Agenda
Advisory Committee on
Model Civil Jury Instructions

December 9, 2013
4:00 to 6:00 p.m.

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

Welcome and approval of minutes	Tab 1	John Young
Insurance Litigation Instructions	Tab 2	Rich Humpherys

Committee Web Page

Published Instructions

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

January 13, 2014
February 10, 2014
March 10, 2014
April 14, 2014
May 12, 2014
June 9, 2014
September 8, 2014
October 14, 2014 (Tuesday)
November 10, 2014
December 8, 2014

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions
November 12, 2013
4:00 p.m.

Present: John L. Young (chair), Alison Adams-Perlac, Juli Blanch, Francis J. Carney, Tracy H. Fowler, Honorable Ryan M. Harris, L. Rich Humpherys, Gary L. Johnson, Paul M. Simmons, Honorable Andrew H. Stone

Excused: Marianna Di Paolo

1. *CV2231. Damages for contractor's defective work.* Mr. Young noted that when the committee approved CV505, "Measure of Damages. Defective Improvements" at its last meeting, it became apparent that CV2231, "Damages for contractor's defective work," was not accurate. Mr. Young therefore revised CV2231 and 2232 to bring them in line with CV505. Kent Scott, the chair of the Construction Contract Instructions subcommittee, has approved the change. Mr. Humpherys thought the "'Loss in Market Value' Measure of Damages" paragraph was cumbersome. Mr. Young noted that "standard of care" does not apply in construction contract cases; the standard is the contract. The committee revised that paragraph to read:

> "Loss in Market Value" Measure of Damages: If repairing the improvements is not possible, or if [name of defendant] proves that the cost to repair the improvements is unreasonably wasteful, then you cannot award [name of plaintiff] the "repair" measure of damages. You must instead award [name of plaintiff] damages equal to the difference between the fair market value that the improvements would have had absent [name of defendant]'s breach and the fair market value of the improvements as received. This is called the "loss in market value" measure of damages.

The committee approved the instruction as revised.

2. *Proposed Pro-Se Instructions.* At Judge Toomey's suggestion, Mr. Johnson, Judge Toomey, and Judge Harris drafted some instructions to be used when one of the parties is pro se. They based them in part on instructions from the Eastern District of California.

a. *CV99. Introducing pro se litigant to the jury.* Mr. Humpherys thought that, if the instructions are to refer to "pro se" litigants, they should define "pro se." The committee thought it would be better to use the term "self-represented" and avoid the Latin phrase. At Mr. Humpherys's suggestion, the committee added the following sentence to the beginning of the instruction: "In this case, [name of plaintiff/defendant] is representing [himself/herself]." The committee also changed "the trier of fact" to "you" in the next paragraph. The committee approved the instruction as revised.

b. *CV101A. General admonitions. (Pro-se version.)* The committee deleted the phrase "proceeding 'pro se,' which means he/she is" from the sixth paragraph and approved the instruction as modified.

c. *CV102A. Role of the judge, jury, parties and lawyers. (Pro-se version.)* At Mr. Ferguson's suggestion, "prejudicial" in the fifth paragraph was changed to "prejudiced." The committee discussed what obligation a judge has to assist a pro-se litigant in order to ensure a fair trial. Judges Harris and Stone noted that the Supreme Court recognized such a duty in *Turner v. Rogers*, 564 U.S. —, 131 S. Ct. 2507 (2011), in a civil contempt case where there was the potential for incarceration. At the suggestion of Judge Stone and Mr. Fowler, the committee added a committee note to the effect that it is unclear to what extent a judge must help a pro-se litigant to insure that the process is fair, citing *Turner v. Rogers*. The committee approved the instruction as revised.

d. *CV119A. Evidence. (Pro-se version.)* Mr. Ferguson did not think that the instruction clearly explained when a pro-se litigant is testifying as a witness. Mr. Young suggested that the court advise the jury whenever the pro-se litigant is testifying as a witness. The committee instead revised the instruction to read, "However, pro se [plaintiff's][defendant's] statements made under oath on the witness stand are evidence." The committee also deleted the preceding sentence ("If the facts as you remember them differ from the way they have stated them, your memory of them controls.") on the grounds that it is not limited to pro-se litigants but applies generally and should be covered in other instructions. The committee approved the instruction as modified.

