 UT 47 (did not pass)		Alyson McAllister
Draft Product Liability Amendments	Tab 2	Tracy Fowler
Progress on Instruction Topics	Tab 3	(Informational)

[Committee Web Page](#)

[Published Instructions](#)

**Meeting Schedule:** Monthly on the 2<sup>nd</sup> Monday at 4 pm

**Next meeting:** May 11, 2026

# TAB 1

# MINUTES

Advisory Committee on Model Civil Jury Instructions  
February 9, 2026  
4:00-6:00 p.m.

Present: Alyson McAllister, John Macfarlane, Aaron Pacini, Bill Eggington, Michael Lichfield, Judge Brian D. Bolinder, Kara North, Ben Lusty, Jace Willard (staff), Clancey Henderson (staff),

Excused: Stewart Harman

Guests: Jesse Egbert, Clark Cunningham, Susan Provenzano

## 1. Welcome and Approval of Minutes

Ms. McAllister welcomed the Committee. The Minutes from the January 2026 meeting were approved.

## 2. Linguistics and Law Group – Update

Ms. McAllister welcomed Messrs. Jesse Egbert, Clark Cunningham, and Susan Provenzano from the Linguistics and Law Group.

Mr. Jesse Egbert presented an update on the group's work during its stage 1 analysis on the MUJI 100-series. Mr. Egbert identified the two initial goals for the group's work: 1) identify words and phrases that may be problematic for juror comprehension; and 2) test potential jury members' comprehension of those words and phrases. Mr. Egbert described the tests used and provided a sampling of results to familiarize the Committee with the group's approach. Mr. Egbert also discussed research on related topics considered in the group's analysis. Mr. Egbert indicated that the initial tests confirmed the methods that could be used for further research. Mr. Egbert discussed the potential for the group to conduct a second stage of research after the priorities are identified by the Committee.

The Committee discussed the need to further investigate linguistic clarity of the instructions by seeking input from actual jurors. Judge Bolinder indicated he would raise the issue with the board of district court judges.

The Committee discussed assigning a sub-committee the task of reviewing the group's work and steering further efforts.

The group indicated it will share its written findings with the Committee in the coming weeks. The Committee will review the report and then assess next steps.

### 3. CV2119 Implied Covenant of Good Faith and Fair Dealing

The Committee continued its discussion on potential revisions to CV2119 Implied Covenant of Good Faith and Fair Dealing based on an issue raised in an article published in the Bar Journal. The Committee discussed the author-attorney's response to the Committee's inquiry. The Committee discussed various potential amendments to the instruction. Mr. Eggington identified the low-frequency terms in the instruction for the Committee to consider.

Mr. Lichfield moved to approve the new proposed instruction. Mr. Pacini seconded the motion. Upon a vote, the instruction was unanimously approved by the Committee for publication and public comment.

### 4. SB211 re *Gardner v Norman*, 2025 UT 47

Ms. North provided an update on SB 211. The Committee discussed the implications for Civil Instructions if the bill passes, and determined to monitor the bill's progress.

### 5. Gender Neutrality in Jury Instructions

The Committee discussed undertaking a review of instruction language, and the need for revisions in order to achieve gender neutrality. The item will be on the agenda for the next meeting as well.

### 6. Scheduling and adjournment

The next meeting will be held on March 9, 2026, at 4:00 p.m.

The meeting adjourned.

# TAB 2

## CV1002 Strict liability. Elements of claim for a [design] [manufacturing] defect.

[Name of plaintiff] claims that [he] was injured by a [product] that had a [design] [manufacturing] defect that made the [product] unreasonably dangerous. ~~You must decide whether~~ To establish a [design] [manufacturing] defect claim, [name of plaintiff] must prove all of the following:

- (1) there was a [design] [manufacturing] defect in the [product];
- (2) the [design] [manufacturing] defect made the [product] unreasonably dangerous;
- (3) the [design] [manufacturing] defect was present at the time [name of defendant] [manufactured/distributed/sold] the [product]; and
- (4) the [design] [manufacturing] defect was a cause of [name of plaintiff]'s injuries.

I will now explain what the terms ["design] ["manufacturing] defect" and "unreasonably dangerous" mean.

