Agenda
Advisory Committee on
Model Civil Jury Instructions

November 13, 2012
4:00 to 6:00 p.m.

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

Welcome and approval of minutes	Tab 1	John Young
Design professional instructions	Tab 2	Craig Mariger

Committee Web Page

Published Instructions

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

December 10, 2012
January 14, 2013
February 11, 2013
March 11, 2013
April 8, 2013
May 13, 2013
September 9, 2013
October 15, 2013 (Tuesday)
November 12, 2013 (Tuesday)
December 9, 2013

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions
October 9, 2012
4:00 p.m.

Present: John L. Young (chair), Diane Abegglen, Marianna Di Paolo, Phillip S. Ferguson, Honorable Ryan M. Harris, Gary L. Johnson, Timothy M. Shea, Paul M. Simmons, Honorable Andrew H. Stone. Also present: Craig R. Mariger, chair of the Design Professional subcommittee (by phone) and Craig C. Coburn, of the Design Professional subcommittee

Excused: Francis J. Carney, Ryan M. Springer, Peter W. Summerill, David E. West

1. *New Member:* Mr. Young introduced Judge Stone as the newest member of the committee. He also welcomed Messrs. Mariger and Coburn to the meeting.

2. *Professional Liability: Design Professionals*. The committee discussed the draft instructions for cases against design professionals.

a. *CV501. Standard of care for design professionals*. Mr. Coburn thought that the edits to the first paragraph by the gang of three were acceptable. The committee discussed whether the Uniform Building Code establishes the standard of care and concluded that it did not necessarily. Mr. Young observed that the building code is a moving target in Utah, since it can be amended by counties and cities. Mr. Mariger noted that the clearest case of design professional negligence involves a code violation and that most cases involve experts arguing over what the code requires. But the committee agreed not to make a code violation a requirement for breach of the standard of care.

Mr. Young asked whether the instruction should say "A licensed [design professional] . . . ," since design professionals must be licensed in Utah. Mr. Mariger noted that home designers do not have to be licensed for certain activities.

At least one member of the subcommittee thought that the locality requirement was meant to make plaintiffs hire local experts, but Mr. Mariger noted that some standards for some design services, such as geotechnical engineering services, may vary greatly from, say, Texas to Utah. He further noted that the instruction says that if there is evidence that the standard varies with the locality, then the jury should apply the standard for the locality at issue. Mr. Young asked whether it was for the judge or the jury to decide whether the standard varied with the locality. Mr. Mariger thought it was for the jury, based on the expert testimony the judge allows into evidence. Mr. Simmons questioned whether the sentence "The standard of care may change over time and may be different in different localities" was necessary. Dr. Di Paolo thought it was helpful. At Mr. Ferguson's suggestion, the committee decided to leave in the sentences about the locality rule but to bracket them, since it is not an issue in every case. Mr. Shea will add a note to the committee note about the reason for

the brackets. Mr. Shea suggested changing "localities" to "places." Dr. Di Paolo thought that "localities" implies a political unit. Mr. Mariger thought the standard varied by geography or region and not by the particular local governmental unit. He suggested using "geographic location" if the committee thought "localities" was not clear enough. Dr. Di Paolo did not think juries would misunderstand the term. At Mr. Shea's suggestion, the committee deleted "at issue in this matter" from the last sentence of the first paragraph and changed "community" to "locality."