3. *CV324. Use of alternative treatment methods.* Some committee members thought that whether the instruction would be appropriate would depend on whether the plaintiff was claiming that the defendant was negligent in his or her choice of treatment methods or that he or she was negligent in performing the method chosen. Judge Harris noted that he did not know when a court would ever give the instruction if there is conflicting expert testimony on whether there are acceptable alternative treatment methods. Mr. Humpherys thought that, unless the instruction is supported by Utah law, it should be withdrawn. In Mr. Springer's absence, the committee deferred further discussion of CV324. Mr. Carney noted, however, that he did not think the Medical Malpractice Instructions subcommittee (comprised of Kurt Frankenburg, Brian Miller, Jack Ray, Ryan Springer, Pete Summerill, and Bobby Wright) would agree on what to do with CV324 in light of *Turner v. University of Utah Hospitals and Clinics*, 2013 UT 52. Mr. Carney will ask both sides to present their best arguments on the issue in writing by January 15.

4. *Insurance Litigation Instructions.* The committee continued its review of the Insurance Litigation instructions:

a. *CV2407. Notice of loss.* Mr. Humpherys noted that he had revisited CV2407 in light of the discussion at the last meeting, and the statute and regulation had not been very helpful. He noted that the first part of the fourth paragraph ("If it was not reasonably possible to give the notice of loss within the required time") was deleted because it was not supported by the statute or case law. The committee approved the instruction as revised.

b. *New notice instruction.* Mr. Humpherys thought that there should be a new notice instruction explaining to whom notice may be given, based on a regulation that says one can give notice to an agent of the insured and former section 31A-23-305 of the Utah Code (now section 31A-23a-405(2)), which now reads:

> There is a rebuttable presumption that every insurer is bound by any act of its appointed licensee performed in this state that is within the scope of the appointed licensee's actual (express or implied) or apparent authority, until the insurer has canceled the appointed licensee's appointment and has made reasonable efforts to recover from the appointed licensee its policy forms and other indicia of agency. . . .

Judge Stone asked whether "agent" (or "licensee") is a defined term. Mr. Johnson noted that the Insurance Code used to include definitions for "agent" and "broker," but the revised code refers to them as "producers." But the revision did not change all statutory references to "agent." Mr. Humpherys thought that the statute was referring to agents in the legal sense and not necessarily an insurance "agent." Mr. Johnson thought it would be a fact question as to whether one was acting as an agent for the insurer, the insured, or both (a dual agent).

c. *CV2409. When insurer claims prejudice from delay in notice or proof.* Mr. Humpherys thought use of the word "lengthy" was problematic. At Judge Stone's suggestion, the phrase "was so lengthy it" was deleted from the second line. Mr. Humpherys also thought the phrase "material change in its ability" was problematic. He noted that there could be a material change, but the insurer could still be able to perform an adequate investigation. Mr. Ferguson asked whether the standard was that the insurer could not complete its investigation. Mr. Humpherys thought not. Mr. Young noted that the committee had used "important" for "material" in other contexts, but the committee thought "important" would not work here. Mr. Fowler suggested "significant," and Judge Stone suggested "meaningful." Mr. Humpherys thought there needed to be some showing of harm to the insurance company because it could not perform its full investigation, such as not being able to find a witness whose testimony would

have changed the outcome. Mr. Ferguson noted that delay only becomes an issue if the notice is given after the time specified in the policy. Mr. Ferguson asked whether "is prejudicial" could be understood to imply some racial prejudice. Judge Stone suggested "detriment" for "prejudice." Mr. Simmons wondered whether lay jurors would understand "detriment" any better than "prejudice." The committee considered synonyms to "detriment," including "impairment," "harm," and "disadvantage." Mr. Young questioned whether we need "actual" if we use "detriment." Mr. Simmons questioned how much detriment is required. For example, if the insurer is precluded from performing an investigation that would meet the gold standard for investigations but is not precluded from obtaining enough information to adjust the claim, is that sufficient to bar the insured's claim? The committee thought that it should be a reasonableness standard. The committee revised the first paragraph of the instruction to read:

> [Insurer] claims that [insured's] delay in providing [notice][proof] of [describe claim or loss] caused actual detriment to insurer. An insurer suffers detriment if it is unable to reasonably investigate, or defend, or resolve a claim because of the delay.

Similarly, in the last paragraph the phrase "was prejudiced by" was replaced with "suffered detriment because of."

The committee revised the first part of the third paragraph to read, "In determining if [insurer] suffered actual detriment, you may consider the extent to which late notice interfered with the [insurer's] ability to reasonably: . . ." Mr. Humpherys questioned the use of "interfered with," noting that it implies some positive action, whereas the failure to provide timely notice is an omission. Ms. Adams-Perlac suggested "prevented," but the committee thought that created too high a standard. Ms. Blanch suggested "affected," but the committee thought that created too low a standard. The committee decided to stay with "interfered with."

Ms. Blanch suggested combining paragraphs (1) and (2) (examining the scene and interviewing witnesses) and adding a catch-all "or otherwise conduct its investigation."

Mr. Humpherys questioned whether the instruction should list factors at all for the jury to consider in determining if the insurer suffered sufficient detriment. He thought that the instruction should just state what the law is, and factors to consider are factual matters that the attorneys can argue but are not part of the legal standard. Mr. Johnson wanted to list the factors so that he and the jury could tell what evidence he needed to prove his case. Mr. Young suggested bracketing all of the factors and just giving those that applied in the particular

case. Mr. Humpherys thought that listing factors for the jury to consider either unduly limits the jury's consideration of all the facts and circumstances of the case or unduly focuses the jury on certain facts. Mr. Simmons suggested moving the factors to a committee note, as was done in CV207, "Abnormally dangerous activity." Ms. Blanch noted that other instructions, such as CV2013, "Wrongful death claim. Adult. Factors for deciding damages," list factors. Mr. Humpherys thought the wrongful death instruction was distinguishable because the law limits the damages recoverable in a wrongful death action to only those categories of damages listed in the instruction. Mr. Carney suggested leaving the factors in the instruction and letting Mr. Humpherys draft a committee note explaining why he thinks it is inappropriate to include them in an instruction. Mr. Young suggested tying the factors to the insurer's claims, so that the jury would be told that (1) the insurer claims that it suffered detriment because of a, b, and c; (2) therefore, you must decide if the insurer suffered detriment because of a, b, or c. Ms. Adams-Perlac offered to put the instruction in that form.

5. *Next meeting.* The next meeting will be on Monday, December 8, 2013, at 4:00 p.m.

The meeting concluded at 6:00 p.m.

Tab 2

Insurance Litigation

Breach of contract. First party claim.

CV 2401. Insurance policy is a contract. Approved

An insurance policy is a contract between an insurance company and a policy holder, and therefore the relationship between [name of plaintiff] and [name of defendant] is contractual. The insurance policy obligates both [name of plaintiff] and [name of defendant] to comply with the terms of the policy.

References

MUJI 1

21.4

Committee Notes

See also the Commercial Contract instructions, CV 2101 et seq., which may have some application here, depending on the circumstances.

CV 2402. General description of claims and defenses. Approved

[Name of plaintiff] claims that [name of defendant] breached the insurance policy and claims to have been damaged by the breach as follows: [describe claimed losses].

[Name of defendant] claims that [describe defenses].

References

MUJI 1

Committee Notes

CV 2403. Breach of policy provision. Approved

[Name of plaintiff] claims that [name of defendant] breached the following provisions in the policy: [Quote applicable policy language.]