### References

[\*Peterson v. Hyundai Motor Company LLC\*, 2021 UT App 128.](#)  
[\*Bylsma v. R.C. Willey\*, 2017 UT 85, 416 P.3d 595.](#)  
[\*Schaerrer v. Stewart's Plaza Pharmacy, Inc.\*, 2003 UT 43, 16, 79 P.3d 922 \(citing \*Interwest Constr. v. Palmer\*, 923 P.2d 1350, 1356 \(Utah 1996\)\).](#)  
[\*Ernest W. Hahn, Inc. v. Armco Steel Co.\*, 601 P.2d 152 \(Utah 1979\).](#)  
[\*Wankier v. Crown Equipment Corp.\*, 353 F.3d 862, 867-68 \(10th Cir. 2003\).](#)  
[\*Brown v. Sears, Roebuck & Co.\*, 328 F.3d 1274, 1280 \(10th Cir. 2003\).](#)  
[\*Allen v. Minnstar, Inc.\*, 8 F.3d 1470, 1472 \(10th Cir. 1993\).](#)  
[Restatement \(Second\) of Torts sect. 402A \(1963 & 1964\).](#)

### MUJI 1st Instruction

#### 12.1.

#### **Committee Notes:**

Section 402A of the Restatement (Second) of Torts, which the Utah Supreme Court adopted in *Ernest W. Hahn, Inc.*, requires that the defendant be engaged in the business of selling the product. Occasional sellers are not liable in product liability actions. See Louis R. Frumer & Melvin I. Friedman, *Product Liability*. Section 5.04 (1997). In most cases, there will be no dispute as to whether the defendant was engaged in the business of selling the product. If the defendant was not, the court will dismiss any strict products liability claim before trial. If there is evidence from which reasonable minds could disagree, however, the court should add a fifth element: "whether ... (5) [Name of defendant] was engaged in the business of selling the [product]."

**CV1012 Strict liability. Component part manufacturer. Part defective only as incorporated into finished product.**

[Name of defendant] [designed/manufactured/distributed/sold] a component part of the [product].

If you find that the component part was not defective as [designed/manufactured/distributed/sold], but only became defective as a result of the way it was [installed/incorporated/used] in the finished [product], then for [name of defendant] ~~can only to~~ be liable to [name of plaintiff] if party(ies) claiming component part is defective] must prove all of the following:

- (1) ~~(1)~~ [Name of defendant] ~~knew enough about the design or operation of~~ substantially participated in the integration of the component part into the finished [product] ~~that [he] could have reasonably foreseen that an injury could occur because;~~
- (2) The integration of the ~~way the~~ component part ~~would be used in the~~ [into the finished product]; made the finished product defective; and
- ~~(2) [Name of defendant] did not warn the [final assembler of the product] of that danger.~~
- (3) The defect in the [product] created by the integration of the component part was a cause of [name of Plaintiff]'s harm.

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To substantially participate, [name of defendant] must have had some control over the decision-making process of the final product or system. Knowledge of the ultimate design of the finished product, by itself, does not amount to substantial participation.

A component part [designer/manufacture/distributor/seller] does not have a duty to foresee all the dangers that may result from the use of a final product which contains its component part and does not have a duty to analyze or anticipate the design of the finished product or system of which its component is a part. However, if the specifications for the component part are obviously unreasonably dangerous, [name of defendant] may be deemed to have control over the product and to have substantially participated.

## References

[Gudmundson v. Del Ozone, 2010 UT 33, 232 P.3d 1059.](#)

## Committee Note

[Burden of proof may vary depending on who is asserting that the component part is defective. That is, if a defendant is claiming the component part was defective, that defendant may carry the burden of proof.](#)

**CV1013 Strict liability. Component part manufacturer. Defective part incorporated into finished product.**

[Name of defendant] [designed/manufactured/distributed/sold] a component part of the [product].

If [name of party(ies) claiming component part is defective] proved each of the following:

~~If you find that (1) \_\_\_\_\_ the component part was defective as [designed/manufactured/distributed/sold] and that,~~

(2) the defective part made the finished product unreasonably dangerous, and

(3) the defect in the [product] created by the integration of the component part was a cause of [name of plaintiff]'s injuries.

then you ~~may~~**must** find both [name of defendant], the manufacturer of the component part, and [name of co-defendant or third party defendant], the manufacturer of the finished product, liable to [name of plaintiff].

References

Utah Code Sections 78B-5-817 to 78B-5-823.

Bylsma v. R.C. Willey, 416 P.3d 595 (2017).

Restatement (Third) of Torts: Apportionment of Liability §13.

**Committee Notes:**

The Utah Supreme Court has not yet determined ~~if or how fault should be apportioned between~~the liability of the manufacturer of a defective component part that is defective and made the finished product defective. In *Bylsma*, the Utah Supreme Court held that strictly liable defendants who are liable for breaching the same duty by selling a dangerously defective product be treated as a unit, and each can be strictly liable for the plaintiff's harm. See *Bylsma v. R.C. Willey*, 2017 UT 85, ¶ 15, 416 P.3d 595. The same rationale is likely to apply to the manufacturer of a component part and the manufacturer of the finished product. ~~Some courts applying a comparative fault system similar to Utah's have concluded that, in some situations, such as in cases of vicarious liability or strict products liability, multiple defendants should be treated as a single unit, on the theory that they are "joint tortfeasors" in the original sense, that is, persons responsible for carrying out a tort by concerted action. See, e.g., *In re Rapeo Foam, Inc.*, 23 B.R. 692 (W.D. Wis. 1982); *Arena v. Owens Corning Fiberglas Corp.*, 74 Cal. Rptr. 2d 580, 593 (Ct. App.), review denied (Cal. 1998); *Wimberly v. Derby Cycle Corp.*, 65 Cal. Rptr. 2d 532, 535-41 (Ct. App. 1997), and cases cited therein; *Steenrod v. Doubrava*, 498 N.Y.S.2d 225 (App. Div. 1986); *Restatement (Third) of Torts: Apportionment of Liability* §§ 7 emt. j; 13 & emts. a, c, d, and e. Therefore, some subcommittee members favored the following instruction: where both the component part and the finished product are defective and the plaintiff is injured by the defective product.~~

