Agenda
Advisory Committee on
Model Civil Jury Instructions

December 8, 2008
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

Approval of minutes	Tab 1	John Young
Fraud and Deceit	Tab 2	Gary Johnson George Haley
CV1057. Safety risks.	Tab 3	John Young
CV1052. Learned intermediary	Tab 4	Frank Carney
Introduction to MUJI 2d and Medical Malpractice Instructions	Tab 5	Frank Carney
Edits to General Instructions	Tab 6	Rich Humphreys

Committee Web Page: http://www.utcourts.gov/committees/muji/

Published Instructions: http://www.utcourts.gov/resources/muji/

Meeting Schedule: Matheson Courthouse, 4:00 to 6:00 p.m.

January 12, 2009	Construction Contracts
February 9, 2009	Eminent Domain
March 9, 2009	Premises Liability
April 13, 2009	Insurance Obligations
May 11, 2009	Probate
June 8, 2009	Professional Liability
July 13, 2009	Employment

Tab 1

MINUTES

Advisory Committee on Model Civil Jury Instructions

November 10, 2008

4:00 – 6:00 p.m.

Present: Juli Blanch, Frank Carney, Phillip Ferguson, Tracy Fowler, Gary Johnson, Stephen Nebeker, Timothy Shea, Peter Summerill,

Excused: Judge William Barrett, Professor Marianna Di Paolo, Rich Humpherys, Colin King, Paul Simmons, David West; John Young

In Mr. Young's absence, Mr. Carney called the meeting to order.

The committee decided to defer consideration of all but the fraud instructions so more members could attend.

CV1701. Elements of fraud.

The committee decided in the second sentence to change "this claim" to "fraud."

The committee decided in item (2) to change "knew the statement was false" to "made the statement knowing it was false."

The committee approved the instruction as amended.

CV1702. Intentional or reckless false statement.

The committee deleted the first paragraph and deleted "intentional" from the title. The committee changed "a false statement is reckless" to a false statement is made recklessly."

The committee approved the instruction as amended.

CV1703. Opinion as statements of fact.

The committee decided to split the instruction into two separate instructions. 1703 would cover the general rule that recovery for fraud is limited to misrepresentation of facts. The committee redrafted the instruction to read:

"You must decide whether the defendant's statement was a representation of fact. Generally, a plaintiff may recover for fraud only if the defendant's statements were misrepresentations of facts and not opinions."

The committee deleted the committee note.

The committee created a new instruction to follow 1703 to focus on the special circumstances in which a plaintiff can recover for representations of an opinion. The committee drafted the instruction to read:

[Name of plaintiff] may recover for fraud for [name of defendant]'s statement of opinions if:

[Name of defendant] claimed to have special knowledge about the subject matter that [name of plaintiff] did not have.

[Name of defendant] made a representation in a way that implied the matter to be true, rather than just as an expression of belief.

[Name of defendant] had a relationship of trust and confidence with [name of plaintiff].

[Name of defendant] has some other special reason to expect that [name of plaintiff] would rely on [name of defendant]'s opinion.

The committee decided to return this instruction to the subcommittee.

CV1704. Promises and statements of future performance.

The committee changed "act in the future" to "future act."

The committee approved the instruction as amended.

CV1705. Important statement of fact or promise.

The committee deleted "or promise" from the title and approved the instruction as amended.

CV1706. Intent to induce reliance.

In the first sentence, the committee changed "you may find that" to "you must decide whether." The committee changed "intended to make plaintiff rely" to "intended plaintiff t rely." The committee changed "the false statement of fact" to "it."

In the first and second sentences, the committee changed "false statement about a fact" to "false statement."

The committee approved the instruction as amended.

CV1707. Reasonable reliance.

The committee amended the instruction to read: "In deciding whether [name of plaintiff]'s reliance on the false statement was reasonable, you must take into account all relevant circumstances, such as [his] age, mental capacity, knowledge, experience, and [his] relationship to [name of defendant]."

The committee approved the instruction as amended.

CV1708. Concealment or fraudulent non-disclosure.

In the second sentence, the committee changed "what you must decide is if" to "you must decide whether." In items (1), (2), and (3) the committee changed "an important fact" to "[describe the important fact]."

The committee approved the instruction as amended.

