

Agenda
Advisory Committee on
Model Civil Jury Instructions
February 10, 2020
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

Welcome and approval of minutes	Tab 1	Judge Andrew Stone, Chair
Subcommittees and subject area timelines	Tab 2	Judge Andrew Stone
Uniformity	Tab 3	Judge Keith Kelly, Alyson McAllister, Lauren Shurman
CV632. Threshold	Tab 4	Alyson McAllister
Other business: recording secretary		Judge Andrew Stone

[Committee Web Page](#)

[Published Instructions](#)

Meeting Schedule: Matheson Courthouse, Judicial Council Room, 4:00 to 6:00 p.m.
unless otherwise stated.

March 9, 2020

April 13, 2020

May 11, 2020

June 8, 2020

September 14, 2020

October 5, 2020

November 9, 2020

December 14, 2020

Tab 1

Model Utah Civil Jury Instructions Committee

Summary Minutes

January 13, 2020

In attendance:

Judge Andrew Stone (chair), Nancy Sylvester (staff), Joel Ferre, Judge Keith Kelly, Randy Andrus, Ruth Shapiro, Lauren Shurman, Marianna Di Paolo, Samantha Slark, Doug Mortensen, Alyson McAllister.

Excused:

Ricky Shelton

1) Welcome and introduction of new members.

Judge Stone welcome everyone to the meeting and had the new members, Randy Andrus and Samantha Slark, introduce themselves.

2) Approval of Minutes.

Judge Stone asked for a motion on the October meeting minutes. Alyson McAllister moved to approve them. Doug Mortensen seconded. The motion passed unanimously.

3) Discuss timeline/Upcoming topics.

The committee discussed its timeline and determined that Tracy Fowler's committee would report in March.

4) Discussion of Uniformity Instructions.

CV102A - Moved by Judge Kelly, seconded by Joel Ferre. APPROVED.

CV107 - Doug Mortensen brought up concern about the wording of this instruction. Marianna Di Paolo made suggestions to correct wording. The committee discussed whether the instruction should be changed now or whether the committee should wait for an implicit bias instruction. The committee elected to move forward now. Mr. Mortensen moved to accept the changes. Judge Kelly seconded. APPROVED.

CV108 – The subcommittee suggested replacing this instruction with CR110 because it is simpler and more direct. The committee discussed whether we need to say the juror's notes would be destroyed after. Mr. Mortensen moved to approve the amendments, Professor Di Paolo seconded. APPROVED.

CV109 – This instruction was adopted from CR111. It appeared that this instruction was approved in June, but the committee wondered whether the last sentence should be included at all, and if so, should it be reworded. The committee discussed specifying that jurors would be asking questions of the current witness only. The committee then discussed modifying the title. Ms. McAllister moved to approve the instruction, Ms. Shapiro seconded. APPROVED.

Judge Kelly moved to establish a stylistic convention, that whatever in the title is not intended to be read to jury is in brackets and lower case and would not be in parentheses for all 100 level instructions. Ms. Shurman seconded. APPROVED

CV 119. Committee discussed whether CV119 may need to be reconsidered in light of the anticipated implicit bias instructions, as the last paragraph seemed to inviting decisions based on bias. Judge Stone recommended flagging this instruction for that subcommittee to look at. Mr. Mortensen raised an issue the language dealing with stipulations and judicial notice. The committee determined that this was addressed in another instruction.

CV119A - Judge Stone raised a question about the order of when this instruction is given and changes are recommended to (1) and (2). Ms. Shurman moved to approve changes to CV119 and 119A, Ms. McAllister seconded. APPROVED.

CV120 – The committee liked the idea of using the rain example from the criminal instructions instead of the old cherry pie example. Rain uses a more universal experience and leaves out any implications of guilt, making it easier to understand why circumstantial evidence is as convincing as direct. Judge Kelly moved to approve, Professor Di Paolo seconded. APPROVED.

CV121-123 - Judge Kelly moved to approve new CV121 to replace old CV121-123. Ms. Shapiro seconded. APPROVED. This instruction was flagged for the implicit bias subcommittee.

CV128A - Judge Kelly suggested modifications to this instruction. Ms. McAllister said she would check her emails and notes to see if consideration was given to substituting this one with CR107. The committee will return to this instruction next meeting.

5) Adjournment.

The meeting adjourned at 6 p.m.

6) Next meeting.

The next meeting will be on February 10, 2020.

Tab 2

Subject	Sub-C in place?	Sub-C Members	Projected Starting Month	Projected Finalizing	Comments Back/Notes
Trespass and Nuisance	Yes	Hancock, Cameron; Beckstrom, Ryan	November-18	October-19	
Uniformity	Yes	Judge Keith Kelly (chair), Alyson McAllister, Lauren Shurman	February-19	February-20	
Caselaw updates	n/a	n/a	October-19	February-20	
Implicit Bias	TBD	Judge Su Chon (chair)	TBD	TBD	
Products Liability	Yes	Tracy Fowler, Nelson Abbott, and Todd Wahlquist	March-20	April-20	Time to update due to significant changes in case law.
Assault/False Arrest	Yes	Rice, Mitch (chair); Carter, Alyson; Wright, Andrew (D); Cutt, David (P)	TBD	TBD	
Insurance	Yes	Johnson, Gary (chair); Pritchett, Bruce; Ryan Schriever, Dan Bertch, Andrew Wright, Rick Vazquez; Stewart Harman (D); Ryan Marsh (D)	TBD	TBD	
Unjust Enrichment	No (instructions from David Reymann)	David Reymann	TBD	TBD	
Abuse of Process	No (instructions from David Reymann)	David Reymann	TBD	TBD	
Directors and Officers Liability	Yes	Call, Monica; Von Maack, Christopher (chair); Larsen, Kristine; Talbot, Cory; Love, Perrin; Buck, Adam	TBD	TBD	
Wills/Probate	No	Barneck, Matthew (chair); Petersen, Rich; Tippet, Rust; Sabin, Cameron	TBD	TBD	Much of this is codified in statute. There may not be enough instructions to dedicate an entire instruction area.
Civil Rights: Set 2	Yes	Ferguson, Dennis (D); Mejia, John (P); Guymon, Paxton (P); Stavors, Andrew (P); Burnett, Jodi (D); Plane, Margaret (D); Porter, Karra (P); White, Heather (D)	TBD	TBD	
Sales Contracts and Secured Transactions	Yes	Cox, Matt (chair); Boley, Matthew; Maudsley, Ade	TBD	TBD	