Additionally, the Utah Supreme Court in Gudmundson v. Del Ozone, 2010 UT 33, declined to adopt the Restatement (Third) of Torts to the situation where the component part itself is defective. “We do not quote section (a) of the Restatement because it only addresses situations in which the component part itself is defective. Because this situation is adequately addressed in our case law, we do not wish to create confusion by applying the Restatement to those situations.” Gudmundson, at ¶ 55, n. 4

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

**CV1050 ~~Comparative fault~~ Allocation Between Strict Liability Defendants and Other Parties/Third Parties.**

~~[Alternative A.]~~

[Name of defendant] claims that [name of plaintiff] ~~was at fault and that~~ [/other defendants/third-parties] were [negligent, misused the product, altered/modified the product, assumed the risk of using the product, otherwise acted wrongfully, or failed to act, hereafter "fault"] and that [fault] was a cause of [name of plaintiff]'s fault ~~caused or contributed to the harm. This is called comparative fault.~~

~~Comparative fault is [negligence] [misuse] [assumption of risk] [or other misconduct] by [name of plaintiff] that causes or contributes to the harm.~~

[Name of defendant] has the burden of proving [name of plaintiff]'s ~~comparative fault by a preponderance of the evidence~~ /other defendants/third-parties]'s [fault] was a cause of [name of plaintiff]'s harm.

If you determine that the [product] was defective, and that any such defect was a cause of [plaintiff]'s harm, then you also must determine what percentage of [name of plaintiff]'s harm was caused by the defective product as compared to what percentage of [name of plaintiff]'s harm was caused by the [fault] of [name of plaintiff]/other defendants/third-parties]. Your allocation of percentages must add up to 100%.

Any comparative fault of [name of plaintiff] does not bar [his] recovery unless you apportion 50% or more of the total fault to [name of plaintiff]. In other words, [name of plaintiff] may recover from [name of defendant(s)] if [name of defendant(s)]'s fault is greater than [name of plaintiff]'s.

If you allocate 50% or more of the total fault of all parties listed on the verdict form to [name of plaintiff], then [name of plaintiff] will recover nothing. If you allocate less than 50% of the total fault to [name of plaintiff], then I will reduce [name of plaintiff]'s total damages you have determined by the percentage of fault you attribute to [name of plaintiff].

**References**

Bylsma v. R.C. Willey, 2017 UT 85, ¶ 78.  
Utah Code Section 78B-5-817 et seq.

**MUJI 1st Instruction**

12.9; 12.10.

~~[Alternative B.]~~

~~[Name of defendant] claims that [name of plaintiff] was at fault and that [name of plaintiff]'s fault caused or contributed to the harm. This is called comparative fault.~~

~~Comparative fault is [misuse] or [assumption of risk] by [name of plaintiff] that causes or~~

~~contributes to the harm.~~

~~[Name of defendant] has the burden of proving [name of plaintiff]'s comparative fault by a preponderance of the evidence.~~

~~If you determine that both [name of plaintiff] and [name of defendant] were at fault in causing [name of plaintiff]'s harm, then you must determine the percentages of fault attributable to [name of plaintiff] and [name of defendant]. You must also determine the total damages [name of plaintiff] has sustained as a result of the harm. Then I will then reduce the total amount of damages by the percentage of [name of plaintiff]'s fault.~~

#### **Committee Notes:**

~~"Fault" is defined in Instruction CV201, Fault defined.~~

"Fault", as defined, is used for brevity in the model instruction, but the instruction should be modified to state the different legal theory(ies) of fault that are at issue in the case. "Fault under the LRA incorporates almost every claim that can proximately cause or contribute to injury or damages." *Bylsma v. R.C. Willey*, 2017 UT 85, ¶ 72 (cleaned up). Accordingly, the bracketed language listing various legal theories of fault in the first paragraph is not meant to be comprehensive or account for the nuance of any given case.

The prior version of these instructions referred to Instruction CV201, Fault defined, but the Committee warns against using that instruction, at a minimum, in cases only involving strict products liability for the reasons discussed in *Bylsma v. R.C. Willey*, 2017 UT 85. See *id.* at ¶ 25-27 ("Strict liability is, by definition, liability without fault or, in other words, liability without blameworthiness in a moral sense. (cleaned up)).