[When deciding this case, you must use the following definitions: Instruct the jury to apply any judicially determined definitions or interpretations about the language of the policy.]

References

MUJI 1

Committee Notes

The interpretation of the policy is the court's responsibility. If there are words and phrases in the policy which need special interpretation, the court will need to provide this to the jury. The jury would not interpret the provision, but only decide the contested facts that relate to the issue.

CV 2404. Elements of the claim. Approved

To succeed on this claim, [name of plaintiff] has the burden to prove [state the elements of the claim that are in dispute].

References

MUJI 1

Committee Notes

The existence of a contract between the insured and the insurer is rarely disputed, and rather than restate all of the elements necessary for a breach of contract claim — see CV 2102, Elements for breach of contract — the judge should focus the jury on those elements that are in dispute.

CV 2405. Value of loss. Approved

[Name of plaintiff] claims that [name of defendant] has not paid for [describe loss]. To succeed on this claim, [name of plaintiff] has the burden to prove the value of [his] loss.

References

MUJI 1

Committee Notes

CV 2406. Exclusion from coverage. Approved

[Name of defendant] claims that the policy excludes [name of plaintiff]'s claim from coverage. The exclusion reads:

[Quote the exclusion or limitation.]

[When deciding this case, you must use the following definitions: instruct the jury to apply any judicially determined definitions or interpretations about the language of the policy.]

To succeed on this claim, [name of defendant] has the burden to prove that the exclusion applies to [name of plaintiff]'s claim.

References

LDS Hospital v. Capitol Life Ins. Co., 765 P.2d 857, 859 (Utah 1988).

MUJI 1

Committee Notes

See the committee note to CV 2403, Breach of policy provision.

It is the general rule in coverage litigation that the burden is on the insured to demonstrate that the loss (under either third-party or first-party coverage) is encompassed by the general coverage provisions of the insurance contract. See, e.g., Quaker State Minit-Lube v. Fireman's Fund Ins. Co., 868 F.Supp. 1278, 1295-96 (D. Utah 1994), aff'd, 52 F.3d 1522 (10th Cir. 1995) (insured bears the burden of proving that its claim comes within the broad meaning of occurrence, and thus comes within the coverage under an insurance policy).

In Young v. Fire Ins. Exchange, 2008 UT App 114, 182 P.3d 911, the Utah Court of Appeals concluded that in litigation arising out of a first party property claim based on a fire, the insured had the threshold burden to present evidence that the fire was the result of an accident. Id. at ¶ 28.

Once the insured meets its burden of establishing that the loss comes within the grant of coverage of the insurance contract, the burden then shifts to the insurer to show the application of an exclusion which would bar coverage. LDS Hospital v. Capitol Life Ins. Co., 765 P.2d 857, 859 (Utah 1988); Metric Construction Co. v. St. Paul fire & Marine Ins. Co., 2005 WL 2100939 at *2 (D. Utah August 31, 2005); Young v. Fire Ins. Exchange, 2008 UT App 114, ¶ 28, 182 P.3d 911; Draughon v. CUNA Mutual Ins. Soc., 771 P.2d 1105, 1108 (Utah Ct. App. 1989).

Once the insurer meets its burden of showing the application of an exclusion, should that exclusion contain any exceptions, the burden is on the insured to show the application of an exception to an exclusion. Quaker State Minit-Lube v. Fireman's Fund Ins. Co., 868 F. Supp 1278, 1312 (D. Utah 1994), aff'd, 52 F.3d 1522 (10th Cir. 2005).

CV 2407. Notice of loss. Approved.

[Name of insurance company] claims that [name of policy holder] breached the terms of the insurance contract because [he/she/it] did not give [adequate/timely] notice of the loss.

[[Name of insurance company] claims that it did not breach the insurance policy because [name of policy holder] did not submit a[n] [adequate/timely] notice of loss.]

