

## MINUTES

### Advisory Committee on Model Civil Jury Instructions

January 10, 2011

4:00 p.m.

Present: John L. Young, Chair, Juli Blanch, Judge William Barrett, Frank Carney, Professor Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, Judge Deno Himonas, Gary Johnson. Ryan Springer, Peter W. Summerill, Judge Kate Toomey, Timothy M. Shea, Diane Abegglen

Excused: Rich Humpherys, John R. Lund, Stephen B. Nebeker, Paul M. Simmons, David E. West

(1) The minutes of the meeting held on December 13, 2010 were approved.

(2) Mr. Young welcomed new members Judge Deno Himonas, Mr. Ryan Springer, and Judge Kate Toomey to the committee. Mr. Young welcomed returning member Mr. Gary Johnson.

(3) Mr. Carney and Mr. Young reported that the Litigation Section of the Bar had offered assistance to the committee.

(4) Mr. Carney asked the judges for their opinions on the instructions that they had used. There were several comments that the general instructions were too repetitive. Mr. Summerill volunteered to review the preliminary and general instructions and offer some suggestions. Judge Toomey reported the attorneys sometimes want to use an instruction from MUJI 1, even though it was omitted deliberately.

Mr. Shea reported that he has been accumulating a list of jury trials every month. The committee decided that Mr. Shea will include the report with the monthly materials and that committee members will be assigned on a rotating basis to contact the judges and lawyers involved for their feedback about the instructions.

(5) 1107. Duty of landlord. The committee changed the “and” connecting paragraphs (a) and (b) to “or.” The committee discussed whether (a) was needed in light of (b). The committee decided there were enough unique elements of each that they were not redundant.

The committee discussed the application of the Fit Premises Act. Mr. Summerill stated that the Fit Premises Act is independent of a claim for negligence. The subcommittee will draft a further committee note for this instruction regarding the Fit Premises Act.

The committee approved the instruction as amended, subject to consideration of the committee note.

(6) CV1108. Duty of property seller. Mr. Summerill reported that the Loveland case, although relevant authority for the instruction, did not expressly adopt Restatement §353. The subcommittee will draft a committee note to that effect. The committee approved the instruction, subject to consideration of the committee note.

(7) CV1109. Recovery for injury to ski resort patrons.

The committee amended the instruction to read:

[Name of defendant] claims that [he] is not liable for that part of [name of plaintiff]'s harm that was caused by one or more of the risks of skiing. To succeed on this claim, [name of defendant] must prove that [name of plaintiff]'s harm that was caused by [describe applicable conditions in Utah Code Section 78B-4-402(1)(a)-(h)].

The committee discussed whether to use the phrase "was caused by one or more of the inherent risks of skiing." Some preferred including "inherent" because it was part of the statute. Others thought "inherent" too difficult to understand and that the statute would be satisfied as long as the specific example of an inherent risk were drawn from the statutory list. After discussion the committee voted not to include "inherent," with three voting "no."

The subcommittee will draft a further committee note describing the interplay between this instruction and the statute.

The committee approved the instruction as amended, subject to consideration of the committee note.

(8) CV1110. Duty of recreational property owner. To better transition from defendant's and plaintiff's required proof, the committee deleted the sentence "Nevertheless, [name of plaintiff] claims that [name of defendant] is liable for harm because:" and added to the end of the preceding paragraph ", unless [name of plaintiff] proves that: ...." The committee approved the instruction as amended.

(9) There being no further business, the committee adjourned at 5:15.