Mr. Simmons thought the second paragraph was similar to the "mere fact of an accident" instructions that the Utah Supreme Court has held to be improper. Mr. Coburn noted that the language was taken from *SME Industries, Inc. v. Thompson, Ventulett, Stainback & Associates, Inc.,* 2001 UT 54, 28 P.3d 669. Mr. Simmons said that his objection was not that the instruction did not accurately state the law but that the court has said that juries should be instructed on what the law requires, not on what it does not require. Mr. Mariger said he would defer to the committee, but he thought lay people think that professionals have to be perfect. Mr. Coburn noted that *SME* says that the law does not require a "perfect plan or outcome" and that a design professional does not warrant results. The committee noted that similar instructions have not been included in the negligence or medical malpractice instructions. Judge Harris thought the design professional context was different and was inclined to leave the paragraph in. Messrs. Young and Ferguson agreed, noting that in medical malpractice there are not plans, blueprints, and change orders that can solve or create problems. The committee voted to include the language, with Judge Stone and Mr. Simmons opposing the motion. Mr. Ferguson questioned the use of "inherent" and suggested, "There is always the possibility of error in the professional services of [the design profession] . . . ." Mr. Young thought "always" goes further than "inherent." Mr. Mariger said that the case law says "inescapable possibility of error." The committee agreed that this language was worse. Judge Stone thought the language could be read as giving the design professional a pass. He noted that a single error in 1000 pages of plans can violate the standard of care, depending on the error. Messrs. Mariger and Coburn agreed. The committee debated whether to say "the law does not require . . ." or "the standard of care does not require . . . ." Dr. Di Paolo favored "the law"; Judge Harris and Mr. Shea favored "the standard of care," since that is the subject of the instruction and the term being defined. Mr. Shea suggested adding to the end of the first paragraph, "The standard of care does not require a perfect plan or satisfactory result," and deleting the rest of the second paragraph. Judge Harris suggested adding the word "necessarily" ("The standard of care does not necessarily require . . ."). Messrs. Mariger and Coburn disagreed. They thought the addition of "necessarily" was not supported by case law and that a satisfactory result was a matter of contract, not part of the standard of care. Dr. Di Paolo

suggested: "The law does not require perfect plans or a satisfactory result but rather requires compliance with the standard of care." Judges Harris and Stone and Mr. Simmons thought this language was acceptable.

At Mr. Shea's suggestion, the committee replaced "injury" with "harm" and "the cause" with "a cause" throughout the instruction and agreed to remove the quotations from the References section, just citing the cases.

Dr. Di Paolo asked whether the third paragraph of the instruction was redundant. Messrs. Mariger and Coburn thought it was necessary to show that the plaintiff has the burden of proving the standard of care. Judge Stone asked why the plaintiff's specific theories were listed. Mr. Shea and Judge Harris noted that the same format is used in the medical malpractice and negligence instructions. Mr. Shea questioned whether the sentence "[Name of defendant] is an [specify type of design professional]" was necessary. Judge Harris and Mr. Young thought so, especially if the instruction is read at the beginning of trial.

The committee approved the instruction as modified.

b. *CV502. More than one recognized practice.* Mr. Young asked whether there was a Utah case that supported the instruction. Judge Harris thought that it contradicted CV501. Mr. Coburn noted that the intent was to say that professionals can disagree about a practice without it necessarily violating the standard of care. Dr. Di Paolo thought the instruction was confusing. She was troubled by the phrase, "if the practice . . . turns out to be the wrong choice . . . ." Judge Stone thought the instruction implied that one can violate the standard of care as long as he or she used his or her best judgment, even if that judgment was poor. Mr. Johnson moved to delete the instruction; Judge Harris 2d. The committee voted to eliminate the instruction.

c. *CV503. Standard of care of a specialist.* Mr. Young asked whether there are specialists among design professionals and whether the instruction is supported by Utah law. Mr. Mariger thought it was similar to medical malpractice, where there are board-certified specialists. He thought that if design professionals hold themselves out as specialists, they should be held to a higher standard of care. He gave as an example a geotechnical engineer who says he is an expert in shoring and bracing design. Merely being a geotechnical engineer is not enough to impose a higher standard of care on the defendant, but when the defendant holds himself or herself out as a specialist within his or her field, then he or she should be held to a higher standard of care. But Mr. Mariger recognized that there could be a problem with insurers denying coverage because the professional is agreeing to a standard of care that is greater than the contract requires. Mr. Ferguson thought the instruction should be included unless there was contrary case law. Mr. Johnson 2d. Judge Harris asked if other states have adopted such an instruction. Judge Stone thought it followed from the medical