[The insurance company must be given an adequate notice of loss. A notice of loss is adequate if it provides sufficient facts to identify the loss and the insurance policy.]

[~~If it was not reasonably possible to give the notice of loss within the required time, t~~The failure to give the notice of loss within the time required by the policy is not a valid reason to deny the claim unless [name of defendant] can prove that it was prejudiced by the failure to give timely notice.]

You must decide whether the notice of loss was [adequate/timely]. [Insurance company] has the burden to prove that the notice of loss was not [adequate/timely]. If it was not timely, [Insurance company] has the burden to prove it was prejudiced before you may rule in [Insurance company]'s favor.

References

Utah Code Section 31A-21-312.

Committee Notes

This instruction applies if plaintiff is claiming damages arising from breach of the insurance contract or if the insurer is claiming there is no coverage due to the failure to timely file a proof of loss. It may not apply if the dispute is simply to determine the value of the covered loss.

It has not yet been decided whether this notice of loss instruction applies to claims made policies.

CV 2408. To whom notice must be given.

CV 2409. Proof-of-loss. Approved.

[[Name of insurance company] claims that [name of policy holder] is not covered because it did not receive a[n] [adequate, timely] proof-of-loss.]

[[Name of insurance company] claims that it was not required to pay for the loss sooner because it did not receive a[n] [adequate, timely] proof of loss.]

The insurance company must be given an adequate proof-of-loss. [[Name of insurance company] claims that [name of policy holder] is not covered because it did not receive a[n] [adequate, timely] proof-of-loss.]

[[Name of insurance company] claims that it was not required to pay for the loss sooner because it did not receive a[n] [adequate, timely] proof of loss.]

A proof-of-loss is a summary of the facts and circumstances that gave rise to the covered loss. The law does not require strict compliance with policy provisions related to submission of the proof-of-loss, as long as the proof-of-loss is adequate. A proof-of-loss is adequate if it gives [[insurance company] a sufficient opportunity to investigate, to prevent fraud, and to form an estimate of its rights and obligations under the policy.

[If it was not reasonably possible to give the proof of loss within the required time, the failure to give proof of loss within the time required by the policy is not a valid reason to deny the claim.]

You must decide whether the proof-of-loss was [adequate/timely]. [Insurance company~~]~~ has the burden to prove that the proof-of-loss was not [adequate/timely].

References

Zions First National Bank v. National American Title Ins. Co., 749 P.2d 651, 655 – 656 (Utah 1988).

MUJI 1

Committee Notes

CV 2410. When Insurer claims prejudice from delay in notice or proof.

An insurer suffers detriment if it is unable to reasonably investigate, or defend, or resolve a claim because of an insured's delay in providing [notice][proof] of loss.

[Insurer] claims that [Insured]'s delay in providing [notice][proof] of [describe claim or loss] caused actual detriment to [Insurer] because it interfered with [Insurer]'s ability to reasonably:.

~~An insurer suffers detriment if it is unable to reasonably investigate, or defend, or resolve a claim because of the delay.~~

~~In determining whether [Insurer] suffered actual detriment, you may consider the extent to which the late notice interfered with the [Insurer's] ability to reasonably:~~

(1) [Examine the scene of the accident, interview witnesses, and otherwise conduct its investigation];

(2) [Review and assess damages claims, both at the outset and as new information came in during the investigation];

(3) [Direct and control the actual trial with attorneys of its choosing];

(4) [Determine the reasonable cost for resolving the claim];

(5) [Retain experts to help assess liability and damages];

(6) [Other].

You must determine whether the evidence shows [Insurer] suffered actual detriment due to [Insured]'s delay because [Insurer] was unable to reasonably:

(1) [Examine the scene of the accident, interview witnesses, and otherwise conduct its investigation];

(2) [Review and assess damages claims, both at the outset and as new information came in during the investigation];

(3) [Direct and control the actual trial with attorneys of its choosing];

(4) [Determine the reasonable cost for resolving the claim];

Formatted: Indent: Left: 0.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

Formatted: Indent: Left: 0.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25", Tab stops: 0.75", Left

Formatted: Indent: Left: 0.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

Formatted: Indent: Left: 0.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, … + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

(5) [Retain experts to help assess liability and damages];

(6) [Other].