Tab 3

MUJI 2D GENERAL INSTRUCTIONS

1

2 **Table of Contents**

3 OPENING INSTRUCTIONS 3

4 CV101 GENERAL ADMONITIONS. 3

5 CV101A GENERAL ADMONITIONS. (SELF-REPRESENTED LITIGANT VERSION) 4

6 CV102 ROLE OF THE JUDGE, JURY AND LAWYERS..... 6

7 CV102A ROLE OF THE JUDGE, JURY, PARTIES, LAWYERS. (SELF-REPRESENTED LITIGANT VERSION) . 7

8 CV103 NATURE OF THE CASE..... 7

9 CV104 ORDER OF TRIAL..... 8

10 CV105 SEQUENCE OF INSTRUCTIONS NOT SIGNIFICANT..... 8

11 CV107 JURORS MAY NOT DECIDE BASED ON SYMPATHY, PASSION AND PREJUDICE. 8

12 CV108 NOTE-TAKING..... 9

13 CV110 RULES APPLICABLE TO RECESSES..... 9

14 CV111A DEFINITION OF “PERSON.” 10

15 CV111B ALL PERSONS EQUAL BEFORE THE LAW. 10

16 CV112 MULTIPLE PARTIES. 10

17 CV113 MULTIPLE PLAINTIFFS. 10

18 CV114 MULTIPLE DEFENDANTS. 10

19 CV115 SETTling PARTIES..... 10

20 CV116 DISCONTINUANCE AS TO SOME DEFENDANTS..... 11

21 CV117 PREPONDERANCE OF THE EVIDENCE. 11

22 CV118 CLEAR AND CONVINCING EVIDENCE. 12

23 CV119 EVIDENCE..... 12

24 CV119A EVIDENCE. (SELF-REPRESENTED LITIGANT VERSION) 13

25 CV120 DIRECT AND CIRCUMSTANTIAL EVIDENCE. 14

26 CV121 BELIEVABILITY OF WITNESSES. 14

27 CV122 INCONSISTENT STATEMENTS..... 15

28 CV123 EFFECT OF WILLFULLY FALSE TESTIMONY..... 16

29 CV124 STIPULATED FACTS. 16

30 CV126 DEPOSITIONS. 16

31 CV127 LIMITED PURPOSE EVIDENCE. 17

32 CV128 OBJECTIONS AND RULINGS ON EVIDENCE AND PROCEDURE. 17

33 CV129 STATEMENT OF OPINION..... 17

34 CV130B CHARTS AND SUMMARIES OF EVIDENCE..... 18

35 CV131 SPOILIATION. 18

36 CV135 OUT-OF-STATE OR OUT-OF-TOWN EXPERTS. 19

37 CV136 CONFLICTING TESTIMONY OF EXPERTS. 20

38 CV141 NO RECORD OF TESTIMONY..... 21

39 CLOSING INSTRUCTIONS 21

40 CV 151. CLOSING ROADMAP..... 21
41 CV 152. CLOSING ARGUMENTS..... 22
42 CV 153. LEGAL RULINGS..... 22
43 CV 154. JUDICIAL NEUTRALITY..... 22
44 CV155. SELECTION OF JURY FOREPERSON AND DELIBERATION..... 22
45 CV155. DO NOT SPECULATE OR RESORT TO CHANCE..... 23
46 CV156. AGREEMENT ON SPECIAL VERDICT..... 23
47 CV157. DISCUSSING THE CASE AFTER THE TRIAL..... 24
48
49

MUJI 2d GENERAL INSTRUCTIONS

OPENING INSTRUCTIONS

CV101 GENERAL ADMONITIONS, Approved June 10, 2019.

Now that you have been chosen as jurors, you are required to decide this case based only on the evidence that you see and hear in this courtroom and the law that I will instruct you about. For your verdict to be fair, you must not be exposed to any other information about the case. This is very important, and so I need to give you some very detailed explanations about what you should do and not do during your time as jurors.

First, ~~although it may seem natural to want to investigate a case,~~ you must not try to get information from any source other than what you see and hear in this courtroom. ~~It's natural to want to investigate a case, but y~~ You may not use any printed or electronic sources to get information about this case or the issues involved. This includes the Internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, ~~Blackberries,~~ iPhones, Smartphones, ~~PDA's,~~ or any social media or electronic device.

You may not do any personal investigation. This includes visiting any of the places involved in this case, using Internet maps or Google Earth, talking to possible witnesses, or creating your own experiments or reenactments.

Second, ~~although it may seem natural,~~ you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. ~~This also is a natural thing to want to do, but y~~ You may not communicate about the case ~~by any means, including by~~ via emails, text messages, tweets, blogs, chat rooms, comments, ~~or other postings, Facebook, MySpace, LinkedIn,~~ or any other or any social media.

You may notify your family and your employer that you have been selected as a juror and you may let them know your schedule. But do not talk with anyone about the case, including your family and employer. You must not even talk with your fellow jurors about the case until I send you to deliberate. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter. And then please report the contact to the clerk or the bailiff, and they will notify me.

Also, do not talk with the lawyers, parties or witnesses about anything, not even to pass the time of day.

I know that these restrictions affect activities that you consider to be normal and harmless and very important in your daily lives. However, these restrictions ensure that the parties have a fair trial based only on the evidence and not on outside information. Information from an outside source might be inaccurate or incomplete, or it might simply not apply to this case, and the parties would not have a chance to explain or contradict that information because they wouldn't know about it. That's why it is so important that you base your verdict only on information you receive in this courtroom.

Courts used to sequester—or isolate—jurors to keep them away from information that might affect the fairness of the trial, but we seldom do that anymore. But this means that we must rely upon your honor to obey these restrictions, especially during recesses when no one is watching.

Any juror who violates these restrictions jeopardizes the fairness of the proceedings, and the entire trial may need to start over. That is a tremendous expense and inconvenience to the parties, the court and the taxpayers. Violations may also result in substantial penalties for the juror.

If any of you have any difficulty whatsoever in following these instructions, please let me know now. If any of you becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that as well. If anyone tries to contact you about the

96 case, either directly or indirectly, or sends you any information about the case, please report this
97 promptly as well. Notify the bailiff or the clerk, who will notify me.

98 These restrictions must remain in effect throughout this trial. Once the trial is over, you may
99 resume your normal activities. At that point, you will be free to read or research anything you
100 wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish.
101 You may write, or post, or tweet about the case if you choose to do so. The only limitation is that
102 you must wait until after the verdict, when you have been discharged from your jury service.

103 So, keep an open mind throughout the trial. The evidence that will form the basis of your verdict
104 can be presented only one piece at a time, and it is only fair that you do not form an opinion until
105 I send you to deliberate.

106 **References**

107 CACI 100

108 **MUJI 1st Instruction**

109 1.1; 2.4.

110 **Committee Notes**

111 News articles have highlighted the problem of jurors conducting their own internet research or
112 engaging in outside communications regarding the trial while it is ongoing. See, e.g., Mistrial by
113 iPhone: Juries' Web Research Upends Trials, New York Times (3/18/2009). The court may
114 therefore wish to emphasize the importance of the traditional admonitions in the context of
115 electronic research or communications.

116 **Amended Dates:**

117 ~~9/2011.~~

118 **CV101A GENERAL ADMONITIONS. (SELF-REPRESENTED LITIGANT VERSION).**
119 **Approved June 10, 2019.**

120 Now that you have been chosen as jurors, you are required to decide this case based only on the
121 evidence that you see and hear in this courtroom and the law that I will instruct you about. For
122 your verdict to be fair, you must not be exposed to any other information about the case. This is
123 very important, and so I need to give you some very detailed explanations about what you should
124 do and not do during your time as jurors.

125 First, although it may seem natural to want to investigate a case, you must not try to get
126 information from any source other than what you see and hear in this courtroom. You may not
127 use any printed or electronic sources to get information about this case or the issues involved.
128 This includes the Internet, reference books or dictionaries, newspapers, magazines, television,
129 radio, computers, iPhones, Smartphones, or any social media or electronic device.

130 ~~First, you must not try to get information from any source other than what you see and hear in this~~
131 ~~courtroom. It's natural to want to investigate a case, but you may not use any printed or electronic~~
132 ~~sources to get information about this case or the issues involved. This includes the internet,~~
133 ~~reference books or dictionaries, newspapers, magazines, television, radio, computers,~~
134 ~~Blackberries, iPhones, Smartphones, PDAs, or any social media or electronic device. You may~~
135 ~~not do any personal investigation. This includes visiting any of the places involved in this case,~~
136 ~~using Internet maps or Google Earth, talking to possible witnesses, or creating your own~~
137 ~~experiments or reenactments.~~

138 Second, although it may seem natural, you must not communicate with anyone about this case,
139 and you must not allow anyone to communicate with you. You may not communicate about the

140 case by any means, including by emails, text messages, tweets, blogs, chat rooms, comments,
141 other postings, or any social media.

142 ~~Second, you must not communicate with anyone about this case, and you must not allow anyone~~
143 ~~to communicate with you. This also is a natural thing to want to do, but you may not~~
144 ~~communicate about the case via emails, text messages, tweets, blogs, chat rooms, comments or~~
145 ~~other postings, Facebook, MySpace, LinkedIn, or any other social media.~~ You may notify your
146 family and your employer that you have been selected as a juror and you may let them know your
147 schedule. But do not talk with anyone about the case, including your family and employer. You
148 must not even talk with your fellow jurors about the case until I send you to deliberate. If you are
149 asked or approached in any way about your jury service or anything about this case, you must
150 respond that you have been ordered not to discuss the matter. And then please report the contact
151 to the clerk or the bailiff, and they will notify me.

