Agenda
Advisory Committee on
Model Civil Jury Instructions

January 13, 2014
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
CV 99 Committee Note	Tab 2	Alison Adams-Perlac
Insurance Litigation Instructions	Tab 3	Rich Humpherys

Committee Web Page

Published Instructions

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

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
December 9, 2013
4:00 p.m.

Present: John L. Young (chair), Alison A. Adams-Perlac, Juli Blanch, Francis J. Carney, Marianna Di Paolo, Phillip S. Ferguson, Honorable Ryan M. Harris, L. Rich Humpherys, Paul M. Simmons, Ryan M. Springer

Absent: Tracy H. Fowler, Gary L. Johnson, John R. Lund, Honorable Andrew H. Stone, Peter W. Summerill, David E. West

1. *Instructions for Cases Involving Pro-se Litigants.* Mr. Ferguson reported that he did not think it was possible to lay down a set of rules for juries to follow in cases involving pro-se litigants. He noted that the cases say that pro-se litigants will be held to the same standard of knowledge and practice as qualified members of the bar; "[n]evertheless," they should be "accorded every consideration that may reasonably be indulged." *See, e.g., State v. Winfield,* 2006 UT 4, ¶ 19, 128 P.3d 1171 (citations omitted). Courts must decide what constitutes reasonable indulgence based on the facts of each case. Mr. Young suggested that a committee note be added to CV99 that explains that and references the cases that state the standard (*State v. Winfield; Allen v. Friel,* 2008 UT 56, 194 P.3d 903; and *Nelson v. Jacobsen,* 669 P.2d 1207 (Utah 1983)). Ms. Adams-Perlac volunteered to draft the committee note.

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

a. *CV2408. To whom notice must be given.* Mr. Humpherys noted that the instruction was taken from the statute, Utah Code Ann. § 31A-21-312(1)(a) & (4). Mr. Young raised the question of electronic notice, such as by e-mail. Mr. Humpherys thought that it could come under the rubric "written notice" but noted that there was no Utah law on the issue.

Ms. Blanch and Mr. Carney joined the meeting.

Mr. Humpherys suggested adding a comment referring users to the instructions on agency. He noted that the regulation, R590-190-7(2), says that notice of claim or loss may be given to "any appointed agent, authorized adjuster, or other authorized claim representative" unless the insurer "clearly directs otherwise," as provided in the regulation. He did not think, however, that the regulation could limit the people who could receive notice under the statute. Mr. Young thought that a committee note would not be necessary in light of the regulation. The committee decided to add a reference to R590-190-7(2) instead of a cross-reference to the agency instructions but not define in the instruction the "Specific Disclosure" required by the regulation. Mr. Ferguson asked whether the insurer's agent for service of process would be considered an "appointed agent" for notice

purposes. Mr. Humpherys did not know the answer but thought one could argue so. Ms. Adams-Perlac offered to look for cases interpreting the statute. At Mr. Simmons's and Dr. Di Paolo's suggestion, the phrase "or mail by depositing a first class postage prepaid envelope addressed to [insurer] with the notice inside" was replaced with "or by first-class mail to the [insurer]." The committee approved the instruction as revised.

b. *CV2409a. To whom proof of loss must be given.* Mr. Humpherys noted that the instruction was the same as CV2408 except that "proof of loss" replaced "notice of loss." The instruction was revised to correspond to the revised CV2408. Mr. Humpherys noted that the regulation governing notice of loss (R590-190-7) does not apply to proofs of loss, which are governed by R590-190-3(10). A citation to the latter regulation was added to the references, and the instruction was approved as modified.