malpractice cases but expressed concern that it could encourage ultrafine distinctions among experts. Mr. Coburn suggested a distinction between claimed specialties and recognized specialties. Mr. Mariger thought the better analogy was to attorneys, who are generally not board certified but hold themselves out as specialists in various fields. He thought that it was the act of holding oneself out as a specialist that created the higher standard of care. At Judge Stone's suggestion, the committee agreed to delete the last paragraph of the instruction, leaving it to the trial judge to qualify an expert on the standard of care. Whether an expert's testimony is admissible will be decided in a rule 702 hearing. Mr. Young suggested that the subcommittee try to find additional authority for the instruction, but the instruction was otherwise approved as modified.

3. *Next Meeting*. The next meeting will be Tuesday, November 12, at 4:00 p.m.

The meeting concluded at 6:00 p.m.

Tab 2

Professional Liability: Design Professionals

CV 501. Standard of care for design professionals. Approved

A [design professional] is required to use the same degree of learning, care, and skill ordinarily used by other [design professionals] under like circumstances. This is known as the "standard of care." The law does not require perfect [plans/drawing/services] or satisfactory results but rather requires compliance with the standard of care.

[The standard of care may change over time and may be different in different localities. If the standard of care has changed over time or does vary by locality, the "applicable standard of care" is the standard of care existing at the time of [name of defendant]'s services and in the same or similar locality as where [name of defendant]'s services were performed.]

The failure to follow the standard of care is a form of fault known as "professional malpractice." [Name of defendant] is an [architect] [landscape architect] [engineer] [land surveyor]. To establish professional malpractice of [name of defendant], [name of plaintiff] has the burden of proving three things:

(1) first, what the standard of care is;

(2) second, that [name of defendant] failed to follow this standard of care; and

(3) third, that this failure to follow the standard of care was the cause of [name of plaintiff]'s harm.

In this case, [name of plaintiff] alleges that [name of defendant] failed to follow the standard of care in the following respects:

(1)

(2)

(3)

If you decide that [name of defendant] failed to follow the standard of care in any of these respects, then you must determine whether that failure was a cause of [name of plaintiff]'s harm.

References

SME Industries, Inc. v. Thompson, Ventulett, Stainback and Assoc., Inc., 2001 UT 54, &&25-29, 28 P.3d 669.

Erickson Landscaping Co. v. Wessel, 711 P. 2d 250, 253 (Utah 1985).

Nauman v. Harold K. Beecher & Assocs., 24 Utah 2d 172, 178-80, 467 P.2d 610, 614-15 (1970).

Whitman v. W.T. Grant Co., 16 Utah 2d 81, 83, 395 P.2d 918, 920 (1964).

Klein v. Catalano, 437 N.E.2d 514 (Mass. 1982).

Borman's, Inc. v. Lake State Dev. Co., 230 N.W.2d 363 (Mich. Ct. App. 1975).

Committee Notes

Use the bracketed paragraph if time and locality has changed.

MUJI 1st

7.30

CV 502. More than one recognized practice. Approved

~~A[n] [architect] [landscape architect] [engineer] [land surveyor] who uses a practice or technique recognized by the [architect] [landscape architect] [engineering] [land surveying] profession does not fail to follow the standard of care if the [architect] [landscape architect] [engineer] [land surveyor] uses his/her best judgment when selecting that practice or technique, even if the practice or technique selected turns out to be the wrong choice or another [architect] [landscape architect] [engineer] [land surveyor] would not have selected that practice or technique in the same situation.~~

MUJI 1st

7.31 Omitted

CV 503. Standard of care of a specialist. Approved

A[n] [architect] [landscape architect] [engineer] [land surveyor] who claims to be a specialist in a particular field must have the same knowledge and skill ordinarily possessed by others who are specialists in that field.