152 [Name of plaintiff] [name of defendant] is representing him/herself.

153 [Name of defendant] [name of plaintiff] is represented by _____.

154 [Name of plaintiff], [name of defendant], attorneys for the [plaintiff][defense] and witnesses are
155 not allowed to speak with you during the case. When you see [plaintiff's] [defendant's] attorneys
156 at a recess or pass them in the halls and they do not speak to you, they are not being rude or
157 unfriendly – they are simply following the law.

158 I know that these restrictions affect activities that you consider to be normal and harmless and
159 very important in your daily lives. However, these restrictions ensure that the parties have a fair
160 trial based only on the evidence and not on outside information. Information from an outside
161 source might be inaccurate or incomplete, or it might simply not apply to this case, and the parties
162 would not have a chance to explain or contradict that information because they wouldn't know
163 about it. That's why it is so important that you base your verdict only on information you receive
164 in this courtroom. Courts used to sequester—or isolate—jurors to keep them away from
165 information that might affect the fairness of the trial, but we seldom do that anymore. But this
166 means that we must rely upon your honor to obey these restrictions, especially during recesses
167 when no one is watching.

168 Any juror who violates these restrictions jeopardizes the fairness of the proceedings, and the
169 entire trial may need to start over. That is a tremendous expense and inconvenience to the parties,
170 the court and the taxpayers. Violations may also result in substantial penalties for the juror.

171 If any of you have any difficulty whatsoever in following these instructions, please let me know
172 now. If any of you becomes aware that one of your fellow jurors has done something that violates
173 these instructions, you are obligated to report that as well. If anyone tries to contact you about the
174 case, either directly or indirectly, or sends you any information about the case, please report this
175 promptly as well. Notify the bailiff or the clerk, who will notify me.

176 These restrictions must remain in effect throughout this trial. Once the trial is over, you may
177 resume your normal activities. At that point, you will be free to read or research anything you
178 wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish.
179 You may write, or post, or tweet about the case if you choose to do so. The only limitation is that
180 you must wait until after the verdict, when you have been discharged from your jury service.

181 So, keep an open mind throughout the trial. The evidence that will form the basis of your verdict
182 can be presented only one piece at a time, and it is only fair that you do not form an opinion until
183 I send you to deliberate.

184 **References**

185 MUJI CV 101.

186 Preliminary Jury Instructions for use with self-represented litigants, U.S. District Court, Eastern
187 District of California.

188 **Committee Notes**

189 News articles have highlighted the problem of jurors conducting their own internet research or
190 engaging in outside communications regarding the trial while it is ongoing. See, e.g., Mistrial by
191 iPhone: Juries' Web Research Upends Trials, New York Times (3/18/2009). The court may
192 therefore wish to emphasize the importance of the traditional admonitions in the context of
193 electronic research or communications.

194 **Amended Dates:**

195 ~~12/2013~~

196 **CV101B FURTHER ADMONITION ABOUT ELECTRONIC DEVICES.**

197 Removed 9/2011. Incorporated into CV 101.

198 **CV102 ROLE OF JUDGE, LAWYERS, AND JURY. ROLE OF THE JUDGE, JURY AND**
199 **LAWYERS. Approved 1/13/20.**

200 **Replaced with CR105 (modified)**

201 All of us, judge, lawyers, and jury, are officers of the court and have different roles during the
202 trial:

203 As the judge I will supervise the trial, decide what evidence is admissible, and instruct you on the
204 law.

205 The lawyers will present evidence and try to persuade you to decide the case in one way or the
206 other.

207 As the jury, you must follow the law as you weigh the evidence and decide the factual issues.
208 Factual issues relate to what did, or did not, happen in this case.

209 Neither the lawyers nor I decide the case. That is your role. Do not be influenced by what you
210 think our opinions might be. Make your decision based on the law given in my instructions and
211 on the evidence presented in court.

212 **References**

213 Utah Code Ann. § 77-17-10(1).

214 Utah Code Ann. § 78A-2-201.

215 State v. Sisneros, 631 P.2d 856, 859 (Utah 1981).

216 State v. Gleason, 40 P.2d 222, 226 (Utah 1935).

217 75 Am. Jur.2d Trial §§ 714, 719, 817.

218 ~~You and I and the lawyers play important but different roles in the trial.~~

219 ~~I supervise the trial and to decide all legal questions, such as deciding objections to evidence and~~
220 ~~deciding the meaning of the law. I will also explain the meaning of the law.~~

221 ~~You must follow that law and decide what the facts are. The facts generally relate to who, what,~~
222 ~~when, where, why, how or how much. The facts must be supported by the evidence.~~

223 ~~The lawyers present the evidence and try to persuade you to decide the case in favor of his or her~~
224 ~~elient.~~

225 ~~Television and the movies may not accurately reflect the way real trials should be conducted.~~
226 ~~Real trials should be conducted with professionalism, courtesy and civility.~~

227 **MUJI 1st Instruction**

228 1.5; 2.2; 2.5; 2.6.

229 **Amended Dates:**

230 ~~9/2011.~~

231 **CV102A ROLE OF THE JUDGE, LAWYERS, PARTIES SELF-REPRESENTED**
232 **PARTY(IES), AND JURY. Approved 1/13/20.**

233 **(SELF-REPRESENTED LITIGANT VERSION)**

234 All of us, judge, lawyers, [name of plaintiff] [name of defendant], and jury have different roles
235 during the trial:

236 As the judge I will supervise the trial, decide what evidence is admissible, and instruct you on the
237 law.

238 The lawyers and [name of self-represented plaintiff] [name of self-represented defendant] will
239 present evidence and try to persuade you to decide the case in one way or the other.

240 As the jury, you must follow the law as you weigh the evidence and decide the factual issues.
241 Factual issues relate to what did, or did not, happen in this case.

242 Neither the lawyers, parties, nor I decide the case. That is your role. Make your decision based on
243 the law given in my instructions and on the evidence presented in court.

244 ~~You and I and [name of plaintiff] [name of defendant] and the lawyers play important but~~
245 ~~different roles in the trial.~~

246 ~~I supervise the trial and to decide all legal questions, such as deciding objections to evidence and~~
247 ~~deciding the meaning of the law. I will also explain the meaning of the law.~~

248 ~~You must follow that law and decide what the facts are. The facts generally relate to who, what,~~
249 ~~when, where, why, how or how much. The facts must be supported by the evidence.~~

250 ~~The lawyers present the evidence and try to persuade you to decide the case in favor of his or her~~
251 ~~client.~~

252 ~~It is the self-represented [plaintiff] [defendant] and [plaintiff] [defense] counsel's duty to object~~
253 ~~when the other side offers testimony or other evidence that the self-represented [plaintiff]~~
254 ~~[defendant] or [plaintiff][defense] counsel believes is not admissible. You should not be unfair or~~
255 ~~prejudiced against the self-represented [plaintiff] [defendant], [plaintiff] [defense] counsel, or~~
256 ~~[plaintiff] [defendant] because the self-represented [plaintiff] [defendant] or [plaintiff] [defense]~~
257 ~~counsel has made objections. Television and the movies may not accurately reflect the way real~~
258 ~~trials should be conducted. Real trials should be conducted with professionalism, courtesy and~~
259 ~~civility.~~

260 **References**

261 MUJI CV 102.

262 Preliminary jury instructions for use with pro se litigants, U.S. District Court, Eastern District of
263 California.

264 **Amended Dates:**

265 12/2013

266 **CV103 NATURE OF THE CASE.**

267 In this case [Name of plaintiff] seeks [describe claim].

268 [Name of defendant] [denies liability, etc.].

269 [Name of defendant] has filed what is known as a [counterclaim/cross-claim/third-party
270 complaint/etc..] seeking [describe claim].

271 **MUJI 1st Instruction**

272 1.1.