CV1709. Compensatory damages.

In Alternative B, the committee deleted paragraphs (2) and (3) and amended the remainder to read:

You may award damages for the harm [name of plaintiff] experienced because of [name of defendant]'s fraud as long as you determine that the damages were

reasonably foreseeable, and that [name of plaintiff] has proven these damages with reasonable certainty. [Name of plaintiff] claims the following damages:

[(1) loss of good will;]

[(2) expenditures in mitigation of damages;]

[(3) lost earnings;]

[(4) prejudgment interest;]

[(5) loss of interest on loans required to finance the business;]

[(6) lost profits;]

[(7) emotional distress;]

[(8) describe other items claimed.]

The committee deleted the last paragraph of the committee note.

The committee returned this instruction to the subcommittee to determine the standard of proof for emotional distress.

The meeting was adjourned.

Tab 2

Fraud Instructions

Contents

(1) CV1701. Elements of fraud.

[Name of plaintiff] claims that [name of defendant] defrauded him by making a false [oral / written], statement of fact that harmed [name of plaintiff]. To establish fraud, [name of plaintiff] must prove each of the following by clear and convincing evidence:

(1) [name of defendant] made a false statement concerning an important fact; and

(2) either [name of defendant] made the statement knowing it was false, or [he] made the statement recklessly and without regard for its truth; and

(3) [name of defendant] intended that [name of plaintiff] would rely on the statement; and

(4) [name of plaintiff] reasonably relied on the statement; and

(5) [name of plaintiff] suffered damages as a result of relying on the statement.

I will provide you with more information about each of these in the following instructions.

References

Yazd v. Woodside Homes Corp., 143 P.3d 283 (Utah 2006)

Armed Forces Insurance Exchange v. Harrison, 70 P.3d 35 (Utah 2003)

Gold Standard, Inc. v. Getty Oil Co., 915 P.2d 1060 (Utah 1996)

Taylor v. Gasor, Inc., 607 P.2d 293 (Utah 1990)

Dilworth v. Lauritzen, 18 Utah 2d 386, 424 P.2d 136 (1967)

Child v. Hayward, 16 Utah 2d 351, 400 P.2d 758 (1965)

See CV118. Clear and convincing evidence

MUJI 1st Instruction

17.1; 17.9

Committee Notes

This instruction and the instructions which follow use the term "important" rather than "material." The Committee made this change because jurors are more likely to understand the former term, and because Utah case law defines materiality in terms of importance. See, e.g., Yazd v. Woodside Homes Corp., 143 P.3d 283 ¶ 34 (Utah 2006) ("To be material, the information must be 'important.'").

Although some of the instructions in this section may be useful in negligent misrepresentation cases, they do not purport to comprise a complete set of instructions for such cases.

Approved

(2) CV1702. Reckless false statement.

A false statement is made recklessly if [name of defendant] knew that [he] did not have sufficient knowledge to make the statement.

References:

Kuhre v. Goodfellow, 2003 UT APP 1, 69 P.3d 286

Prince v. Bear River Mut. Ins. Co., 2002 UT 68, 56 P.3d 524

Rawson v. Conover, 2001 UT 24, 20 P.3d 876 ("To have made a false representation recklessly, defendants would have to know that they had insufficient knowledge upon which to base the representation made.")

MUJI 1st Instruction

Approved

(3) CV1703. Recovery for misrepresentation of fact.

You must decide whether the defendant's statement was a representation of fact. Generally, a plaintiff may recover for fraud only if the defendant's statements were misrepresentations of facts and not opinions.

References:

Cerritos Trucking Co. v. Utah Venture No. 1, 645 P.2d 608 (Utah 1982).

References

MUJI 1st Instruction

17.3; 17.4

Committee Notes

(4) CV1704. Recovery for statement of opinion.

[Name of plaintiff] may recover for fraud for [name of defendant]'s statement of an opinion if:

[Name of defendant] claimed to have special knowledge about the subject matter that [name of plaintiff] did not have.

[Name of defendant] made a representation in a way that implied the matter to be true, rather than just as an expression of belief.

[Name of defendant] had a relationship of trust and confidence with [name of plaintiff].

[Name of defendant] has some other special reason to expect that [name of plaintiff] would rely on [name of defendant]'s opinion.