References

Basic Civil Jury Instructions, District of Utah.

MUJI 1st

7.32

CV 504A. Evidence of standard of care where expert is required.

You must decide whether [name of defendant] complied with the standard of care. I have determined that, due to the advanced learning and skill involved in [architecture] [landscape architecture] [engineering] [land surveying], you must rely on expert testimony to decide whether [name of defendant] complied with the standard of care. Thus, you may not rely on your own ideas of what the standard of care should be in this case. Rather, you must determine the standard of care solely from the evidence presented in this trial by [architects] [landscape architects] [engineers] [land surveyors] called as expert witnesses, who testified about the skill and care ordinarily exercised by other [architects] [landscape architects] [engineers] [land surveyors] under like circumstances.

You should consider each expert witness's opinions, his or her qualifications, and the reasons given for his or her opinions. If you find that an expert witness has relied on a fact that has not been proved, or has been disproved, you must consider that in determining the value of the expert witness' opinion. Give each opinion the weight that you believe it deserves.

When the testimony of the expert witnesses is conflicting, you must determine who to believe by considering all of the following factors:

(1) the reasons given for the opinions;

(2) the facts relied upon by the expert witnesses; and

(3) the relative credibility, special knowledge, skill, experience, training and education of the expert witnesses.

References

Preston & Chambers, P.C. v. Koller, 943 P.2d 260, 263 (Utah Ct. App. 1997).

Wyaclis v. Guardian Title of Utah, 780 P.2d 1989, 726 n. 8 (Utah Ct. App. 1989).

Groen v. Tri-O-Inc., 667 P.2d 598, 603 (Utah 1983).

Dixon v. Stewart, 658 P.2d 591, 597 (Utah 1982).

Nauman v. Harold K. Beecher & Assocs., 24 Utah 2d 172, 467 P.2d 610 (1970).

Committee Notes

This instruction should not be given ~~if~~unless the court has previously determined that expert testimony is required to establish the standard of care. It may be the case that lay persons are competent to decide whether the defendant breached the standard of care without relying on expert testimony. See Instruction CV504B, Evidence of standard of care where expert is not required.

"Utah courts have held that expert testimony may be helpful, and in some cases necessary, in establishing the standard of care required in cases dealing with the duties owed by a particular profession. See Wycalis v. Guardian Title, 780 P.2d 821, 826 n. 8 (Utah.Ct.App.1989). Expert testimony is required '[w]here the average person has little understanding of the duties owed by particular trades or professions,' as in cases involving medical doctors, architects, and engineers." Preston & Chambers, P.C. v. Koller, 943 P.2d 260, 263 (Utah Ct. App. 1997).

This instruction will require modification if experts in other disciplines than the defendant's were found competent by the trial court to testify to the applicable standard of care. See Wessel v. Erickson Landscaping Company, 711 P.2d 250 (Utah 1985).

In cases where expert testimony is required to establish the element of causation, this instruction may be modified to address that issue at well. See Bowman v. Kalm, 2008 UT 9, 179 P.3d 754.

MUJI 1st

7.33

CV 504B. Evidence of standard of care where expert is not required.

You must decide whether [name of defendant] complied with the standard of care. I have determined that you do not need to rely on the evidence presented in this trial by [architects] [landscape architects] [engineers] [land surveyors] called as expert witnesses, who testified about the skill and care ordinarily used by other [architects] [landscape architects] [engineers] [land surveyors] under like circumstances. You may choose to rely on the expert testimony, but are not required to do so. You may give each opinion the weight that you believe it deserves.

Whether or not you choose to rely on the expert testimony, you may rely on your own knowledge and experience to determine whether [name of defendant] complied with the standard of care.

This instruction should not be given. For purposes of consistency, there should simply be a reference to the general 'experts' instruction[MSOffice1].