273 **Amended Dates:**

274 9/2011.

275 **CV104 ORDER OF TRIAL.**

276 The trial will proceed as follows:

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

279 (2) [Name of plaintiff] will offer evidence first, followed by [name of defendant]. I may allow the
280 parties to later offer more evidence.

281 (3) Throughout the trial and after the evidence has been fully presented, I will instruct you on the
282 law. You must follow the law as I explain it to you, even if you do not agree with it.

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

285 (5) The final step is for you to go to the jury room and discuss the evidence and the instructions
286 among yourselves until you reach a verdict.

287 **MUJI 1st Instruction**

288 1.2.

289 **Amended Dates:**

290 9/2011.

291 **CV105 SEQUENCE OF INSTRUCTIONS NOT SIGNIFICANT.**

292 The order in which I give the instructions has no significance. You must consider the instructions
293 in their entirety, giving them all equal weight. I do not intend to emphasize any particular
294 instruction, and neither should you.

295 **MUJI 1st Instruction**

296 2.1.

297 **Amended Dates:**

298 9/2011.

299 **CV106 JURORS MUST FOLLOW THE INSTRUCTIONS.**

300 Removed 9/2011. Incorporated into CV 102.

301 **MUJI 1st Instruction**

302 1.5.

303 **CV107 JURORS MAY NOT DECIDE BASED ON SYMPATHY, PASSION AND**
304 **PREJUDICE. Approved 1/13/20.**

305 | You must decide this case based on the facts and the law, without regard to sympathy, passion, or
306 | prejudice. You must not decide for or against anyone because you feel sorry for or angry at
307 | ~~anyone~~ that person or anyone else.

308 | **MUJI 1st Instruction**

309 | 2.3.

310 | **Amended Dates:**

311 | 9/2011

312 | **CV108 NOTE-TAKING. Approved 1/13/20.**

313 | **Replaced with CR110**

314 | Feel free to take notes during the trial to help you remember the evidence, but do not let note-
315 | taking distract you. Your notes are not evidence and may be incomplete.

316 | ~~You may take notes during the trial and have those notes with you when you discuss the case. If~~
317 | ~~you take notes, do not over do it, and do not let your note taking distract you from following the~~
318 | ~~evidence. Your notes are not evidence, and you should use them only as a tool to aid your~~
319 | ~~personal memory. [I will secure your notes in the jury room during breaks and have them~~
320 | ~~destroyed at the end of the trial.]~~

321 | **References**

322 | URCP 47(n).

323 | **MUJI 1st Instruction**

324 | 1.6.

325 | **Committee Notes**

326 | The judge may instruct the jurors on what to do with their notes at the end of each day and at the
327 | end of the trial.

328 | **Amended Dates:**

329 | ~~9/2011.~~

330 | **CV109 JUROR QUESTIONS FOR WITNESSES. [Optional for judges who permit**
331 | **questions.] Approved 6/10/19/1/13/20.**

332 | **Added from CR111 (modified)**

333 | During the trial you may submit questions to be asked of the witnesses, but you are not required
334 | to do so. You should write your questions down as they occur to you. Please do not ask your
335 | questions out loud. To make sure the questions are legally appropriate, we will use the following
336 | procedure: After the lawyers have finished questioning each witness, I will ask if you have any
337 | questions for that witness. You should hand your questions to the bailiff when I ask for them. I
338 | will review them with the lawyers to ~~make determine if sure~~ they are allowed. If they are allowed,
339 | your questions will be asked. ~~I will tell you if your questions are allowed or not.~~

340 | **References**

341 | Utah R. Civ. P. 47(j).

342 |

343 | **CV110 RULES APPLICABLE TO RECESSES.**

344 | Removed 9/2011. Incorporated into CV 101.

345 **MUJI 1st Instruction**

346 1.8; 1.7

347 **CV111A DEFINITION OF "PERSON."**

348 "Person" means an individual, corporation, organization, or other legal entity.

349 **Amended Dates:**

350 9/2011.

351 **CV111B ALL PERSONS EQUAL BEFORE THE LAW.**

352 The fact that one party is a natural person and another party is a [corporation/partnership/other
353 legal entity] should not play any part in your deliberations. You must decide this case as if it were
354 between individuals.

355 **MUJI 1st Instruction**

356 2.8.

357 **Amended Dates:**

358 9/2011.

359 **CV112 MULTIPLE PARTIES.**

360 There are multiple parties in this case, and each party is entitled to have its claims or defenses
361 considered on their own merits. You must evaluate the evidence fairly and separately as to each
362 plaintiff and each defendant. Unless otherwise instructed, all instructions apply to all parties.

363 **Amended Dates:**

364 9/2011.

365 **CV113 MULTIPLE PLAINTIFFS.**

366 Although there are _____ plaintiffs, that does not mean that they are equally entitled to recover or
367 that any of them is entitled to recover. [Name of defendant] is entitled to a fair consideration of
368 [his] defense against each plaintiff, just as each plaintiff is entitled to a fair consideration of [his]
369 claim against [name of defendant].

370 **MUJI 1st Instruction**

371 2.21.

372 **Amended Dates:**

373 9/2011.

374 **CV114 MULTIPLE DEFENDANTS.**

375 Although there are _____ defendants, that does not mean that they are equally liable or that any
376 of them is liable. Each defendant is entitled to a fair consideration of [his] defense against each of
377 [name of plaintiff]'s claims. If you conclude that one defendant is liable, that does not necessarily
378 mean that one or more of the other defendants are liable.

379 **MUJI 1st Instruction**

380 2.22.

381 **Amended Dates:**

382 9/2011.

383 **CV115 SETTling PARTIES.**

384 [Name of persons] have reached a settlement agreement.

385 There are many reasons why persons settle their dispute. A settlement does not mean that anyone
386 has conceded anything. Although [name of settling person] is not a party, you must still decide
387 whether any of the persons, including [name of settling person], were at fault.

388 You must not consider the settlement as a reflection of the strengths or weaknesses of any
389 person's position. You may consider the settlement in deciding how believable a witness is.

390 **References**

391 *Slusher v. Ospital*, 777 P.2d 437 (Utah 1989).

392 *Paulos v. Covenant Transp., Inc.*, 2004 UT App 35 (Utah App. 2004).

393 *Child v. Gonda*, 972 P.2d 425 (Utah App. 1998).

394 URE 408.

395 **MUJI 1st Instruction**

396 2.24.

397 **Committee Notes**

398 The judge and the parties must decide whether the fact of settlement and to what extent the terms
399 of the settlement will be revealed to the jury in accordance with the principles set forth in *Slusher*
400 *v. Ospital*, 777 P.2d 437 (Utah 1989).

401 Substitute other legal concepts if "fault" is not relevant. For example, in commercial disputes.

402 **Amended Dates:**

403 9/2011.

404 **CV116 DISCONTINUANCE AS TO SOME DEFENDANTS.**

405 [Name of defendant] is no longer involved in this case because [explain reasons]. But you must
406 still decide whether fault should be allocated to [name of defendant] as if [he] were still a party.

407 **MUJI 1st Instruction**

408 2.23.

409 **Committee Notes**

410 This instruction should be given at the time the party is dismissed. The court should explain the
411 reasons why the defendants have been dismissed to the extent possible. If allocation of fault to the
412 dismissed party is not appropriate under applicable law the final sentence should not be given.

413 **CV117 PREPONDERANCE OF THE EVIDENCE.**

414 You may have heard that in a criminal case proof must be beyond a reasonable doubt, but this is
415 not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a
416 preponderance of the evidence.

417 When I tell you that a party has the burden of proof or that a party must prove something by a
418 "preponderance of the evidence," I mean that the party must persuade you, by the evidence, that
419 the fact is more likely to be true than not true.

420 Another way of saying this is proof by the greater weight of the evidence, however slight.
421 Weighing the evidence does not mean counting the number of witnesses nor the amount of
422 testimony. Rather, it means evaluating the persuasive character of the evidence. In weighing the
423 evidence, you should consider all of the evidence that applies to a fact, no matter which party
424 presented it. The weight to be given to each piece of evidence is for you to decide.