References:

Baird v. Eflow Inv. Co., 289 P.2d112 (Utah 1930)

See Sections 538A, 539, and 542 of the Second Restatement of Torts.

(5) CV1705. Promises and statements of future performance.

A promise about a future act is a false statement ~~about a~~of fact if [name of plaintiff] proves that [name of defendant]:

(1) never intended to keep the promise; and

(2) made the promise for the purpose of deceiving [name of plaintiff].

References:

Cerritos Trucking Co. v. Utah Venture No. 1, 645 P.2d 608 (Utah 1982)

Hull v. Flanders, 83 Utah 158, 27 P.2d 56 (1933)

MUJI 1st Instruction

Approved

(6) CV1706. Important statement of fact.

A statement of fact is important if knowing that it is false would influence a reasonable person's judgment, or [his] decision to act or not to act.

References:

Yazd v. Woodside Homes Corp., 2006 UT 47, 143 P.3d 283

Walter v. Stewart, 2003 Utah App. 86, 67 P.3d 1042

MUJI 1st Instruction

Approved

(7) CV1707. Intent to induce reliance.

You must decide whether [name of defendant] intended [name of plaintiff] to rely on a false statement, even though [name of defendant] did not make it directly to [name of plaintiff].

[Name of defendant] intended [name of plaintiff] to rely on the false statement if

[[Name of defendant] made the statement to a group of people that included [name of plaintiff]].

[[Name of defendant] made the statement to another person, with the intent or the belief that it would be communicated to [name of plaintiff]].

References:

Ellis v. Hale, 373 P.2d 382 (1962)

MUJI 1st Instruction

Approved

(8) CV1708. Reasonable reliance.

In deciding whether [name of plaintiff]'s reliance on the false statement was reasonable, you must take into account all relevant circumstances, such as [his] age, mental capacity, knowledge, experience, and [his] relationship to [name of defendant].

References

Mikkelson v. Quail Valley Realty, 641 P.2d 124 (Utah 1982)

Berkeley Bank for Coops. v. Meibos, 607 P.2d 1369 (Utah 1980)

MUJI 1st Instruction

17.8

Approved

(9) CV1709. Concealment or fraudulent non-disclosure.

I have determined that [name of plaintiff] was in a [type of relationship] that gave [name of defendant] a duty to disclose an important fact to [name of plaintiff]. You must decide whether [name of defendant] failed to disclose an important fact. To establish that [name of defendant] failed to disclose an important fact, [name of plaintiff] must prove all of the following:

(1) that [name of defendant] knew [describe the important fact] and failed to disclose it to [name of plaintiff];

(2) that [name of plaintiff] did not know [describe the important fact]; and

(3) that [name of defendant]'s failure to disclose [describe the important fact] was a substantial factor in causing [name of plaintiff]'s damages.

References

Yazd v. Woodside, 143 P.3d 283 (Utah 2006)

Moore v. Smith, 158 P.3d 561 (Utah App. 2007)

MUJI 1st Instruction

17.10

Committee Note

This instruction should be given only if the Court has determined that a special relationship imposing the higher duty is established as a matter of law. Moore v. Smith, 158 P.3d 561 (Utah App. 2007).

Approved

(10) CV1710. Compensatory damages.

If you decide that [name of defendant] defrauded [name of plaintiff], then you must also decide how much money is needed to fairly compensate [name of plaintiff] for any damages caused by the fraud.

[ALTERNATIVE A]

In deciding how much money [name of plaintiff] is entitled to as damages, you should determine the difference between the value of the property that [name of plaintiff] [bought / sold] and the value the same property would have had if [name of defendant]'s statements about it had been true.*

[ALTERNATIVE B]

In deciding how much money [name of plaintiff] is entitled to as damages, you should determine the total amount [name of plaintiff] was damaged as a consequence of [his] reliance on [name of defendant]'s statements.

You may award damages for the harm [name of plaintiff] experienced because of [name of defendant]'s fraud as long as you determine that the damages were reasonably foreseeable, and that [name of plaintiff] has proven these damages with reasonable certainty. [Name of plaintiff] claims the following damages:

[(1) loss of good will;]

[(2) expenditures in mitigation of damages;]

[(3) lost earnings;]

[(4) prejudgment interest;]

[(5) loss of interest on loans required to finance the business;]

[(6) lost profits;]

[(7) emotional distress;]

[(8) describe other items claimed.]