c. *CV2410. When insurer claims prejudice from delay in notice or proof.* Ms. Adams-Perlac noted that she had revised the instruction in light of the discussion at the last meeting. Mr. Young did not think the list of ways an insurer could be prejudiced needed to be included twice. Mr. Ferguson noted that, in the last paragraph, "[insured]" and "[insurer]" needed to be switched. Mr. Humpherys questioned the phrase "both at the outset and as new information came in during the investigation" in subparagraph (2). The committee deleted the phrase. He also questioned whether subparagraph (3) ("Direct and control the actual trial with attorneys of its choosing") was an accurate statement of the law. He noted that an insurer is not prejudiced if the insurer's chosen counsel provides appropriate representation. He said the problem occurs when trial counsel does not protect the insurer's interest. Mr. Ferguson suggested deleting the phrase "with attorneys of its choosing." Ms. Blanch asked whether the committee was trying to be too precise in enumerating ways the insurer may be prejudiced by late notice. Dr. Di Paolo quested the use of the phrase "actual detriment" and asked what "actual" added. She noted that, if we use the term "actual detriment," jurors will assume it means something different from "detriment" and will try to figure out the difference. Mr. Simmons suggested that courts use the phrase "actual detriment" to distinguish it from "theoretical detriment" but thought that juries did not need to be concerned with the distinction. The committee decided to delete "actual." Mr. Young suggested that we include a committee note explaining that the cases (including *State Farm Mut. Auto. Ins. Co. v. Green*, 2003 UT 48, 89 P.3d 97) talk about "actual prejudice," but the committee decided to use a different term that would be more understandable to lay people, without intending any difference in meaning. Ms. Adams-Perlac questioned whether "detriment" was sufficiently plain English and suggested using "harm" instead. Dr. Di Paolo agreed that "detriment" does not mean much to lay people and is vague. After considering alternatives (including

"loss"), the committee decided to use "harm" throughout. The committee questioned the use of "interfered" as well and considered alternatives, such as "obstructed," "inhibited," and "prevented." Mr. Humpherys noted that it is not enough that the late notice interfered with the insurer's ability to investigate, defend, or resolve a claim; the insurer must be harmed *because of* the interference. The committee decided to use "obstructed." Mr. Young questioned whether the last paragraph was necessary. Mr. Humpherys thought it was because it explains who has the burden of proof. The committee also discussed the order of the sentences within the instruction and revised the instruction to read:

> **CV 2410. When insurer claims prejudice (harm) from delay in notice or proof**
>
> [Insurer] claims that [insured]'s delay in providing [notice/proof] of [describe claim or loss] harmed [insurer] by obstructing [insurer's] ability to reasonably [investigate/defend/resolve] the claim.
>
> The failure to give [adequate/timely] [notice/proof] of loss is a valid reason to deny the claim if [insurer] proves that it was harmed because of [insured]'s failure to give [adequate/timely] [notice/proof] of loss.
>
> You must determine whether the evidence shows [insurer] was harmed due to [insured]'s delay.

The committee approved the instruction as revised.

d. *CV2414. Must have an insurable interest.* Mr. Humpherys noted that he still needs to draft CV2414a, "What is an insurable interest." He noted that it will be complicated because it differs with each type of insurance. He noted a Utah case that involved a partnership that took out life insurance on its two partners. After the partnership was dissolved, one of the partners died. The other partner claimed the life-insurance proceeds, as did the deceased partner's family. The court sided with the family, on the grounds that the surviving partner did not have an insurable interest in the life of his former partner at the time of his death. The case has been heavily criticized because the partner had an insurable interest in his partner's life when the policy was purchased, and the partnership paid the premiums on the policy. Mr. Simmons asked whether CV2414 should explain when the insurable interest must exist. Mr. Young thought it could vary depending on the type of insurance and would be covered in CV2414a. At Judge Harris's suggestion, the titles of CV2414 and CV2414a were

changed to "Insurable interest required" and "Insurable interest defined," respectively. At Mr. Ferguson's suggestion, the phrase "Under the law" was deleted from the beginning of the instruction. At Mr. Young's suggestion, the phrase "You will be asked to decide" was replaced with "You must decide" in the last sentence. The committee approved CV2414 as modified.

Mr. Humpherys asked to be excused because he had another commitment. The committee decided to defer further discussion of the instructions until he can be present.