In *Bylsma v. R.C. Willey*, 2017 UT 85, ¶ 13, the Utah Supreme Court explained that when allocating fault between the plaintiff and the product manufacturer "to avoid conflating negligence and strict liability, the proper approach is one of 'relative causation' rather than 'relative fault.'" To accomplish this, the jury must first determine "that the plaintiff has proven the elements of strict liability—the product was defective, it caused some part of the plaintiff's injuries, it was sold by defendant, and the defendant is in the business of selling such products." *Id.* at ¶ 81. "Then, after it has made that determination, the jury must allocate the 'fault' in the case by determining the proportion of the injury caused by the defective product and the proportion of the injury caused by the plaintiff's 'misuse, modification, or abuse of the product.'" *Id.* (cleaned up).

The Supreme Court also clarified in *Bylsma* that the concept of fault is inapplicable in strict products liability claims between the plaintiff and those in the chain of distribution, including for retailers that could raise the passive retailer defense recognized in *Sanns v. Butterfield*, 2004 UT App 203, but overruled by *Bylsma*, 2017 UT 85, ¶ 12. Instead, issues of which entity should pay more or less of a verdict (or settlement) are to be addressed in indemnity and/or contribution claims. See *e.g. id.* at ¶ 23 ("There are three key aspects of our strict products liability doctrine that work together to achieve its goals.... Third, it permits an innocent non-manufacturer (one who sold the product and was therefore held strictly liable) to recover its losses from the manufacturer by way of indemnity. The interplay between these three factors ensured both that

the injured plaintiff would obtain a full recovery and that the costs were ultimately borne by those parties who are in a position to absorb the loss by distributing it as a cost of doing business.” (cleaned up); see also id. at ¶ 34.

In an effort to avoid imprecisely interjecting the concept of fault into this instruction, the Committee suggests that it be modified to specifically list the type(s) of fault in dispute (e.g., misuse or unreasonable use). Once those types of fault are listed in this instruction, the court should give separate instructions explaining each type of fault involved, enabling the jury to determine what misconduct by plaintiff, other defendants, or non parties proximately caused or contributed to plaintiff’s harm.

If nonparties are alleged to be at fault or strictly liable and will be listed on the verdict form, the ~~instruction may have to be broadened to include~~ name(s) of those nonparties should be included in this instruction, as well as the plaintiff and defendants. Further, in light of the foregoing, unless there are pending claims submitted to the jury among those in the chain of distribution, the jury should not allocate fault among entities in the chain of distribution.

~~The definition of "comparative fault" in the second paragraph should include only those forms of comparative fault that are at issue in the case. The court should give separate instructions defining the particular type of misconduct involved (e.g., misuse or unreasonable use).~~

The committee has developed two comparative fault instructions for use in products liability cases. The committee is divided over whether the "pure comparative fault" rule established in *Mulherin v. Ingersoll Rand Co.*, 628 P.2d 1301 (Utah 1981) survived ~~the Liability Reform Act of 1986.~~

~~At the time Utah adopted strict products liability in 1979, the Utah comparative negligence statute applied the so-called 50/50 rule, under which a plaintiff could not recover if his or her negligence was greater than or equal to that of the defendants. In *Mulherin v. Ingersoll Rand Co.*, 628 P.2d 1301 (Utah 1981), the Utah Supreme Court adopted a pure form of comparative fault in strict products liability cases. In 1986 the Utah Legislature enacted the Utah Liability Reform Act, which kept the 50/50 rule of the prior comparative negligence. MUJI contained two similar alternative instructions in light of the uncertainty at the time as to whether the Utah Liability Reform Act applied to strict liability claims involving comparative fault. Some committee members believe this uncertainty still exists. Thus, the two alternative positions are set forth.~~

~~However, the Utah Supreme Court has decided a case involving strict liability and other claims apparently based on the 50/50 rule of comparative fault. In *Interwest Construction v. Palmer*, 923 P.2d 1350 (Utah 1996), the Utah Supreme Court, in an opinion affirming a bench trial found that the trial court had erred in not considering the appellant's strict liability and negligence claims but found the error harmless because the trial court had correctly ruled against the appellant on its breach of contract and warranty claims because the appellant had caused its own damage. The Supreme Court read this as a factual determination that [the appellant's] misuse of [the product] exceeded the fault, if any, of its suppliers [the appellees]. Otherwise, the trial court would have apportioned damages on [the appellant's] breach of warranty claim." 923 P.2d at 1357. This language suggests that the court thought the Liability Reform Act applied. Nonetheless, some members of the committee believe the trial court's ruling can also be read as meaning that the~~

appellant was the sole proximate cause of damages, in which case an apportionment of fault would be neither necessary nor proper. Notably, in *Red Flame, Inc. v. Martinez*, 2000 UT 22, the Utah Supreme Court held that the mere fact that the Dramshop Liability Act prescribes a form of strict liability rather than traditional negligence does not exclude it from application of the comparative fault statute. See also *S.H. v. Bistrski*, 923 P.2d 1376 (Utah 1996) (holding comparative fault provisions of sections 78B-5-817 and 78B-5-818 applied to Utah's strict liability dog bite statute).