~~In determining whether [Insurer] suffered actual detriment, you may consider the evidence in light of the purposes of the notice requirements, namely to enable insurer to investigate and take the necessary steps to evaluate the [claim][loss] and protect its interests.~~

The failure to give [adequate/timely] [notice of loss][proof-of-loss] is a valid reason to deny the claim if ~~the [name of defendant~~[Insured] proves that it suffered actual detriment because of [Insurer~~name of plaintiff~~]'s failure to give [adequate/timely] proof-of-loss.

References

Busch v. State Farm Fire & Cas. Co., 743 P.2d 1217 (Utah 1987).
State Farm Mut. Auto Ins. Co., 2003 UT 48, 89 P.3d 97.
F.D.I.C. v. Oldenburg, 34 F.3d 1529.
Utah Transit Authority v. Liberty Mut. Ins. Co., 2006 WL 2992715 (D. Utah Oct. 18 2006) (applying Utah law).
Utah Code Section 32A-21-312(2).

Committee Notes

The wording selected will depend on whether the claim at issue is a first-party claim or a third-party claim. If a prejudice instruction is needed in a case involving breach of the consent to settle in the context of underinsured or uninsured motorist coverage. *See* State Farm Mut. Ins. Co. v. Green, 2003 UT 48, ¶ 33, 89 P.3d 97 (setting forth the factors to be considered).

CV 2411. Unspecified time of performance. Approved

When the policy requires an act to be performed without specifying the date to perform the act, the act must be done by a reasonable time under the circumstances.

Because the policy does not require [name of defendant/name of plaintiff] to [pay the benefits, complete the investigation, submit proof of loss, respond to demands/offers, etc.] by a particular date, you must decide, based on all of the circumstances, what was a reasonable time for [insurer/plaintiff] to [pay the benefits, complete the investigation, submit proof of loss, respond to demands/offers, etc.].

References

Coulter & Smith, Ltd. v. Russell, 966 P.2d 852 (Utah 1998).

Bradford v. Alvey & Sons, 621 P.2d 1240, 1242 (Utah 1980).

Formatted: Indent: Hanging: 0.75", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25", Tab stops: 0.75", Left

Formatted: Indent: Left: 0.5", Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

MUJI 1

Committee Notes

This instruction applies only if the policy or the law does not provide when the performance at issue must be done.

CV 2412. Recovery of damages. Approved.

If you find that [name of defendant] breached the provisions of the policy, [name of plaintiff] is entitled to the unpaid benefits under the policy and damages caused by [name of defendant]'s breach.

As appropriate, instruct the jury on expectation damages:

Instruction CV2135. Expectation damages - General.

And consequential damages:

Instruction CV2136. Consequential damages.

References

Machan v. UNUM Life Ins. Co. of Am., 2005 UT 37, ¶ 17, 116 P.3d 342, 346.

Black v. Allstate Ins. Co., 2004 UT 66, ¶ 28, 100 P.3d 1163, 1170.

Berube v. Fashion Centre, 771 P.2d 1033, 1050 (Utah 1989).

Gardiner v. York, 2006 UT App 496, ¶ 14, 153 P.3d 791, 795.

Beck v. Farmers Insurance Exchange, 701 P.2d 795 (Utah 1985).

Restatement (Second) of Contracts § 351 (1981).

MUJI 1

21.9

Committee Notes

The measure of damages for breach of an insurance contract is the same as for commercial contracts generally, unless changed by law.