425 After weighing all of the evidence, if you decide that a fact is more likely true than not, then you
426 must find that the fact has been proved. On the other hand, if you decide that the evidence
427 regarding a fact is evenly balanced, then you must find that the fact has not been proved, and the
428 party has therefore failed to meet its burden of proof to establish that fact.

429 [Now] [At the close of the trial] I will instruct you in more detail about the specific elements that
430 must be proved.

431 **References**

432 *Johns v. Shulsen*, 717 P.2d 1336 (Utah 1986).

433 *Morris v. Farmers Home Mut. Ins. Co.*, 500 P.2d 505 (Utah 1972).

434 *Alvarado v. Tucker*, 268 P.2d 986 (Utah 1954).

435 *Hansen v. Hansen*, 958 P.2d 931 (Utah App. 1998)

436 **MUJI 1st Instruction**

437 2.16; 2.18.

438 **Amended Dates:**

439 9/2011

440 **CV118 CLEAR AND CONVINCING EVIDENCE.**

441 Some facts in this case must be proved by a higher level of proof called “clear and convincing
442 evidence.” When I tell you that a party must prove something by clear and convincing evidence, I
443 mean that the party must persuade you, by the evidence, to the point that there remains no serious
444 or substantial doubt as to the truth of the fact.

445 Proof by clear and convincing evidence requires a greater degree of persuasion than proof by a
446 preponderance of the evidence but less than proof beyond a reasonable doubt.

447 I will tell you specifically which of the facts must be proved by clear and convincing evidence.

448 **References**

449 *Essential Botanical Farms, LC v. Kay*, 2011 UT 71.

450 *Jardine v. Archibald*, 279 P.2d 454 (Utah 1955).

451 *Greener v. Greener*, 212 P.2d 194 (Utah 1949).

452 See also, *Kirchgestner v. Denver & R.G.W.R. Co.*, 233 P.2d 699 (Utah 1951).

453 **MUJI 1st Instruction**

454 2.19.

455 **Committee Notes**

456 In giving the instruction on clear and convincing evidence, the judge should specify which
457 elements must be held to this higher standard. This might be done in an instruction and/or as part
458 of the verdict form. If the judge gives the clear and convincing evidence instruction at the start of
459 the trial and for some reason those issues do not go to the jury (settlement, directed verdict, etc.)
460 the judge should instruct the jury that those matters are no longer part of the case.

461 **Amended Dates:**

462 9/2011.

463 **CV119 EVIDENCE. Approved 1/13/20.**

464 "Evidence" is anything that tends to prove or disprove a disputed fact. It can be the testimony of a
465 witness or documents or objects or photographs or certain qualified opinions or any combination
466 of these things.

467 You must entirely disregard any evidence for which I sustain an objection and any evidence that I
468 order to be struck.

469 Anything you may have seen or heard outside the courtroom is not evidence and you must
470 entirely disregard it.

471 The lawyers might stipulate—or agree—to a fact or I might take judicial notice of a fact.
472 Otherwise, what I say and what the lawyers say ~~usually are~~ is not evidence.

473 You are to consider only the evidence in the case, but you are not expected to abandon your
474 common sense. You are permitted to interpret the evidence in light of your experience.

Comment [NS1]: Implicit bias subcommittee should look at this paragraph.

475 **MUJI 1st Instruction**

476 1.3; 2.4.

477 **Amended Dates:**

478 9/2011.

479 **CV119A EVIDENCE. ~~(Self-represented litigant version)~~ Approved 1/13/20.**

480 "Evidence" is anything that tends to prove or disprove a disputed fact. It can be the testimony of a
481 witness or documents or objects or photographs or certain qualified opinions or any combination
482 of these things.

483 You must entirely disregard any evidence for which I sustain an objection and any evidence that I
484 order to be struck.

485 Anything you may have seen or heard outside the courtroom is not evidence and you must
486 entirely disregard it.

487 In reaching your verdict, you may consider only the testimony and exhibits received into
488 evidence. Certain things are not evidence, and you may not consider them in deciding what the
489 facts are. I will list them for you:

490 (1) Arguments and statements by ~~pro se~~ self-represented plaintiff self-represented defendant
491 and [plaintiff] [defense] counsel are not evidence. ~~Pro se~~ Self-represented plaintiff self-
492 represented defendant when acting as his/her/their own counsel and [plaintiff] [defense]
493 counsel are not witnesses. What they ~~have said~~ say in their opening and closing statements, ~~will~~
494 ~~say in their closing arguments,~~ and what they say at other times when they are not testifying as a
495 witness is intended to help you interpret the evidence, but it is not evidence. If the facts as you
496 remember them differ from the way they have stated them, your memory of them controls.
497 However, ~~pro se~~ self-represented plaintiff self-represented defendant's statements as a witness
498 are evidence.

499 (2) Questions and objections by ~~pro se~~ self-represented plaintiff self-represented defendant
500 and [plaintiff] [defense] counsel are not evidence.

501 The ~~lawyers parties~~ might stipulate -- or agree -- to a fact or I might take judicial notice of a fact.
502 Otherwise, what is said in court, other than sworn testimony, ~~I say and what the lawyers say~~
503 ~~usually~~ is not evidence.

504 You are to consider only the evidence in this case, but you are not expected to abandon your
505 common sense. You are permitted to interpret the evidence in light of your experience.

Comment [NS2]: Implicit bias subcommittee should look at this.

506 **References**

507 CV 119.

508 Preliminary jury instructions for use with pro se litigants, U.S. District Court, Eastern District of
509 California.

510 **Amended Dates:**

511 November 2013.

512 **CV120 DIRECT AND CIRCUMSTANTIAL EVIDENCE. Approved 1/13/20.**

513 **Replaced with CR210 (modified)**

514 Facts may be proved by direct or circumstantial evidence. The law does not treat one type of
515 evidence as better than the other.

516 Direct evidence can prove a fact by itself. It usually comes from a witness who perceived
517 firsthand the fact in question. For example, if a witness testified he looked outside and saw it was
518 raining, that would be direct evidence that it had rained.

519 Circumstantial evidence is indirect evidence. It usually comes from a witness who perceived a set
520 of related events, but not the fact in question. However, based on that testimony someone could
521 conclude that the fact in question had occurred. For example, if a witness testified that she looked
522 outside and saw that the ground was wet and people were closing their umbrellas, that would be
523 circumstantial evidence that it had rained.

524 A fact may be proved by direct or circumstantial evidence. Circumstantial evidence consists of
525 facts that allow someone to reasonably infer the truth of the facts to be proved. For example, if
526 the fact to be proved is whether Johnny ate the cherry pie, and a witness testifies that she saw
527 Johnny take a bite of the cherry pie, that is direct evidence of the fact. If the witness testifies that
528 she saw Johnny with cherries smeared on his face and an empty pie plate in his hand, that is
529 circumstantial evidence of the fact.

530 **MUJI 1st Instruction**

531 2.17.

532 **References**

533 29 Am. Jur.2d Evidence § 4.

534 29 Am. Jur.2d Evidence § 1468.

535 **Amended Dates:**

536 9/2011.

537 **CV121 BELIEVABILITY OF WITNESSES, WITNESS CREDIBILITY. Approved 1/13/20.**

538 **CV121-123 replaced with CR207**

539 In deciding this case you will need to decide how believable each witness was. Use your
540 judgment and common sense. Let me suggest a few things to think about as you weigh each
541 witness's testimony:

- 542 • How good was the witness's opportunity to see, hear, or otherwise observe what the
543 witness testified about?
- 544 • Does the witness have something to gain or lose from this case?
- 545 • Does the witness have any connection to the people involved in this case?
- 546 • Does the witness have any reason to lie or slant the testimony?
- 547 • Was the witness's testimony consistent over time? If not, is there a good reason for the
548 inconsistency? If the witness was inconsistent, was it about something important or
549 unimportant?

Comment [NS3]: Implicit bias subcommittee.