### **CV1051 Product unavoidably unsafe.**

In response to [name of plaintiff]'s claim that the [product] was defective in design, [name of defendant] claims that the [product] was unavoidably unsafe and that it is therefore not at fault. Some products cannot be made safe for their intended use, but their benefits are great enough to justify their risks of harm. The rabies vaccination is an example, since a few recipients will suffer serious side effects, but the result of not receiving the vaccination is death.

To establish the defense that the [product] was unavoidably unsafe, [name of defendant] must prove that:

(1) when the [product] was made, it could not be made safe for its intended use even applying the best available testing and research; and

(2) the benefits of the [product] justified its risk.

If [name of defendant] proves both by a preponderance of the evidence, the [product] is not defective.

This defense does not apply to [name of plaintiff]'s claims that the [product] was improperly manufactured or had inadequate warnings.

### **References**

[Grundberg v. Upjohn Co., 813 P.2d 89 \(Utah 1991\).](#)

[Burningham v. Wright Medical, 2019 UT 56.](#)

[Restatement \(Second\) of Torts sect.402A, cmt. k.](#)

### **Committee Notes:**

Some committee members believe that the jury should be permitted to consider whether the safety features are cost prohibitive in determining whether the product was unavoidably unsafe.

**CV1031 Breach of Implied Warranty. Elements of implied warranty of merchantability claim. (Tort).**

In this case, [name of plaintiff] claims that [name of defendant] breached an implied warranty that the [product] was merchantable. To establish this claim, [name of plaintiff] must prove all of the following:

- (1) that [name of defendant] sold the [product;]
- (2) that at the time of sale, the [product]:
  - [(a) was not reasonably fit for the ordinary purposes for which such [products] are used;] or
  - [(b) was not of the same kind and quality as other [products] with which it was sold;] or
  - [(c) would not pass without objection in the industry;]
- (3) that this condition rendered the [product] defective and unreasonably dangerous;
- (4) that [name of plaintiff] was harmed;
- (5) that the defective condition of the [product] was a cause of [name of plaintiff]'s harm.

**References**

[Ernest W. Hahn, Inc. v. Armco Steel Co., 601 P.2d 152, 159 \(Utah 1979\).](#)  
[Kirkbride v. Terex USA, LLC, 798 F.3d 1343, 1353-1355 \(2015\).](#)  
[63 Am Jur 2d Products Liability sect. 707.](#)

**Committee Notes:**

[The Tenth Circuit Court of Appeals, applying Utah law, has concluded that there is no tort claim for breach of the implied warranty because its elements, if such a claim exists, are the same as those for a claim for strict liability. Kirkbride v. Terex USA, LLC, 798 F.3d 1343, 1354 \(2015\) \(We conclude that for purposes of a tort claim for breach of the implied warranty of merchantability, Utah law provides that the warranty is breached only if the plaintiff establishes the elements of a strict-products-liability claim for defective manufacture, defective design, or failure to warn.” \(citing Grundberg v. Upjohn Co., 813 P.2d 89, 92 \(Utah 1991\) \(“There are three types of product defects: manufacturing flaws, design defects, and inadequate warnings regarding use.”\)\)\). For the reasons discussed in Kirkbride and the cases cited therein, the committee is skeptical that a tort claim for breach of the implied warranty exists in Utah law. To the extent such a claim exists, the committee provides this instruction.](#)

~~In a tort action.~~ [Because](#) the elements of strict liability and [a tort claim for breach of implied warranty](#) "are essentially the same."[," some members of the committee believe that the elements for a claim of breach of implied warranty of merchantability are different if the claim sounds in](#)

tort than if it sounds in contract. Ernest W. Hahn, Inc. v. Armco Steel Co., 601 P.2d 152, 159 (Utah 1979) (citing William L. Prosser, The Assault Upon the Citadel, 69 Yale L.J. 1099 (1960); David G. Epstein, Products Liability: Defenses Based on Plaintiff's Conduct, 1968 Utah L. Rev. 267); see also Salt Lake City Corp. v. Kasler Corp., 855 F. Supp. 1560, 1572 (D. Utah 1994) (citing Utah cases). ~~Thus, some members of the committee believe that the elements for a claim of breach of implied warranty of merchantability are different if the claim sounds in tort than if it sounds in contract.~~ This instruction is meant to state the elements of a tort claim for breach of implied warranty of merchantability if such a claim continues to exist in Utah law.