3. *Next meeting.* The next meeting will be on Monday, January 13, 2014, at 4:00 p.m.

The meeting concluded at 5:30 p.m.

Tab 2

CV 099. Introducing self-represented litigant to the jury. Approved.

In this case, [plaintiff] [defendant] is representing [himself] [herself].
The fact that one party is represented by counsel and another party is not should not play any part in your deliberations. Parties have a right to represent themselves, and you must apply the law without regard to the litigant's status as a self-represented party. You should neither favor nor penalize a litigant because that litigant is self-represented.

References:
Allen v. Friel, 2008 UT 56, 194 P.3d 903.
State v. Winfield, 2006 UT 4, 128 P.3d 1171.
Nelson v. Jacobsen, 669 P.2d 1207, 1213 (Utah 1983).

Committee Note:
A self-represented litigant "will be held to the same standard of knowledge and practice as any qualified member of the bar." *Nelson v. Jacobsen*, 669 P.2d 1207, 1213 (Utah 1983). *See also State v. Winfield*, 2006 UT 4, 128 P.3d, 1171; *Allen v. Friel*, 2008 UT 56, 194 P.3d 903. However, "because of his lack of technical knowledge of law and procedure [a self-represented litigant] should be accorded every consideration that may reasonably be indulged." *Id*. at 1213.

CV101A. General admonitions. (self-represented litigant version). Approved.

Now that you have been chosen as jurors, you are required to decide this case based only on the evidence that you see and hear in this courtroom and the law that I will instruct you about. For your verdict to be fair, you must not be exposed to any other information about the case. This is very important, and so I need to give you some very detailed explanations about what you should do and not do during your time as jurors.

First, you must not try to get information from any source other than what you see and hear in this courtroom. It's natural to want to investigate a case, but you may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, Blackberries, iPhones, Smartphones, PDAs, or any social media or electronic device. You may not do any personal investigation. This includes visiting any of the places involved in this case, using Internet maps or Google Earth, talking to possible witnesses, or creating your own experiments or reenactments.

Second, you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. This also is a natural thing to want to do, but you may not communicate about the case via emails, text messages, tweets, blogs, chat rooms, comments or other postings, Facebook, MySpace, LinkedIn, or any other social media. You may notify your family and your employer that you have been selected as a juror and you may let them know your schedule. But do not talk with

Tab 3

Insurance Litigation

Insurance Litigation 1
CV 2401. Insurance policy is a contract. Approved 1
CV 2402. General description of claims and defenses. Approved 2
CV 2403. Breach of policy provision. Approved 2
CV 2404. Elements of the claim. Approved 3
CV 2405. Value of loss. Approved 3
CV 2406. Exclusion from coverage. Approved 3
CV 2407. Notice of loss. Approved. 4
CV 2408. To whom notice must be given. Approved. 5
CV 2409. Proof-of-loss. Approved. 6
CV 2409a. To Whom Proof of Loss Must Be Given. Approved. 6
CV 2410. When Insurer claims prejudice (harm) from delay in notice or proof. Approved. 7
CV 2411. Unspecified time of performance. Approved 8
CV 2412. Recovery of damages. Approved. 8
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CV 2414a. Insurable interest defined. Rich to draft. 10
CV 2415. Compliance with Utah law. 10
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CV 2417. Claim Regarding Insurable Interest. 11
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CV 2419. Life Insurance – Insurable Interest. 12
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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. Approved.

Notice of the loss [or claim] may be given to any authorized agent of [insurer]. This may be done directly by oral communication, delivery of written notice, or by first class mail ~~by depositing the notice in a first class postage prepaid envelope addressed~~ to [insurer].

References

Utah Code Section 31A-21-312 (1) (a) and (4).

Utah Admin. Code R. 590-190-7(2).

Committee Note

Notice of claim or loss may be given to "any appointed agent, authorized adjuster, or other authorized claim representative of an insurer." Utah Admin. Code R. 590-190-7(2).

