

MINUTES

Advisory Committee on Model Civil Jury Instructions

October 11, 2008

4:00 – 6:00 p.m.

Present: Judge William Barrett, Juli Blanch, Tracy Fowler, Gary Johnson, Stephen Nebeker, Timothy Shea, David West, John Young

Excused: Frank Carney, Professor Marianna Di Paolo, Phillip Ferguson, Rich Humpherys, Colin King, Paul Simmons, Peter Summerill

Guests: Lynn Davies

Mr. Young called the meeting to order.

Mr. Young reported that the construction contract instructions had been delayed. He asked Mr. Johnson to be ready to present the intentional tort instructions at the November meeting.

Mr. Young reported that due to the absence of several key people, the discussion of Instruction 1057, Safety risks, would be postponed to November.

Mr. Young reported that Frank Carney had proposed editing the Introduction and the committee note preceding the medical malpractice instructions because of reports that some lawyers are arguing to use the original MUJI rather than MUJI 2nd. Because Mr. Carney was unable to attend, these items will be postponed to November.

Mr. Young reported that Mr. Carney had also suggested amending Instruction 1052, Learned intermediary, because of the Supreme Court decision in *Downing v. Hyland Pharmacy*. This also was postponed to November, and Mr. Young suggested a separate instruction for pharmacists.

Mr. Johnson reported that he must resign from the committee. Mr. Young said that he has talked with John Lund about being a member, and Mr. Lund is willing. Mr. Young asked the committee to consider other possible replacements, and the committee will decide in November.

Instruction 615, Right of way. Flashing red light. Mr. Davies recommended adding a sentence in brackets “[The driver must yield the right-of-way to a pedestrian in a crosswalk.]” because the driver’s duty at a flashing red light is the same as at a stop sign. Mr. Davies also recommended adding a citation to Utah Code Section 41-6a-902. The committee agreed.

Instruction 616, Right-of-way. Flashing yellow light. Because there are so many different circumstances, Mr. Young suggested adding “The driver must yield the right-of-way to [insert factual dispute].” The committee agreed.

Instruction 630, Owner who allows minor to drive. Mr. Davies recommended adding to the end of the instruction the sentence: “If you find that the driver is at fault, any judgment will be applied fully against both the driver and the vehicle owner.” Mr. West asked whether a verdict form would be adequate to cover this point. Mr. Young thought

that the addition would confuse the jury. Mr. Davies argued that the jury should be told why the owner is in the case, and what will be the effect of the jury's verdict, citing *Dixon v. Stewart*. Mr. Young thought the new sentence restated the sentence before it.

Mr. Young suggested adding a new first paragraph that set up the opposing claims and what had to be decided.

After discussion, the committee approved the sentence recommended by Mr. Davies and added a new first paragraph:

[[Name of plaintiff] claims that [name of owner] gave [name of driver] permission to drive the vehicle. [Name of owner] denies giving permission. You must decide whether [name of owner] gave [name of driver] permission to drive.]

The paragraph should be bracketed because permission might not be disputed.

Instruction 631, Negligent entrustment. After discussion, the committee agreed to replace the current committee note with a note suggested by Mr. Davies: "Liability for negligent entrustment is not imputed liability; rather, it is independent negligence for the act of entrustment. Therefore, the jury should apportion fault to the negligent entrustment tortfeasor pursuant to UCA 78B-5-818, -819 and -820."

Instruction 632, Threshold. Mr. Davies said that the subcommittee had recommended including "reasonable and necessary" to describe the necessary minimum medical expenses. He said that the subcommittee had discussed the point extensively. He argued that although Section 31A-22-309(1)(a) does not use the phrase, Section 31A-22-307 which describes the minimum personal injury protection coverage for reasonable and necessary medical expenses, establishes the formula for both -307 and -309. Mr. Young noted that Mr. Humphreys also had argued in favor of including "reasonable and necessary" at the previous meeting. After discussion, the committee decided to insert "reasonable and necessary" before "medical expenses in excess of \$3,000" and delete the committee note.

Instruction 635, Seatbelt usage. The committee reviewed and approved the committee note proposed by Mr. Fowler.

The meeting was adjourned.