Other members of the committee believe that the elements of a claim for breach of implied warranty of merchantability are the same whether the claim sounds in contract or tort. These committee members believe that, when the court in Hahn said that the elements of strict liability and breach of implied warranty "are essentially the same," it merely meant that a product that breached the implied warranty of merchantability was, by definition, defective, at least under a consumer expectations test such as that set out in Utah Code Section 78B-6-703(2). These committee members do not believe that a plaintiff in a tort case must prove a product defect separate and apart from the breach of implied warranty of merchantability but only has to show that a breach of the implied warranty and that the breach caused his harm.

In paragraph (2) instruct on subparagraphs (a), (b) or (c) for which there is evidence.

### CV10--- Enhanced Injury Instruction.

[Name of plaintiff] has brought what is called an enhanced injury claim. An enhanced injury occurs if an injury caused by some other event is increased or enhanced over and above the harm that would have otherwise resulted from the event, as a result of a defective product.

To establish an enhanced injury claim, [name of plaintiff] must prove by a preponderance of the evidence all of the following:

- (1) The product had a [design] [manufacturing] [warning] defect that made it unreasonably dangerous; and
- (2) That defect was a substantial factor in increasing the harm [name of plaintiff] experienced, over and above the harm that would have otherwise resulted from the event.

If you find that a product defect was a substantial factor in increasing the harm [name of plaintiff] experienced, over and above the harm that would have otherwise resulted from the event, then you next must apportion the harm caused by the defect and the harm caused by the other event.

### References

Egbert v. Nissan North America, 2007 UT 64, ¶ 19.  
Egbert v. Nissan Motor Co., Ltd., 2010 UT 8, ¶¶ 23, 37 & 40.  
Restatement (Third) of Torts: Products Liability § 16(a).

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### CV10--- Implied Indemnity - Introduction

One who [is required to pay] [may be required to pay] [has paid] damages for causing injury to another may be reimbursed for that sum from another party in certain circumstances, which will be explained to you in the following instructions.

This is known as indemnity.

### References

Bylsma v. R.C. Willey, 2017 UT 85.

Hanover Ltd. v. Cessna Aircraft Co., 758 P.2d 443 (Utah Ct. App. 1988).

### Committee Notes

Though it had been thought that the [Liability Reform Act](#) abolished implied indemnity claims, the Utah Supreme Court explained this was not the case in [Bylsma v. R.C. Willey, 2017 UT 85](#), noting implied indemnity was the “only place where culpability factors into the products liability equation at all.” Id. at ¶32. “Implied indemnity is a doctrine applying in a limited number of scenarios that shifts the entire burden of a plaintiff’s loss from a non-culpable party to a culpable party.” Id. “This right of implied indemnification is accorded to a retailer against the manufacturer of an alleged defective product regardless of whether the seller is found liable to the purchaser under a strict liability theory in tort or that of breach of warranty.” [Hanover Ltd. v. Cessna Aircraft Co., 758 P.2d 443, 446 \(Utah Ct. App. 1988\)](#). There may be instances where a manufacturer seeks indemnity from a retailer, such as when the manufacturer delegates some aspect of manufacture, e.g. final assembly or inspection, to a subsequent seller. [Bylsma at ¶34, n. 62 \(quoting RESTATEMENT \(THIRD\) OF TORTS: PROD. LIAB. § 2 cmt. c \(AM. LAW INST. 1998\)\)](#).

### **CV10--- Elements of Indemnity Claim**

[Claimed indemnitee] claims that [s/he/it] is entitled to indemnity from [alleged indemnitor]. [Claimed indemnitee] must prove [alleged indemnitor]'s conduct in the [design] [manufacture] [warning] [distribution] of the [product] is more culpable than [claimed indemnitee]'s conduct.

### **References**

Bylsma v. R.C. Willey, 2017 UT 85.

Hanover Ltd. v. Cessna Aircraft Co., 758 P.2d 443 (Utah Ct. App. 1988).

### **Committee Notes**

### **CV10--- Considerations for Determining the More Culpable Party.**

When considering whether [alleged indemnitor] was the more culpable party in causing [underlying plaintiff's] [injuries][damages], you may consider:

[who designed or manufactured the [product];]

[who participated in the design, manufacture, or assembly of the [product];]

[who was charged with conducting a final inspection of the [product];]

[whether any party was aware of the alleged defect at the time the [product] was sold;]

[whether [claimed indemnitee] was negligent in failing to discover the defect prior to distribution;]

[whether the [product] was defective when it left [claimed indemnitor]'s possession;]

[whether [claimed indemnitee] breached its warranty to [plaintiff];]

[the relative knowledge and specialization of the parties;] and

[insert any other factors regarding the parties' knowledge, control, and/or conduct as the case warrants.]

The difference in the conduct of the parties must be a difference in quality or nature, rather than in quantity.

### **References**

Bylsma v. R.C. Willey, 2017 UT 85.

Hanover Ltd. v. Cessna Aircraft Co., 758 P.2d 443 (Utah Ct. App. 1988).

Restatement (Third) of Torts: Apportionment Liab. § 22 (2000).

