

MINUTES
Advisory Committee on Model Civil Jury Instructions
January 8, 2007
4:00 p.m.

Present: Juli Blanch, Francis J. Carney, Ralph L. Dewsnap, , Tracy H. Fowler, Colin P. King, , Timothy M. Shea, David E. West, Jonathan Jemming, Marianna Di Paolo, and Kamie F. Brown

Excused: John L. Young, Phillip S. Ferguson, Paul M. Simmons

Mr. Fowler, the chair of the Products Liability subcommittee, conducted the meeting in Mr. Young's absence.

Survey by the National Center for State Courts

Mr. Shea explained that the NCSC is planning to sponsor a conference in 2008 of plain language pattern jury instructions. The NCSC is surveying committees such as ours to determine which topics should be included. The committee agreed that topics dealing with juror comprehension and use of instruction should have a high priority and that topics dealing with committee operations and procedures would have less relevance in Utah. Mr. Shea will respond to the survey on behalf of the committee.

Draft Instructions

Mr. Dewsnap presented his proposed alternative reorganization of the first six product liability instructions. This alternative includes definitions for "design defect," "manufacturing defect" and "unreasonably dangerous" and a single statement of the elements for both design and manufacturing defects. It then states the definitions and elements for failure-to-warn. Mr. Dewsnap tried not to change the substance of the instructions, but to present them in an order that preserved their symmetry. Mr. Dewsnap proposed that the disputed element of a design defect – the availability of a safer alternative – would be better included in the definition of a design defect, rather than among the elements.

After discussion, the committee agreed with Mr. Dewsnap's proposal, but that the order should place the elements of the claim immediately before the definitions. The order will be:

Introduction

Elements of claim for a [design/manufacturing] defect.

Definition of "design defect" and "unreasonably dangerous."

Definition of "manufacturing defect" and "unreasonably dangerous."

Elements of claim for failure to adequately warn.

Definition of "failure to warn" and "unreasonably dangerous."

The committee noted that the instructions use “hazard,” “risk” and “danger” somewhat interchangeably. Mr. Fowler and Ms. Brown will propose a uniform term at the next meeting.

The committee noted that there should be a definition of “adequate” warning so that jurors might better decide whether a warning is adequate. Mr. Fowler and Ms. Brown will propose a definition at the next meeting.

The committee discussed whether 1001. Introduction was needed. The committee decided to keep the instruction at least for cases in which more than one theory is presented to the jury.

In discussing the definition of “unreasonably dangerous,” the committee agreed that there should be just one alternative. Most members favored Alternative A. Mr. Fowler and Ms. Brown will propose a definition at the next meeting.

The meeting was adjourned.