References

Alternative A

Dugan v. Jones, 615 P.2d 1239 (Utah 1980)

Lamb v. Bangart, 525 P.2d 602 (Utah 1974)

Dilworth v. Lauritzen, 424 P.2d 136 (Utah 1967)

Alternative B

Restatement (Second) of Torts, § 549

Campbell v. State Farm Mutual Automobile Ins. Co., 65 P.3d 1134 (2001)

Ong International (U.S.A.) Inc., v. 11th Avenue Corp., 850 P.2d 447 (1993)

Crookston v. Fire Ins. Exch., 817 P.2d 789 (Utah 1991)

MUJI 1st Instruction

17.11

Committee Notes

This instruction expands MUJI 17.11 to address a broader range of fraud cases than in MUJI 17.11. Alternative A states the traditional measure of damages in fraud cases involving the purchase or sale of property, as recognized in Dugan v. Jones, 615 P.2d 1239 (Utah 1980) (real estate), Lamb v. Bangart, 525 P.2d 602 (Utah 1974) (livestock), Dilworth v. Lauritzen, 424 P.2d 136 (Utah 1967) (distributorship) and others.

Alternative B is intended for cases where loss is suffered in reliance on a fraudulent misrepresentation, but there is not necessarily any purchase or sale between the plaintiff and defendant. This situation is presented in a variety of cases: e.g., where the plaintiff is fraudulently induced to extend money or credit, or where the plaintiff is fraudulently induced to purchase or use an article which is inappropriate for the intended use. See Restatement (Second) of Torts § 549, and comments thereto.

Tab 3

CV 1057. Safety risks.

A [product] ~~is~~ may not be defective or unreasonably dangerous ~~merely because it presents some safety risks that cause it to be dangerous for its intended use, nor is it defective or unreasonably dangerous~~ merely because it could have been made safer or because a safer model of the [product] is available.

References

Slisze v. Stanley-Bostitch, 1999 UT 20, ¶ 10.

Fed. Jury Prac. and Instr., § 122.10 (5th Ed. 2000) (modified).

MUJI 1st References

Committee Notes

In Slisze v. Stanley-Bostitch, the Utah Supreme Court held that a product manufacturer does not have a duty to make a non-defective product safer or to warn a user that a safer alternative exists. 1999 UT 20, ¶¶ 9-15. Committee members who favored this instruction maintain that under Slisze, a plaintiff cannot establish that a product is defective or unreasonably dangerous merely by offering evidence that a safer alternative exists. A manufacturer is not an insurer of a product's safety, nor must a manufacturer provide only the very safest of products. See, e.g., Ernest W. Hahn, Inc. v. Armco Steel Co., 601 P.2d 152 (Utah 1979). Under Utah law, a product may not be considered to have a defect or to be in a defective condition unless at the time it was sold there was a defect or defective condition in the product that made it unreasonably dangerous to the user or consumer. Utah Code Ann. § 78B-6-703(1). Committee members who favored this instruction thought that it makes clear that there is no duty for manufacturers to provide products that are perfectly safe, consistent with the holding in Slisze.

Other committee members, however, thought that this instruction is unnecessary and improper. They believe that jury instructions should state what the law is, not what the law is not. The plaintiff must prove that a product is defective and unreasonably dangerous. This instruction states that a product may not be defective or unreasonably dangerous just because it could have been made safer or because a safer model is available. On the other hand, a jury may find that a product that could have been made safer *is* defective or unreasonably dangerous. The test is not whether the product could have been made safer but whether it was dangerous to an extent beyond what would be contemplated by the ordinary and prudent consumer or user of the product in that community. *See* Utah Code Section 78B-6-702. The jury is already instructed on the proper test; "unreasonably dangerous" is defined in CV 1006. These committee members believe this instruction does not help the jury decide whether a product is defective or unreasonably dangerous, but is just argumentative. Moreover, they believe that *Slisze* was a negligence case. They believe that Slisze did not address when a product is not defective or unreasonably dangerous and therefore do not think that Slisze supports the instruction.