References

Bowman v. Kalm, 2008 UT 9, 179 P.3d 754.

Nixdorf v. Hicken, 612 P.2d 348, 352 (Utah 1980).

Committee Notes

This instruction should not be given if lay persons are not competent to decide whether the defendant breached the standard of care without relying on expert testimony. See MUJI 2d 504A. See Instruction CV504A, Evidence of standard of care where expert is required. This instruction assumes the plaintiff is not legally required to present expert testimony in order to reach the jury, but that expert testimony is nevertheless presented.

CV 505. Damages. Entitlement to damages.

You must determine the amount of damages to give to [name of plaintiff], but only if you decide (1) that [name of defendant]'s professional services were not performed using the standard of care of [architects] [landscape architects] [engineers] [land surveyors], and (2) that [name of plaintiff] has been injured by [name of defendant]'s failure to provide professional services meeting the standard of care. If [name of defendant]'s professional services were not performed using the standard of care of [architects] [landscape architects] [engineers] [land surveyors], we call this a "breach of the standard of care."

If you decide both that [name of defendant] breached the standard of care and [name of plaintiff] was injured by [name of defendant]'s breach of the standard of care, then you must give to [name of plaintiff] as damages the amount of money that will reasonably compensate [name of plaintiff] for the injury caused to [name of plaintiff] by the breach of the standard of care.

CV505A. Damages. Measure of property damages.

If [name of plaintiff]'s property has been damaged by [name of defendant]'s breach of the standard of care, the amount of money that will reasonably compensate [name of plaintiff] for the injury will be either (1) a "repair measure of damages" or (2) a "loss in property value measure of damages."

Repair Measure of Damages: If repair of the property is possible and repair of the property would not be unreasonably wasteful, you must give [name of plaintiff] the reasonable costs to repair the property to the condition it would have been in if [name of defendant] had not breached the standard of care. This is called the "repair measure of damages."

Loss in Property Value Measure of Damages: If repair to the property is not possible or if [name of defendant] proves that the costs of repair of the property are sufficiently more than the loss in the value of the property caused by the breach of the standard of care that it would be unreasonably wasteful to repair the property, then you cannot give

[name of plaintiff] a repair measure of damages. If repair is not possible or if [name of defendant] proves that the costs of repair would be unreasonably wasteful, you must give [name of plaintiff] damages equal to the difference between the value that the property would have had if [name of defendant] had not breached the standard of care and the value of the property received by [name of plaintiff] following [name of defendant]'s breach of the standard of care. This is called the "loss in property value measure of damages."

~~For example, consider the case of a designer of an office building who was proven to have breached the standard of care by designing the building with non-reflective glass panels that caused the building owner to pay more per year in air conditioning costs than if the design had included reflective glass panels. Assume the evidence proved that the material costs and installation costs of the reflective glass panels and the non-reflective glass panels are the same and that the cost to repair the building to replace all non-reflective glass panels with reflective glass panels is $200,000. Also assume the evidence proved the value of the building delivered to the building owner with non-reflective glass panels was $4,000,000, but the value of the building would have been $4,100,000 if reflective glass panels had been included in the design and installed. In this case you would consider whether the cost to repair ($200,000) was sufficiently greater than the loss in value of the property ($100,000) that it would be unreasonably wasteful to repair the building. If you decided that it would be unreasonably wasteful to repair the building, you would give the building owner $100,000, the loss in property value measure of damages. If you decided that it would not be unreasonably wasteful to repair the building, you would give the building owner $200,000, the cost of repair measure of damages.~~[MSOffice2]

Needs a lot of work. Too long, not clear. Can the regular damages instructions provide any help here[MSOffice3]?

References

F.C. Stangl, III v. Todd, 554 P.2d 1316, 1320 (Utah 1976).

Rex T. Fuhriman, Inc. v. Jarrell, 21 Utah 2d 298, 302-03, 445 P.2d 136, 139 (Utah 1968).