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).

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Committee Notes

CV 2409a. To Whom Proof of Loss Must Be Given. Approved.

Proof of loss may be given to any authorized agent of [insurer]. This may be done directly or by first class mail ~~by depositing a first class postage prepaid envelope addressed~~ to [insurer].

References

Utah Code Section 31A-21-312 (1) (a) and (4).

R. 590-190-3(10).

CV 2410. When Insurer claims prejudice (harm) from delay in notice or proof. Approved.

[Insurer] claims that [Insured]'s delay in providing [notice][proof] of [describe claim or loss] harmed the [Insurer] by obstructing [Insurer]'s ability to reasonably [investigate] [defend] [resolve] a claim.

The failure to give [adequate/timely] [notice of loss][proof-of-loss] is a valid reason to deny the claim if [Insurer] proves that it was harmed because of [Insured]'s failure to give [adequate/timely] proof-of-loss.

You must determine whether the evidence shows [Insurer] was harmed due to [Insured]'s delay. ~~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.~~

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).

Utah case law requires that an insurer show “actual prejudice”, as opposed to theoretical prejudice, based on the insured’s failure to provide adequate or timely proof-of-loss. *Id*. at ¶ 37. To make the concept easier for a jury to understand, the committee substituted the word “prejudice” with “harm.”

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).

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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).

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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. ~~Must Have an I~~ Insurable interest required. Approved.

~~Under the law, a~~A person may not recover insurance benefits unless he has an insurable interest in the [~~i~~Insured]'s [describe the event, such as the life of an individual, the destruction of real or personal property, or other event or item]. You ~~will be asked to~~must decide whether [name of plaintiff] has ~~such~~ an insurable interest.

References

Utah Code Section 31A-21-104.

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

CV 2414a. ~~What is an~~ Insurable interest <u>defined</u>. Rich to draft.

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.")

CV 2417. Claim Regarding Insurable Interest.

[Name of Claimant] is making a claim for benefits under an insurance policy issued by [name of insurance company].

Insurance is not valid and [name of insurance company] is not required to pay benefits unless [claimant] had an insurable interest. [Name of Insurance Company] claims that [name of claimant] did not have an insurable interest in [describe - item of property, a person's life, liability for an event, etc.]

References
Utah Code § 31A-21-104(2)(a).

CV 2418. Insurable Interest in Property or Liability.

An insurable interest means any lawful and substantial economic interest in the nonoccurrence of the event insured against.

References
Utah Code § 31A-21-104(1)(c).

CV 2419. Life Insurance – Insurable Interest.

An insurable interest in the [life, health, safety] of a person means the following:

(1) If it is in a person closely related by blood or by law, there must be a substantial interest engendered by love and affection;

(2) If it is a person closely related by blood or law, there must be a lawful and substantial interest in having the life, health, and bodily safety of the person insured continue.

References
Utah Code § 31A-21-104(3).

Committee Notes
Utah Code section 31A-21-104(3) through (8) provides a non-exhaustive list of insurable interests which are expressly permitted under certain conditions, such as shareholders, members or partners having insurable interest in other shareholders, members or partners; a trust having insurable interests in beneficiaries; a corporation having an insurable interest in officers and employees. These listed items are not intended to exclude other valid insurable interests. *Id*. at § 21-104(9).

CV 2420. Representation, Warranty and Estoppel.

No statement, representation or warranty made by any person representing [name of insurer] in the negotiation of an insurance policy affects the insurance company's obligation under the policy unless it is stated in the policy or in a written application signed by the applicant. This general rule is subject to the following exception.

If an agent of [name of insurer] made a representation about a term contained in the policy, [name of insurer] is bound by the representation if the policy holder reasonably relied upon the agent's representations to his or her detriment. This is true even if there is a provision in the insurance policy that the terms of the policy cannot be waived.

References
Hardy v. Prudential Insurance Co. of America, 763 P.2d 761, 768 (Utah 1988).