These committee members also thought that the instruction is similar to an instruction that the mere fact of an accident does not necessarily mean that anyone was negligent, which the Utah Supreme Court has held is improper. *See Green v. Louder,*

2001 UT 62, ¶¶ 15-18, 29 P.3d 638. As the court noted in *Green,* if there is no evidence from which a jury could conclude that an element of the plaintiff's claim has been met, the court should direct a verdict for the defendant. If there is such evidence, the jury should be allowed to decide the issue based on proper instructions on the elements of the claim and the burden of proof, not on negative instructions about what does not constitute an element of the claim.

From: Gary L. Johnson [mailto:Gary-Johnson@rbmn.com]
Sent: Wednesday, October 22, 2008 9:36 AM
To: John Young
Cc: tfowler@swlaw.com; Juli Blanch
Subject: Instruction CV 1057

John:

This instruction has been the source of marked disagreement among Committee members. The present, revised version is watered down, but even this stirs opposition. The basis of the instruction (which I had no hand in drafting) is the Utah Supreme Court's reasoning in Slisze v. Stanley-Bostich, 979 P.2d 317 (Utah 1999). As you may remember, this case involves a construction worker who took a nail into the head. He was using a pneumatic nailer known as a "contact-trip" model (you just push the end down, and if your finger is on the trigger, a nail automatically fires). The industry also manufactures a "sequential-trip" model (you push the end of the nailer down and then you have to separately push the trigger after), which is admittedly a safer model.

Plaintiff was appealing the dismissal of his negligence claim brought under Utah's Product Liability Act (the court first decided that a party can bring a negligence action under then Section 78-15-6). On appeal, the Utah Supreme Court identified the plaintiff's arguments as follows:

(1) Slisze is essentially asserting that Stanley had a duty to stop marketing a product that is less safe than another, although not defective, or to actively warn and inform consumers that the product is less safe.

(2) Alternatively, Slisze wants this court to impose a duty on the manufacturer to inform consumers about the safer model. (979 P.2d at 320).

The Utah Supreme Court rejected both contentions and, as the proposed committee note to CV 1057 explains, held that a manufacturer does not have a duty to make a non-defective product safer or to warn a user that a safer alternative exists. The court specifically held that a "non-defective product may present some safety risks that cause it to be dangerous for its intended use, but not 'unreasonably dangerous' according to the statutory definition;…." Id.

Instruction CV 1057 (both in its original form and in the watered down version) sets forth the public policy of the State of Utah concerning the issue of whether admittedly dangerous products, that can be made safer, are automatically defective and unreasonably dangerous, and the answer is no. The instruction so states. Some members of the Committee do not like the fact that this is the law in Utah. I can appreciate the opposition, particularly after the Tenth Circuit's decision in Henrie v. Northrop Grumman Corp., 502 F.3d 1228 (10th Cir. 2007). There, the court (applying Utah law) affirmed Judge Cassell's summary judgment in favor of the defendant manufacturer of an apparatus used by plaintiff painter to support large aircraft parts for painting. Relying on Slisze as stating the law in Utah, the court found that while the apparatus may have been dangerous, it was not "unreasonably dangerous" according

to the Utah statutory definition and that the defendant was not required to make the apparatus safer.

Slisze is the law in Utah on this issue and has not been questioned, let alone overruled by any later cases. This instruction should be used.

Tab 4

CV1052. Learned intermediary.

Manufacturers of prescription drugs have a duty to warn only the physician prescribing the drug, not the patient, of the risks associated with the drug and the procedures for its use. If you find that the manufacturer gave appropriate warnings to the physician, you must find that the manufacturer fulfilled its duty to warn.

References

Schaerrer v. Stewart's Plaza Pharmacy, Inc., 79 P.3d 922 (Utah 2003).

See also, Downing v Hyland Pharmacy, ____ P.3d _____, 2008 UT 65 (learned intermediary rule does not preclude a negligence claim against a pharmacist for dispensing drug that has been withdrawn from the market.)

Tab 5

Introduction to the Model Utah Jury Instructions, Second Edition.