CV 2413. Coverage by estoppel. Approved

[Name of plaintiff] claims that [Name of defendant]'s agent misrepresented the [scope of coverage/benefits] of [name of defendant]'s insurance policy. [Name of plaintiff] therefore claims that [he/she/it] is entitled to modify the insurance policy to conform to

what was represented by [name of defendant]'s agent. To succeed, [name of plaintiff] must prove the following:

[Name of defendant]'s agent made an important misrepresentation to [name of plaintiff] regarding the [scope of coverage/ benefits/protection] provided by the insurance policy;

[Name of plaintiff] reasonably relied on [name of defendant]'s agent's misrepresentations, and

[Name of plaintiff] was harmed by [his/her/its] reliance.

References

Youngblood v. Auto-Owners Ins. Co., 2007 UT 28, ¶ 25, 158 P.3d 1088.

Committee Notes

Estoppel is generally an equitable relief to be decided by the court. This instruction applies if the court has an advisory jury to decide the factual issues.

CV 2414. Insurable interest.

You will be asked to decide whether [name of plaintiff] has an insurable interest in [real or personal property].

Under the law, a person has an insurable interest in [real or personal property] whenever [he/she/it] would profit by or gain some advantage by its continued existence and suffers some loss or disadvantage by its destruction. Title or possession to the property, or having a lien on the property, is not the deciding fact. The interest may be legal, qualified, conditional, contingent, or merely a right to use the property, with or without the payment of rent.

References

Error v Western Home Ins. Co., 762 P.2d 1077, 1081-1082 (1988).

Hill v Safeco Ins. Co., 22 Utah 2d 96, 448 P.2d 915 (1969).

CV 2415. Compliance with Utah law.

When interpreting the insurance contract, [name of defendant] was required to do so consistent with Utah law, which I will now explain.

[(1) An insurance company is required to construe any ambiguous or uncertain language in the policy in favor of coverage as long as the uncertain language could be reasonably interpreted in favor of coverage. The court has ruled that:]

[(2) An insurance company cannot deny a claim based on a provision in the policy which is contrary or inconsistent with Utah law. Utah law provides:

If [name of defendant] did not comply with the above, you may consider this in deciding if [name of defendant] breached the insurance contract.]

References

Lieber v. ITT Hartford Insurance Center, 2000 UT 90, ¶ 14, 15 P.3d 1030 ("[T]o the extent that any provision in this policy is not in harmony with the statutory requirements as we have interpreted them today, we hold such provisions invalid ...").

CV 2416. Recovery of consequential damages.

If you find that [name of defendant] breached the provisions of the policy, [name of plaintiff] is entitled to the unpaid benefits under the policy and any "consequential" damages caused by [name of defendant]'s breach.

Consequential damages are those damages caused by [name of defendant]'s breach which, at the time the policy was issued, [name of defendant] could have generally foreseen might occur if it breached the terms of the policy.

A loss is foreseeable if it follows from the breach in the ordinary course of events. A loss is also foreseeable if it is the result of special circumstances, beyond the ordinary course of events, that [name of defendant] knew of or had reason to know of.

In deciding whether the damage was foreseeable at the time the policy was issued, you may consider the nature and language of the policy and the reasonable expectations of the parties.

References

Mahan v. UNUM Life Ins. Co. of Am., 2005 UT 37, ¶ 17, 116 P.3d 342.
Black v. Allstate Ins. Co., 2004 UT 66, ¶ 28, 100 P.3d 1163. ("Limiting Black's recovery in this action to contractual damages does not leave him without a meaningful remedy for Allstate's breach. …We stated [in *Beck*] that '[d]amages recoverable for breach of contract include both general damages, i.e., those flowing naturally from the breach, and consequential damages, i.e., those reasonably within the contemplation of, or reasonably foreseeable by, the parties at the time the contract was made.' …We recognized that 'consequential damages for breach of contract may reach beyond the bare contract terms,' indicating that '[a]though the policy limits define the amount for which the insurer may be held responsible in performing the contract, they do not define the amount for which it may be liable upon a breach.' Thus, while Black will be unable to recover punitive damages in this case, he may recover both general and consequential damages, which could conceivably exceed the amount of his policy limit.")