- How believable was the witness’s testimony in light of other evidence presented at trial?
- How believable was the witness’s testimony in light of human experience?
- Was there anything about the way the witness testified that made the testimony more or less believable?

Comment [NS4]: Implicit bias subcommittee

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

Comment [NS5]: Implicit bias subcommittee.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness’s testimony. You may believe many witnesses against one or one witness against many.

In deciding whether a witness testified truthfully, remember that no one’s memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

References

Utah Code Ann. § 78B-1-128.

United States v. McKissick, 204 F.3d 1282, 1289 (10th Cir. 2000).

Toma v. Utah Power & Light Co., 365 P.2d 788, 792-793 (Utah 1961).

Gittens v. Lundberg, 3 Utah 2d 392, 284 P.2d 1115 (1955).

State v. Shockley, 80 P. 865, 879 (1905).

75 Am. Jur.2d Trial § 819.

Testimony in this case will be given under oath. You must evaluate the believability of that testimony. You may believe all or any part of the testimony of a witness. You may also believe one witness against many witnesses or many against one, in accordance with your honest convictions. In evaluating the testimony of a witness, you may want to consider the following:

- (1) Personal interest. Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?
- (2) Bias. Do you believe the accuracy of the testimony was affected by any bias or prejudice?
- (3) Demeanor. Is there anything about the witness’s appearance, conduct or actions that causes you to give more or less weight to the testimony?
- (4) Consistency. How does the testimony tend to support or not support other believable evidence that is offered in the case?
- (5) Knowledge. Did the witness have a good opportunity to know what [he] is testifying about?
- (6) Memory. Does the witness’s memory appear to be reliable?
- (7) Reasonableness. Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. You are the ultimate judges of how to evaluate believability.

MUJI 1st Instruction

2.9, 2.10, 2.11.

CV122 INCONSISTENT STATEMENTS.

You may believe that a witness, on another occasion, made a statement inconsistent with that witness’s testimony given here. That doesn’t mean that you are required to disregard the testimony. It is for you to decide whether to believe the witness.

591 **MUJI 1st Instruction**

592 ~~2.10.~~

593 ~~CV123 EFFECT OF WILLFULLY FALSE TESTIMONY.~~

594 ~~If you believe any witness has intentionally testified falsely about any important matter, you may~~
595 ~~disregard the entire testimony of that witness, or you may disregard only the intentionally false~~
596 ~~testimony.~~

597 **References**

598 ~~*Gittens v. Lundberg*, 3 Utah 2d 392, 284 P.2d 1115 (1955).~~

599 **MUJI 1st Instruction**

600 ~~2.11.~~

601 **CV124 STIPULATED FACTS.**

602 A stipulation is an agreement. Unless I instruct you otherwise, when the lawyers on both sides
603 stipulate or agree to a fact, you must accept the stipulation as evidence and regard that fact as
604 proved.

605 The parties have stipulated to the following facts:

606 [Here read stipulated facts.]

607 Since the parties have agreed on these facts, you must accept them as true for purposes of this
608 case.

609 **MUJI 1st Instruction**

610 1.3; 1.4

611 **Committee Notes**

612 This instruction should be given at the time a stipulated fact is entered into the record.

613 **CV125 JUDICIAL NOTICE.**

614 I have taken judicial notice of [state the fact] for purposes of this trial. This means that you must
615 accept the fact as true.

616 **MUJI 1st Instruction**

617 1.3.

618 **Committee Notes**

619 This instruction should be given at the time the court takes judicial notice of a fact.

620 **CV126 DEPOSITIONS.**

621 A deposition is the sworn testimony of a witness that was given previously, outside of court, with
622 the lawyer for each party present and entitled to ask questions. Testimony provided in a
623 deposition is evidence and may be read to you in court or may be seen on a video monitor. You
624 should consider deposition testimony the same way that you would consider the testimony of a
625 witness testifying in court.

626 **MUJI 1st Instruction**

627 2.12.

628 **Amended Dates:**

629 9/2011.

630 **CV127 LIMITED PURPOSE EVIDENCE.**

631 Some evidence is received for a limited purpose only. When I instruct you that an item of
632 evidence has been received for a limited purpose, you must consider it only for that limited
633 purpose.

634 **MUJI 1st Instruction**

635 1.3.

636 **Amended Dates:**

637 9/2011.

638 **CV128 OBJECTIONS AND RULINGS ON EVIDENCE AND PROCEDURE.**

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

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

650 **MUJI 1st Instruction**

651 2.5.

652 **CV128A OBJECTIONS AND RULINGS ON EVIDENCE AND PROCEDURE [Self-**
653 **represented litigant version.]**

654 From time to time during the trial, I may have to make rulings on objections or motions made by
655 the lawyers or the parties. Lawyers and parties on each side of a case have a right to object when
656 the other side offers evidence that the lawyer believes is not admissible. You should not think less
657 of a lawyer or a party because they make objections. You should not conclude from any ruling or
658 comment that I make that I have any opinion about the merits of the case or that I favor one side
659 or the other. And if a lawyer objects and I sustain the objection, you should disregard the question
660 and any answer.

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

665 **MUJI 1st Instruction**

666 2.5.

667

668 **CV129 STATEMENT OF OPINION.**

669 Under limited circumstances, I will allow a witness to express an opinion. Consider opinion
670 testimony as you would any other evidence, and give it the weight you think it deserves.

671 You may choose to rely on the opinion, but you are not required to do so.

Comment [NS6]: Question on whether to replace with CR107

672 If you find that a witness, in forming an opinion, has relied on a fact that has not been proved, or
673 has been disproved, you may consider that in determining the value of the witness's opinion.

674 **References**

675 *Lyon v Bryan*, 2011 UT App 256 (jury entitled to disregard even un rebutted expert testimony).

676 **MUJI 1st Instruction**

677 2.13; 2.14.

678 **Committee Notes**

679 This instruction may be given if an expert or another witness is permitted to express an opinion
680 on a matter that the jury is capable of deciding with or without expert testimony. This instruction
681 should not be given if the jury is required to rely on expert testimony to establish the standard of
682 care or some other fact. See, for example, Instruction CV 326. Expert testimony required..

683 If the jury is required to rely on expert testimony for some decisions and is allowed to decide
684 other facts with or without expert testimony, the court's instructions should distinguish for the
685 jury which matters the jury must decide based only on expert testimony and which matters they
686 may decide by giving the expert testimony the weight they think it deserves.

687 **Amended Dates:**

688 September, 2011; November 13, 2012.

689 **CV130A CHARTS AND SUMMARIES AS EVIDENCE.**

690 Charts and summaries that are received as evidence will be with you in the jury room when you
691 deliberate, and you should consider the information contained in them as you would any other
692 evidence.

693 **MUJI 1st Instruction**

694 2.15.

695 **Committee Notes**

696 Use this instruction if the charts and summaries used at trial are introduced as evidence under
697 URE 1006.

698 **Amended Dates:**

699 9/2011.

700 **CV130B CHARTS AND SUMMARIES OF EVIDENCE.**

701 Certain charts and summaries will be shown to you to help explain the evidence. However, these
702 charts and summaries are not themselves evidence, and you will not have them in the jury room
703 when you deliberate. You may consider them to the extent that they correctly reflect the evidence.

704 **MUJI 1st Instruction**

705 2.15.

706 **Committee Notes**

707 Use this instruction if the charts and summaries used at trial are used only as demonstrative aids.

708 **Amended Dates:**

709 9/2011.

710 **CV131 SPOILIATION.**

711 I have determined that [name of party] intentionally concealed, destroyed, altered, or failed to
712 preserve [describe evidence]. You may assume that the evidence would have been unfavorable to
713 [name of party].

714 **References**

715 *Hills v. United Parcel Service, Inc.*, 2010 UT 39, 232 P.3d 1049.
716 *Daynight, LLC v. Mobilight, Inc.*, 2011 UT App 28, 248 P.3d 1010.
717 *Burns v. Cannondale Bicycle Co.*, 876 P.2d 415 (Utah Ct. App. 1994).
718 URCP 37(~~gg~~).