The Supreme Court has two advisory committees, one for civil instructions and one for criminal instructions, working to draft new and amended instructions to conform to Utah law. The Court will not promulgate the instructions in the same manner as it does the rules of procedure and evidence; rather the Court relies on its committees and their subcommittees, consisting of lawyers of varied interests and expertise, to subject the model instructions to a full and open critical appraisal.

The Utah Supreme Court approves this Second Edition of the Model Utah Jury Instructions (MUJI 2d) for use in jury trials. An accurate statement of the law is critical to instructing the jury, but accuracy is meaningless if the statement is not understood - or is misunderstood - by jurors. MUJI 2d is intended to be an accurate statement of the law using simple structure and, where possible, words of ordinary meaning. Using a model instruction, however, is not a guarantee of legal sufficiency. MUJI 2d is a summary statement of Utah law but is not the final expression of the law. In the context of any particular case, the Supreme Court or Court of Appeals may review a model instruction.

Sometimes the law itself is unclear. There might be no controlling statutes or cases. The statutes or cases might be incomplete, internally inconsistent, or inconsistent with each other. In such cases, an instruction might have two or more alternatives. The alternatives are different statements of the law based on differing authority. The order of the alternatives does not imply preference.

For civil instructions, MUJI 2d eventually will replace the original MUJI published by the Utah State Bar. MUJI 2d represents the first published compilation of criminal instructions in Utah. This will be a gradual process, ~~but~~ and when a revised version appears in MUJI 2d, ~~that~~it ~~is intended to~~ replaces the same instructions in MUJI 1st, and MUJI 1st should no longer be used.

MUJI 2d is a continual work in progress, with new and amended instructions being published periodically on the state court web site. Although there is no comment period for jury instructions as there is for rules, we encourage lawyers and judges to share their experience and suggestions with the advisory committees: experience with these model instructions and with instructions that are not yet included here. Judges and lawyers who draft a clearer instruction than is contained in these model instructions should share it with the appropriate committee.

If there is no Utah model instruction, the judge must nevertheless instruct the jury. The judge's task is to further the jurors' understanding of the law and their responsibility though accuracy, clarity and simplicity. To assist in this task, links on this page lead to principles for plain-language drafting and to the pattern instructions of some other jurisdictions.

Judges should instruct the jurors at times during the trial when the instruction will most help the jurors. Many instructions historically given at the end of the trial may be given at

the beginning or during the trial so that jurors know what to expect. The fact that an instruction is not organized here among the opening instructions does not mean that it cannot be given at the beginning of the trial. Instructions relevant to a particular part of the trial should be given just before that part. A judge might repeat an instruction during or at the end of the trial to help protect the integrity of the process or to help the jurors understand the case and their responsibilities.

When preparing written instructions, judges and lawyers should include the title of the instruction. This information helps jurors organize their deliberation and decision-making. Judges should provide a copy of the written instructions to each juror. This is permitted under the rules of procedure and is a sound practice because it allows each juror to follow the instructions as they are read and to refer to them during deliberations.

MUJI 2d is drafted without using gender-specific pronouns whenever reasonably possible. However, sometimes the simplest, most direct statement requires using pronouns. The criminal committee uses pronouns of both genders as its protocol. In the trial of criminal cases, often there will not be time to edit the instructions to fit the circumstances of a particular case, and the criminal instructions are drafted so that they might be read without further concern for pronoun gender. The civil committee uses masculine pronouns as its protocol. In the trial of civil cases there often is more time to edit the instructions. Further, in civil cases, the parties are not limited to individual males and females but include also government and business entities and multiple parties. Judges and lawyers should replace masculine with feminine or impersonal pronouns to fit the circumstances of the case at hand. Judges and lawyers also are encouraged in civil cases to use party names instead of "the plaintiff" or "the defendant." In these and other circumstances judges and lawyers should edit the instructions to fit the circumstances of the case.

CV301A Committee Note on Medical Malpractice Instructions

The Advisory Committee intentionally omitted several of the MUJI 1st medical malpractice instructions.

MUJI 1st 6.27 (Physician Not Guarantor of Results) was deleted in view of the decisions in Green v. Louder, 2001 UT 62, 29 P.3d 638 (trial courts directed not to instruct juries that the “mere fact” of an accident does not mean that anyone was negligent), and Randle v. Allen, 863 P.2d 1329 (trial courts directed not to instruct juries on "unavoidable accidents").