### **Committee Notes**

“[T]he purpose of implied indemnity is to shift the burden from an individual passive retailer—who bears no fault in the usual sense of the word—onto the party responsible for the defect, the manufacturer.” Bylsma v. R.C. Willey, 2017 UT 85, ¶33. The factors identified above should be adjusted to account for the particular facts and circumstances of the case. Additional factors may be appropriate.

## CV10--- Nature of the Indemnity Case

### [Alternative 1]

[1] In addition to [plaintiff]'s claim[s] against [name of defendants] in this case, [cross-claimant] claims [s/he/it] is entitled to indemnity from [name of cross-defendant] for any sum [cross-claimant] may become liable to pay [plaintiff].

[2] [cross-claimant] claims that if [s/he/it] is found liable to [plaintiff], [cross-claimant] is entitled to indemnity because [cross-defendant]'s conduct was more culpable in [designing] [manufacturing] [distributing] the [product] in causing the [injuries] [damages] to [plaintiff], if any, than [cross-claimant]'s conduct in distributing the [product] to [plaintiff].

[3] [Insert brief description of cross-defendant's defenses.]

### [Alternative 2]

[1] In addition to [plaintiff]'s claim[s] against [defendant(s)] in this case, [third party plaintiff] claims [s/he/it] is entitled to indemnity from [third party defendant] for any sum [third party plaintiff] may become liable to pay [plaintiff] because [third party defendant] [manufactured] [designed] [distributed] the [product].

[2] [Third party plaintiff] claims that if [s/he/it] is found liable to [plaintiff], [third party plaintiff], is entitled to indemnity because [third party defendant]'s conduct was more culpable in [designing] [manufacturing] [distributing] the [product] in causing the [injuries] [damages], if any, to [plaintiff] than [third-party plaintiff]'s conduct in distributing the [product] to [plaintiff].

[3] [Insert brief description of third party defendant's defenses.]

### [Alternative 3]

[1] In a separate legal proceeding, [claimed indemnitee] was required to pay money to respond to allegations that [product] was defective and caused [injuries] [damages] to [name of underlying plaintiff]. [Claimed indemnitee] now seeks indemnity for that sum [plus attorneys fee] from [alleged indemnitor] because [alleged indemnitor]'s actions in [designing] [manufacturing] [distributing] the [product] are more culpable in causing [underlying plaintiff]'s [injuries] [damages] than [claimed indemnitee]'s conduct in distributing the [product] to [underlying plaintiff].

[2] [Insert brief description of claimed indemnitor's defenses.]

## References

Bylsma v. R.C. Willey, 2017 UT 85.

Hanover Ltd. v. Cessna Aircraft Co., 758 P.2d 443 (Utah Ct. App. 1988).

### Committee Notes

Alternative 1 is to be given when indemnitee and indemnitor are identified as tortfeasors in the plaintiff's complaint.

Alternative 2 is to be given when indemnitor is not charged as a tortfeasor in the plaintiff's complaint and the claim for implied indemnity is tried concurrently.

Alternative 3 is to be given when the indemnitor was not party to the action in which the third-party plaintiff incurred liability, attorneys' fees, and costs. Due to the factors discussed in *Hanover Ltd. v. Cessna Aircraft Co.*, 758 P.2d 443 (Utah Ct. App. 1988), Alternative 3 is provided as a basic template and should be adapted to account for the specific circumstances of the case, e.g. whether a judgment has been entered or if there is a finding in the prior action that the product was defective. *Id.*

There are other procedural postures under which an implied indemnity case may be presented to the jury. These instructions may be modified to address those situations.

**CV10--- Absence of Liability to Original Plaintiff**

If you decide [claimed indemnitee] is not liable to [plaintiff], you will have no occasion to consider the question of indemnity.

**References**

Bylsma v. R.C. Willey, 2017 UT 85.

Hanover Ltd. v. Cessna Aircraft Co., 758 P.2d 443 (Utah Ct. App. 1988).

**Committee Notes**

This instruction is to be used when the question of indemnity is tried concurrently with the underlying plaintiff's claims.

### **CV10-- – Failure to warn claims for FDA approved drugs.**

[Name of plaintiff] claims [drug product] was defective because it did not include an adequate warning. Prescription drug [labels] [warnings] are regulated by the United States Food and Drug Administration (“FDA”), and [name of defendant] claims that the FDA would not have approved any variation of the [label or warning].

If [name of defendant] proves by clear evidence that the FDA would not have permitted [plaintiff’s] proposed variation to the [label] [warning], [name of defendant] is not **liable to [name of plaintiff]**.