Restatement (First) of Contracts § 346(1) (1932).

CV 506. Betterment or value added.

The damages you give to [name of plaintiff] cannot place [him] in a better position than the position that [he] would have been in had [name of defendant] not breached the standard of care.

You must reduce from the damages you give to [name of plaintiff] any additional amount of money that [name of plaintiff] would have paid in designing and constructing

the [facility name] if [name of defendant] had provided services meeting the standard of care. You must make this reduction only if [name of defendant] proves that [name of plaintiff] would have completed the [facility name] if [name of defendant] had provided services meeting the standard of care. For example, consider the case of a designer of a mountain ski cabin that was proven to have breached the standard of care by designing the cabin without the number of roof supports necessary to safely carry the weight of the snow. Assume it was proven that the cost to repair the cabin is $30,000 and that it would have cost the cabin owner $10,000 more to construct the cabin with the design containing the additional roof supports required by the standard of care. In this case, you must reduce from the $30,000 repair measure of damages the $10,000 the cabin owner would have paid if the design had met the standard of care, but only if the designer proves that the cabin owner would have constructed the cabin if the designer had provided a design meeting the standard of care.

For the same reasons, you must reduce from the damages you give to [name of plaintiff] using a cost of repair measure of damages the costs of any repairs that better or add value to the [facility name] beyond the value it would have had if [name of defendant] had not breached the standard of care. For example, consider a designer of a retaining wall that collapses after five years of its intended 20-year life because of a design that is proven to have breached the standard of care. Assume it is proven that the cost to replace the retaining wall with a 20-year design life retaining wall is $50,000, and that this cost includes $10,000 to construct a landscape planter on top of the retaining wall that was not included in the retaining wall that collapsed. In this case, the $10,000 to construct the added landscape planter and an amount for the added value the retaining wall owner will receive because the replacement retaining wall will last an additional 20 years (not an additional 15 years as would the collapsed retaining wall had it been designed meeting the standard of care), must be reduced from the repair measure of damages given to the retaining wall owner.

References

Lochrane Engineering, Inc. v. Willingham Realgrowth Inv. Fund, Ltd., 552 So. 2d 228, 232-33 (Fla. App. 1989).

St. Joseph Hosp. v. Corbetta Constr. Co., 21 Ill. App. 3d 925, 936-941,316 N.E. 2d 51, 59-62 (1974).

Henry J. Robb, Inc. v. Urdahl, 78 A. 2d 387, 388-89 (D.C. App. 1951).

Reiman Construction Co. v. Jerry Hiller Co., 709 P.2d 1271, 1277 (Wyo. 1985).

Pingree v. Continental Group of Utah, Inc., 558 P.2d 1317, 1319-20 (Utah 1976)(mentions the word ‘betterment,’ but unclear from the case whether that doctrine is adopted as law).

Ogden Livestock Shows, Inc. v. Rice, 108 Utah 228, 233-34, 159 P.2d 130, 132-33 (Utah 1945). Held that admission of testimony regarding cost of new bridge vs. value of old bridge not error. Did not expressly adopt ‘betterment’ as a doctrine. Instead,

recognized that “"There is no universal test for determining the value of property injured or destroyed" Ogden Livestock Shows v. Rice, 108 Utah 228, 233, 159 P.2d 130, 132 (1945). In the absence of some compelling argument that Utah has singled out ‘betterment’ as the factor to be used, it seems inappropriate to focus a jury on this issue to the exclusion of all other factors. This may be an instruction that the lawyers themselves seek to use through motion, but is not an instruction so clearly grounded in Utah law as to require its formal adoption by this committee[MSOffice4].