MUJI 1st 6.34 and 6.35 (causation instructions) have been replaced by a single instruction.

The Advisory Committee considered but did not include instructions on the role of custom in determining the standard of care, loss-of-chance causation, and apparent agency claims against hospitals. There is no clear appellate authority on whether those claims exist in this state.

As with all MUJI 2d instructions, these are intended to replace the earlier versions found in MUJI 1st and, thus, the medical malpractice instructions in MUJI 1st should no longer be used.

Tab 6

(1) CV104 Order of trial.

The trial will generally proceed as follows:

(1) Opening statements. The lawyers will make opening statements, outlining what the case is about and what they think the evidence will show.

(2) Presentation of evidence. [Name of plaintiff] will offer evidence first, followed by [name of defendant]. The parties may later offer more evidence, called rebuttal evidence, after hearing the witnesses and seeing the exhibits.

(3) Instructions on the law. Throughout the trial and after the evidence has been fully presented, I will instruct you on the law that you must apply. You must obey these instructions. You are not allowed to reach decisions that go against the law.

(4) Closing arguments. The lawyers will then summarize and argue the case. They will share with you their views of the evidence, how it relates to the law and how they think you should decide the case.

(5) Jury deliberations. The final step is for you to go to the jury room and discuss the case among yourselves until you reach a verdict. Your verdict must be based on the evidence presented in court and on my instructions on the law. I will give you more instructions about that step at a later time.

(2) CV101 General admonitions.

You have now been sworn as jurors in this case. I want to impress on you the seriousness of being a juror. You must come to the case without bias and attempt to reach a fair verdict based on the evidence and on the law. Before we begin, I need to explain how to conduct yourselves during the trial.

From time to time I will call for a recess. It may be for a few minutes, a lunch break, overnight or longer. You will not be required to remain together while we are in recess. You must obey the following instructions during the recesses.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case with anyone, including your family, friends, or even your fellow jurors until after I tell you that it is time for you to decide the case. When it is time to decide the case, you will meet in the jury room. You may discuss the case only in the jury room, at the end of the trial, when all of the jurors are present. After the trial is over and I have released you from the jury, you may discuss the case with anyone, but you are not required to do so.

During the trial you must not listen to anyone talk about the case outside this courtroom. Although it is a normal human tendency to talk with other people, do not talk with any of the parties or their lawyers or with any of the witnesses. By this, I mean do not talk with them at all, even to pass the time of day. While you are in the courthouse, the clerk may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you.

If anyone tries to talk to you about the case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and tell the clerk or the bailiff that you need to see me to report the incident. If you must talk to me, do not discuss it with your fellow jurors.

During the trial do not read about the case in the newspapers or on the internet or listen to radio or television broadcasts about the trial. If a headline or an announcement catches your attention, do not read or listen further. Media accounts may be inaccurate or may contain matters that are not evidence.

You must decide this case based only on the evidence presented in this trial and the instructions that I provide. Do not investigate the case or conduct any experiments. Do not do any research on your own or as a group. Do not use dictionaries, the internet, or other reference materials. Do not contact anyone to assist you. Do not visit or view the scene of the events in this case. If you happen to pass by the scene, do not stop or investigate.

Keep an open mind throughout the trial. Evidence can only be presented one piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all of the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

~~From time to time during the trial I may have to rule on points of law. Do not concern yourselves with the reasons for these rulings. Do not conclude from anything I say that I favor one party or the other, or that I have an opinion about what your verdict should be.~~

Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

(3) CV128 Objections and rulings on evidence and procedure.

From time to time during the trial, I may have to make rulings on objections or motions made by the lawyers. Lawyers on each side of a case have a right to object when the other side offers evidence that the lawyer believes is not admissible. You should not think less of a lawyer or a party because the lawyer makes objections. You should not conclude from any ruling or comment that I make that I have any opinion about the merits of the case or that I favor one side or the other. And if I sustain an objection to a question, you should not draw any conclusions from the question itself.

During the trial I may have to confer with the lawyers out of your hearing about questions of law or procedure. Sometimes you may be excused from the courtroom for that same reason. I will try to limit these interruptions as much as possible, but you should remember the importance of the matter you are here to decide. Please be patient even though the case may seem to go slowly.