### **References**

[Cerveny v. Aventis, Inc., 855 F.3d 1091 \(10th Cir. 2017\).](#)

### **Committee Notes**

In [Buckman Co. v. Plaintiffs’ Legal Committee](#), 531 U.S. 341, 121 S.Ct. 1012, 69 USLW 4101 (2001), the United States Supreme Court held that state law fraud on the FDA claims conflict with and are preempted by federal law. 531 U.S. at 348, 121 S.Ct. at 1017. Accordingly, the committee has not included claims of misrepresentation on the FDA in this instruction. [Applicable caselaw analyzing preemption of such claims holds a state law failure to warn claim is preempted by federal law “if a pharmaceutical company presents clear evidence that the FDA would have rejected an effort to strengthen the label’s warnings.” \*Cerveny v. Aventis, Inc.\*, 855 F.3d 1091 \(10th Cir. 2017\) \(citing \*Dobbs v. Wyeth Pharm.\*, 606 F.3d 1269, 1269 \(10th Cir. 2010\).](#)

This instruction is applicable to both negligence and strict product liability claims.

**CV10-- Product liability – No Duty to Make a Safer Product Safer.**

[Name of defendant] may market a non-defective product even if a safer model is available. There is no duty to make a safer product safer. [Name of defendant] has no duty to inform the consumer of the availability of the safer model.

**Reference**

Slisze v. Stanley-Bostitch, 1999 UT 20, ¶¶ 10 & 13, 979 P.2d 317  
Clayton v. Ford Motor Co., 214 P.3d 865 (2009)

<b>Summary report:</b>	
<b>Litera Compare for Word 11.10.1.2 Document comparison done on 4/8/2026 2:06:29 PM</b>	
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<b>Intelligent Table Comparison:</b> Active	
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Embedded Excel	0
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# TAB 3

**MUJI Civil Upcoming Queue:**

<b>Numbers</b>	<b>Subject</b>	<b>Members</b>	<b>Progress</b>	<b>Next Report Date</b>
1000	Products Liability	Tracy Fowler, Paul Simmons, Judge Todd Shaughnessy	Appeared on Agenda November 2021. Continuing to work and will report back.	April 2026
2003, 2005	Economic Damages / Collateral Sources	Kara North and Ben Miller	Notes added Jan. 2026 (related to <i>Gardner v Norman</i> , 2025 UT 47); back from comment April 2026	April 2026
2400	Insurance	Andrew Wright, Richard Vazquez, Stewart Harman, Dan Bertch, Bruce Pritchett, Jake Hinkins	Appeared on Agenda March 2022. Feb. 2025 Stewart indicates the group is awaiting a decision on appeal.	
	Unjust Enrichment	Aaron Pacini	Aaron submitted draft instructions March 2026.	2026
2700	Directors and Officers Liability	Adam Buck	April 2025 - Stewart will contact	
2500	Wills / Probate	Matthew Barneck; Rustin Diehl	Matthew and Rustin have met to discuss direction and have started reaching out to various recommendations – Elder law section, Probate Subcommittee, WINGS, recommended individuals. Alyson, Stewart, and Jace to follow up on this one.	
2300	Sales Contracts and Secured Transactions	Matthew Boley	Matthew willing to work on this topic and would like more feedback from the Committee. Alyson, Stewart, and Jace to follow up on this one.	
	Case law and Statutory Updates	TBD	Previous chairs or group leads may have feedback.	
	Linguistics and Law I - General	Bill Eggington, Judge Kelly, John Macfarlane, Michael Lichfield, Robert Cummings, Clark Cunningham, Jesse Egbert, Scott Jarvis	Presented Feb. 2025 and Feb. 2026. Have identified instructions potentially in need of plain-language adjustments; awaiting feedback on work; working with MUJI (Crim) as well	2026
	Linguistics and Law II - Reasonableness	Judge Bolinder, Bill Eggington, Ben Lusty	Bill presented Feb. 2025 on the changing meaning of reasonableness; this subcommittee would also like to work with MUJI (Crim)	2026

**Archived Topics:**

<b>Numbers</b>	<b>Subject</b>	<b>Completed</b>
1500	Emotional Distress	December 2016
200 / 1800	Fault / Negligence	October 2017
1300	Civil Rights: Set 1 and 2	September 2017
1400	Economic Interference	December 2017
1900	Injurious Falsehood	February 2018
1200	Trespass and Nuisance	October 2019
100	Uniformity	February 2020
1600	Defamation Update	March 2022, December 2022
135	Pretrial Delay	December 2022, February 2023
107A	Avoiding Bias	May 2023, February 2025
632, 632A-632D	Minimum Injury Requirements Update and New	October 2023
132A	Remote Testimony	October 2023
2021	Present Cash Value Update	October 2023, Feb. 2025
900	Easements (prescriptive 920-925, easement by necessity 930-931, and easement by implication, 940-941)	February 2024, Feb. 2025
301B/301C	Elements of a Medical Negligence Claim; Standard of Care	December 2024
324	Use of Alternative Treatment Methods (removed with explanatory committee note)	December 2024
2015	Survival claim (amended committee note)	December 2024
1700	Assault/Battery/False Arrest/Malicious Prosecution	August 2025
331	Past and Future Medical Expenses	November 2025
1740-42	Abuse of Process	November 2025