719 **Committee Notes**

720 Utah appellate courts have not recognized a cause of action for first-party spoliation (a claim
721 against a party to the underlying action – or the party’s attorney – who spoliates evidence
722 necessary or relevant to the plaintiff’s claims against that party), or a cause of action for third-
723 party spoliation (a stranger to the underlying action or a party not alleged to have committed the
724 underlying tort as to which the loss or destroyed evidence is related). *Hills v. United Parcel Serv.*,
725 *Inc.*, 2010 UT 39, 232 P.3d 1049; *Burns v. Cannondale Bicycle Co.*, 876 P.2d 415 (Utah Ct. App.
726 1994). Rule 37(~~gb~~), (~~e~~), however, expressly provides authority to trial courts to address spoliation
727 of evidence by a litigant, including instructing the jury regarding an adverse inference. See,
728 URCP 37(b)(~~7~~), (~~2~~), (~~F~~).

729 In *Daynight, LLC v. Mobilight, Inc.*, 2011 UT App. 28, 248 P.3d 1010, the Utah Court of Appeals
730 observed that “spoliation under [Rule 37(~~gg~~)], meaning the destruction and permanent deprivation
731 of evidence, is on a qualitatively different level than a simple discovery abuse under [Rule
732 37(b)(~~2~~)] which typically pertains only to a delay in the production of evidence. . . . [R]ule
733 37(~~gg~~)] of the Utah Rules of Civil Procedure does not require a finding of ‘willfulness, bad faith,
734 fault or persistent dilatory tactics’ or the violation of court orders before a court may sanction a
735 party.” Id. at ¶ 2.

736 The standard announced by the *Daynight* court differs from that employed by the United States
737 Court of Appeals for the Tenth Circuit. Spoliation sanctions are proper in federal court when (1) a
738 party has a duty to preserve evidence because it knew, or should have known the litigation was
739 imminent, and (2) the adverse party was prejudiced by the destruction of the evidence. If the
740 aggrieved party seeks an adverse inference to remedy the spoliation, it must also prove bad faith.
741 Mere negligence in losing or destroying records is not enough because it does not support an
742 inference of consciousness of a weak case. Without a showing of bad faith, a district court may
743 only impose lesser sanctions. *Turner v. Public Serv. Co.*, 563 F.3d 1136, 1149 (10th Cir. 2009).
744 In addition, it is appropriate for a federal trial court to consider “the degree of culpability of the
745 party who lost or destroyed the evidence.” *North v. Ford Motor Co.*, 505 F. Supp. 2d 1113, 1116
746 (D.Utah 2007).

747 The discussion by the Utah Court of Appeals in *Daynight* appears to indicate that even the
748 negligent destruction of evidence will be sufficient to trigger a spoliation instruction without a
749 finding of willfulness or bad faith.

750 **Amended Dates:**

751 9/2011.

752 **~~CV135-CV132~~ OUT-OF-STATE OR OUT-OF-TOWN EXPERTS.**

753 You may not discount the opinions of [name of expert] merely because of where [he] lives or
754 practices.

755 **References**

756 *Swan v. Lamb*, 584 P.2d 814, 819 (Utah 1978).

757 **MUJI 1st Instruction**

758 6.30

759 **Committee Notes**

760 The committee was not unanimous in its approval of this instruction. Use it with caution.

761 ~~CV136~~ **CV133 CONFLICTING TESTIMONY OF EXPERTS.**

762 In resolving any conflict that may exist in the testimony of [names of experts], you may compare
763 and weigh the opinion of one against that of another. In doing this, you may consider the
764 qualifications and credibility of each, as well as the reasons for each opinion and the facts on
765 which the opinions are based.

766 **MUJI 1st Instruction**

767 6.31

768 ~~CV137 Selection of jury foreperson and deliberation.~~

769 ~~When you go into the jury room, your first task is to select a foreperson. The foreperson will~~
770 ~~preside over your deliberations and sign the verdict form when it's completed. The foreperson~~
771 ~~should not dominate the discussions. The foreperson's opinions should be given the same weight~~
772 ~~as the opinions of the other jurors.~~

773 ~~After you select the foreperson you must discuss with one another—that is deliberate—with a~~
774 ~~view to reaching an agreement. Your attitude and conduct during discussions are very important.~~

775 ~~As you begin your discussions, it is not helpful to say that your mind is already made up. Do not~~
776 ~~announce that you are determined to vote a certain way or that your mind cannot be changed.~~
777 ~~Each of you must decide the case for yourself, but only after discussing the case with your fellow~~
778 ~~jurors.~~

779 ~~Do not hesitate to change your opinion when convinced that it is wrong. Likewise, you should not~~
780 ~~surrender your honest convictions just to end the deliberations or to agree with other jurors.~~

781 ~~Amended Dates:~~

782 ~~9/2011.~~

783 **CV138 Do not speculate or resort to chance.**

784 ~~When you deliberate, do not flip a coin, speculate or choose one juror's opinions at random.~~
785 ~~Evaluate the evidence and come to a decision that is supported by the evidence.~~

786 ~~If you decide that a party is entitled to recover damages, you must then agree upon the amount of~~
787 ~~money to award that party. Each of you should state your own independent judgment on what the~~
788 ~~amount should be. You must thoughtfully consider the amounts suggested, evaluate them~~
789 ~~according to these instructions and the evidence, and reach an agreement on the amount. You~~
790 ~~must not agree in advance to average the estimates.~~

791 **References**

792 *Day v. Panos*, 676 P.2d 403 (Utah 1984).

793 **CV139 Agreement on special verdict.**

794 I am going to give you a form called the Special Verdict that contains several questions and
795 instructions. You must answer the questions based upon the instructions and the evidence you
796 have seen and heard during this trial.

797 Because this is not a criminal case, your verdict does not have to be unanimous. At least six jurors
798 must agree on the answer to each question, but they do not have to be the same six jurors on each
799 question.

800 As soon as six or more of you agree on the answer to all of the required questions, the foreperson
801 should sign and date the verdict form and tell the bailiff you have finished. The bailiff will escort
802 you back to this courtroom; you should bring the completed Special Verdict with you.

803 ~~Amended Dates:~~

804 ~~9/2011.~~

805 ~~CV140 Discussing the case after the trial.~~

806 Ladies and gentlemen of the jury, this trial is finished. Thank you for your service. The American
807 system of justice relies on your time and your sound judgment, and you have been generous with
808 both. You serve justice by your fair and impartial decision. I hope you found the experience
809 rewarding.

810 You may now talk about this case with anyone you like. You might be contacted by the press or
811 by the lawyers. You do not have to talk with them—or with anyone else, but you may. The choice
812 is yours. I turn now to the lawyers to instruct them to honor your wishes if you say you do not
813 want to talk about the case.

814 If you do talk about the case, please respect the privacy of the other jurors. The confidences they
815 may have shared with you during deliberations are not yours to share with others.

816 Again, thank you for your service.

817 ~~CV141-CV134 NO RECORD OF TESTIMONY.~~

818 At the end of trial, you must make your decision based on what you recall of the testimony. You
819 will not have a transcript or recording of the witnesses' testimony. I urge you to pay close
820 attention to the testimony as it is given.

821 ~~Amended Dates:~~

822 ~~Added 9/2011.~~

823 **CLOSING INSTRUCTIONS**

824 **CV-151. CLOSING ROADMAP.**

825 **[from CR201, CR202]**

826 Members of the jury, you now have all the evidence. Three things remain to be done:

827 First, I will give you additional instructions that you will follow in deciding this case.

828 Second, the lawyers will give their closing arguments. The Plaintiff(s) will go first, then
829 the Defendant(s). The Plaintiff(s) may give a rebuttal.

830 Finally, you will go to the jury room to discuss the evidence and the instructions and
831 decide the case.

832

833 **INSTRUCTION NO. CV 152**

[from CR202]

In the jury room you will ~~You~~ have two main duties as jurors.

