

MINUTES

Advisory Committee on Model Civil Jury Instructions

February 10, 2021

4:00 p.m.

Present: Ruth A. Shapiro (chair), Nancy J. Sylvester (staff), Marianna Di Paolo, Joel Ferre, Alyson McAllister, Douglas G. Mortensen, Lauren A. Shurman, Samantha Slark, Randy Andrus, Ricky Shelton, Judge Kent Holmberg, Judge Keith A. Kelly, Adam Wentz (recording secretary).

Also present: Tracy Fowler, Paul M. Simmons

1. *Welcome.*

Ruth Shapiro welcomed the committee to the meeting.

2. *Approval of Minutes.*

Ms. Shapiro requested a motion on the minutes. Ricky Shelton moved and Alyson McAllister seconded. The October Meeting Minutes were unanimously approved.

3. *Timeline.*

The committee discussed the timeline and observed that some of the instructions had not been circulated for comment. Judge Kelly moved to circulate the Uniformity and Trespass and Nuisance instructions for comment, with comments to be considered at the April meeting. Samantha Slark seconded.

4. *Discussion of Product Liability Instructions*

• 1001

The two groups agreed on the instruction detailed in the Table of Proposed Product Liability Instructions. The deleted portion of the prior committee note was resolved in *Egbert v. Nissan Motor Co., Ltd.*, 2010 UT 8, ¶¶ 9-21. Both groups agreed that the question of the constitutionality of the UPLA has been resolved.

• 1002

- The committee discussed the appropriateness of alternate instructions and whether they should be used here.
- Alternative A in the proposed instruction represents the Plaintiff Group's proposal, and Alternative B represents the Defendants'.
- Both groups approved the alternative options preliminarily, but agreed to vote later on the entire instruction.

• 1004: Definition of "unreasonably dangerous"

- The committee discussed this instruction at length at a previous meeting and agreed to informally approve alternatives A and B.

- 1005 (previously 1007): Duty to warn.
 - Marianna Di Paolo noted that the third paragraph regarding foreseeable use /generally known would work better if moved to directly after the second paragraph.
 - A bracket was added around the entire second paragraph.
 - In the committee notes, we clarified that the **bracketed** paragraph of the instruction should not be given when the danger is capable of being economically alleviated. It originally referenced the **last** paragraph of the instruction. Ruth Shapiro noted the possibility of creating a factual issue if we include this language in the committee notes. However, after a review of the cited case law, the committee decided that *House v. Armour* was consistent with the language of the instruction and should remain.
 - Judge Holmberg suggested the addition of the preface “in other words” to the third paragraph to assist with clarity.
 - Provisional approval given to new language of this instruction after a vote.
- 1006 (previously 1008): failure to warn
 - Tracy Fowler believes we should defer on voting on this instruction until we agree on 1001.
- 1007 (previously 1009): Definition of “adequate warning.”
 - It was suggested that paragraphs one and four be moved closer together due to their similarities. The committee decided to leave them as is.
 - The committee discussed the possibility of joining paragraphs 2 and 3 like the court did in the cited *Feasel v. Tracker Marine LLC* case, but ultimately decided that keeping them separate was clearer.
 - Informal approval provided by a unanimous vote.
- 1008 (previously 1010): Rebuttable presumption that an adequate warning would have been read and followed.
 - No suggested changes.
 - Informal approval provided by a unanimous vote.
- 1009 (previously 1011): Presumption that a warning will be read and followed.
 - The committee discussed whether the qualifier “adequate” [adequate warning] should be included in the instruction.
 - Tracy Fowler suggested that it may be redundant.
 - Others argued that if we do not include the qualifier “adequate,” the jury may not know if we are referencing an adequate or inadequate warning.
 - Tracy Fowler is concerned, however, that by including a qualifier that is not in the language of the comment to Section 402A, we create the risk of suggesting that the law has changed when it has not. He suggested that the qualifier should, therefore, remain in brackets to allow the trial judge determine whether use of the qualifier is applicable.

- Dr. Di Paolo suggested that perhaps we leave it in brackets and explain in the committee notes why the use of the qualifier may be helpful.
- Judge Holmberg and Judge Kelly both supported taking the brackets out completely and leaving in the qualifier. If we do that, however, the committee notes would need to be correspondingly adjusted by simply striking the paragraph starting with “although the word ‘adequate’ does not appear....”
- Tracy Fowler suggested a committee note that there is some disagreement as the appropriateness of the qualifier.

5. *Adjournment.*

The meeting concluded at 5:58 P.M.

6. *Next Meeting.*

The next meeting is scheduled for March 8, 2021 at 4:00 P.M.