Committee Notes

The value added or betterment defense recognized in St. Joseph Hosp. v. Corbetta Constr. Co., 21 Ill. App. 3d 925, 316 N.E. 2d 51 (1974) has been held inapplicable in the absence of proof that the owner would have gone forward with the project using a design that met the standard of care. L.L. Lewis Const., LLC v. Adrian, 142 S.W. 3d 255, 264 (Mo. App. 2004); Skidmore, Owings & Merrill v. Intrawest I, LP, 87 Wash. App. 1054, 1997 WL 563159 (Wash. App., 1997).

CV 507. Transition instruction.

[Name of plaintiff] claims that [name of defendant] is responsible for damages under breach of warranty. To establish breach of warranty, [name of plaintiff] does not also have to prove that the [name of defendant] was negligent.

MUJI 1st

7.35

References

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CV508. Breach of warranty essential elements.

[Name of plaintiff] must prove the following elements to prove breach of warranty:

(1) [name of defendant] made a warranty of the work [name of defendant] performed for [name of plaintiff]; and

(2) [name of defendant] reasonably expected that [name of plaintiff] would rely on the warranty; and

(3) The work of [name of defendant] was not as { name of defendant] warranted; and

(4) [name of plaintiff] was injured and incurred damages as a consequence of the breach of warranty by [name of defendant]; and

It was reasonably foreseeable at the time that [name of defendant] warranted the work that [name of plaintiff] would incur the injuries and damages suffered by [name of plaintiff] if the work was not as warranted by [name of defendant].

MUJI 1st

7.36.

References

Management Comm. of Graystone Pines Homeowners Ass'n v. Graystone Pines, Inc., 652 P.2d 896 (Utah 1982).

Basic Civil Jury Instructions, District of Utah.

CV509. Creation of a warranty.

You must decide whether [name of defendant] made a warranty of the work of [name of defendant] to [name of plaintiff]. A warranty is made by [name of defendant] of the work of [name of defendant] if you must find that [name of defendant] gave [name of plaintiff] an assurance or promise of a certain fact or condition regarding the work of [name of defendant].

A warranty that is expressed in written or oral words is an express warranty. A warranty that is made by the actions of [name of defendant] or by operation of law is known as an implied warranty.

MUJI 1st

7.37.

References

See MUJI § 26 passim.

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CV 510. Implied warranties. Accuracy and fitness for purpose.

A[n] [architect] [engineer] [land surveyor] does not impliedly warrant or guarantee that the professional services rendered will be performed accurately, that is, without errors or defects, or that the professional services will be fit or suitable for the intended purpose or for the needs of the party employing the [architect] [engineer] [land surveyor]. However the [architect] [engineer] [land surveyor] does warrant that his performance of services will not fall below the ordinary skill and care exercised by others engaged in the same profession in the same locality.

Committee Notes

This instruction may require modification if used in conjunction with MUJI 7.39.

References

Nauman v. Harold K. Beecher & Assocs., 24 Utah 2d 172, 467 P.2d 610 (1970).

Mississippi Meadows, Inc. v. Hodson, 299 N.E.2d 359 (Ill. App. Ct. 1973).

Klein v. Catalano, 437 N.E.2d 514 (Mass. 1982).

Borman's, Inc. v. Lalm State Dev. Co., 230 N.W.2d 363 (Mich. Ct. App. 1975).

John Cruet, Jr. v. Robert Carroll, 2001 Conn. Super. Lexis 3336.

SME Industries v. Thompson, 28 P.3d 669 (Utah 2001).

CV 511. Implied warranties. Compliance with building code.

A[n] [architect] [engineer] [land surveyor] engaged to prepare plans and specifications for the construction of a building or other structure, in the absence of an expressed disclaimer, impliedly warrants and guarantees that the plans and specifications conform to the applicable building codes. This implied warranty of compliance with applicable building codes may be eliminated by express language which, in common understanding, calls attention to the elimination of the warranty and makes it clear that there is no implied warranty of compliance with applicable building codes. If you find that the defendant eliminated the implied warranty of compliance with applicable building codes, a failure of the defendant's plans or specifications to conform to the applicable building codes is not a breach of implied warranty.

References

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