~~First, you will decide from the evidence. The first is to decide from the evidence~~ what the facts are. You may draw all reasonable inferences from that evidence. ~~Deciding what the facts are is your job, not mine.~~

~~Second, you will. The second duty is to~~ take the law I give you in the instructions, apply it to the facts, and reach a verdict.

CV-1523. CLOSING ARGUMENTS.

[from CR203]

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say anything about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

CV-1543. LEGAL RULINGS.

[from CR204]

During the trial I have made certain rulings. I made those rulings based on the law, and not because I favor one side or the other.

However,

- if I sustained an objection,
- if I did not accept evidence offered by one side or the other, or
- if I ordered that certain testimony be stricken,

then you must not consider those things in reaching your verdict.

CV-~~155~~154. JUDICIAL NEUTRALITY.

[from CR205]

As the judge, I am neutral. If I have said or done anything that makes you think I favor one side or the other, that was not my intention. Do not interpret anything I have done as indicating that I have any particular view of the evidence or the decision you should reach.

CV~~137~~-CV155. FOREPERSON SELECTION AND DUTIES AND JURY DELIBERATIONS.
~~SELECTION OF JURY FOREPERSON AND DELIBERATION.~~

CV 137 replaced with CR 216-217 (modified) and renumbered

Among the first things you should do when you go to the jury room to deliberate is to appoint someone to serve as the jury foreperson. The foreperson should not dominate the jury's discussion, but rather should facilitate the discussion of the evidence and make sure that all members of the jury get the chance to speak. The foreperson's opinions should be given the same weight as those of other members of the jury. Once the jury has reached a verdict, the foreperson is responsible for filling out and signing the verdict form(s) on behalf of the entire jury.

875 In the jury room, discuss the evidence and speak your minds with each other. Open discussion
876 should help you reach an agreement on a verdict. Listen carefully and respectfully to each other's
877 views and keep an open mind about what others have to say. I recommend that you not commit
878 yourselves to a particular verdict before discussing all the evidence.

879 Try to reach an agreement, but only if you can do so honestly and in good conscience. If there is a
880 difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you
881 become convinced that your position is wrong. On the other hand, do not give up your honestly
882 held views about the evidence simply to agree on a verdict, to give in to pressure from other
883 jurors, or just to get the case over with. In the end, your vote must be your own.

884 In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a
885 coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment.

886 ~~In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a~~
887 ~~coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment~~

888 ~~When you go into the jury room, your first task is to select a foreperson. The foreperson will~~
889 ~~preside over your deliberations and sign the verdict form when it's completed. The foreperson~~
890 ~~should not dominate the discussions. The foreperson's opinions should be given the same weight~~
891 ~~as the opinions of the other jurors.~~

892 ~~After you select the foreperson you must discuss with one another—that is deliberate—with a~~
893 ~~view to reaching an agreement. Your attitude and conduct during discussions are very important.~~

894 ~~As you begin your discussions, it is not helpful to say that your mind is already made up. Do not~~
895 ~~announce that you are determined to vote a certain way or that your mind cannot be changed.~~
896 ~~Each of you must decide the case for yourself, but only after discussing the case with your fellow~~
897 ~~jurors.~~

898 ~~Do not hesitate to change your opinion when convinced that it is wrong. Likewise, you should not~~
899 ~~surrender your honest convictions just to end the deliberations or to agree with other jurors.~~

900 **CV138-CV156. DO NOT SPECULATE OR RESORT TO CHANCE.**

901 When you deliberate, do not flip a coin, speculate or choose one juror's opinions at random.
902 Evaluate the evidence and come to a decision that is supported by the evidence.

903 If you decide that a party is entitled to recover damages, you must then agree upon the amount of
904 money to award that party. Each of you should state your own independent judgment on what the
905 amount should be. You must thoughtfully consider the amounts suggested, evaluate them
906 according to these instructions and the evidence, and reach an agreement on the amount. You
907 must not agree in advance to average the estimates.

908 **References**

909 *Day v. Panos*, 676 P.2d 403 (Utah 1984).

910 **CV139-CV157. AGREEMENT ON SPECIAL VERDICT.**

911 I am going to give you a form called the Special Verdict that contains several questions and
912 instructions. You must answer the questions based upon the instructions and the evidence you
913 have seen and heard during this trial.

914 Because this is not a criminal case, your verdict does not have to be unanimous. At least six jurors
915 must agree on the answer to each question, but they do not have to be the same six jurors on each
916 question.

917 As soon as six or more of you agree on the answer to all of the required questions, the foreperson
918 should sign and date the verdict form and tell the bailiff you have finished. The bailiff will escort
919 you back to this courtroom; you should bring the completed Special Verdict with you.

920 | **CV140CV158. DISCUSSING THE CASE AFTER THE TRIAL.**

921 Ladies and gentlemen of the jury, this trial is finished. Thank you for your service. The American
922 system of justice relies on your time and your sound judgment, and you have been generous with
923 both. You serve justice by your fair and impartial decision. I hope you found the experience
924 rewarding.

925 You may now talk about this case with anyone you like. You might be contacted by the press or
926 by the lawyers. You do not have to talk with them - or with anyone else, but you may. The choice
927 is yours. I turn now to the lawyers to instruct them to honor your wishes if you say you do not
928 want to talk about the case.

929 If you do talk about the case, please respect the privacy of the other jurors. The confidences they
930 may have shared with you during deliberations are not yours to share with others.

931 Again, thank you for your service.

Tab 4

Date of Printing: August 12, 2019 09:02:18 AM CDT
Last Run: August 05, 2019 09:03:38 AM CDT

KEYCITE ALERT

[§ 31A-22-309. Limitations, exclusions, and conditions to personal injury protection](#), UT ST § 31A-22-309

Results Narrowed by:

History References

Detail Level: Most Detail

Citing References

Detail Level: Most Detail

History

No references satisfied your KeyCite Alert History request.

Citing References

Citing References (1)

Title	Date	NOD Topics	Type
<p>1. 59 Am. Jur. Trials 347, Litigating the No-Fault Serious-Injury Threshold Am. Jur. Trials</p> <p>"No-fault" automobile insurance systems are statutory schemes to provide automobile accident victims with compensation for certain expenses arising out of personal injuries...</p> <p>... her life, that the herniated disc would not go away on its own, and that motorist would not be able to regain all bodily function. Utah Code Ann. § 31A-22-309(1)(a)(iii))Pinney v. Carrera, 2019 UT App 12, 438 P.3d 902 (Utah Ct. App. 2019) [Top ...</p>	2019	—	Other Secondary Source

Motorist who suffered a herniated disc in her back following car accident met the tort threshold injury requirement of permanent impairment under no-fault statute, and, thus, could seek general damages for her personal injuries in action brought against other driver who allegedly failed to stop at a stop sign and struck injured motorist's car; treating chiropractor testified that based on the examinations, treatment, and MRI, that injured motorist had suffered a permanent impairment, and chiropractor further testified that motorist would be plagued by the injury for the rest of her life, that the herniated disc would not go away on its own, and that motorist would not be able to regain all bodily function. Utah Code Ann. § 31A-22-309(1)(a)(iii). *Pinney v. Carrera*, 2019 UT App 12, 438 P.3d 902 (Utah Ct. App. 2019).

59 Am. Jur. Trials 347 (Originally published in 1996)

CV632 Threshold.

[Name of defendant] claims that [name of plaintiff] has not met the threshold injury requirements and therefore cannot recover non-economic damages.

A person may recover non-economic damages resulting from an automobile accident only if [he] has:

[(1) permanent disability or permanent impairment based on objective findings.] or

[(2) permanent disfigurement.] or

[(3) reasonable and necessary medical expenses in excess of \$3,000.]

References

Utah Code Section 31A-22-309(1)(a).

Committee Notes

Neither the statute nor case law has provided clear boundaries on the definitions of disability and impairment. It is also undecided whether the plaintiff or the defendant who asserts the defense carries the burden of proof or burden of moving forward.