

MINUTES

Advisory Committee on Model Civil Jury Instructions

January 11, 2021

4:00 p.m.

Present: Ruth A. Shapiro (incoming chair), Honorable Andrew H. Stone (outgoing 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.

Also present: Chief Justice Matthew B. Durrant, Tracy Fowler. Paul M. Simmons

Excused: Honorable Keith A. Kelly, Adam Wentz (recording secretary)

1. Welcome.

Ruth Shapiro, new committee chair, welcomed the committee to the meeting and asked for approval of the minutes. Mr. Mortensen moved, with a second by Ms. Shurman. The motion carried.

2. Fond farewell and introductions.

Chief Justice Durrant complimented the work of the committee and bid a fond farewell to Judge Andrew Stone, who has chaired the committee for the past three years and been with the committee since 2012. Chief Justice Durrant also welcomed Judge Holmberg to the committee and Ruth Shapiro to the chairmanship.

3. Timeline.

Judge Stone mentioned that pandemic/virtual jury trials instruction may come to the committee for review. Boundaries and easements will come to the committee after Products Liability.

4. Products Liability Instructions.

Tracy Fowler and Paul Simmons presented on behalf of the subcommittee.

- CV1001. The plaintiff and defendant subcommittee groups agree on this instruction. Proposed one single instruction.
 - Motion to approve: Doug-1, Joel-2. Motion carried. Motion failed later with subsequent amendments to consolidate 1001 and 1002.
- CV1002. The 2 groups did not agree on this instruction.
 - Proposal to make 1001 the introduction and 1002 the elements of the design and manufacturing defect.
 - CV 1001 had a new number 1 added: "1. There was a defect in the [product]," for consolidation purposes.
 - CV 1002 was deleted.
- CV1003 (new CV1002).
 - The committee discussed leaving both alternatives. Alternative B brings in the federal law. Instruction tabled for subcommittee work to continue.
- CV1004 (new CV 1003).

- Added an "or" between two elements since it could be either one or both.
- CV1006 (new CV1004).
 - Current MUJI has both alternatives already. Suggestion that Alternative B be eliminated is new. Argument that COA case (Brown) suggests that Alt B is still viable.
 - Suggestion to pick Alt A and put the alternatives in the notes.
 - Motion: Doug-1, Randy, Ricky-2 to keep only Alternative A (follow words in the statute). Motion failed.
 - Committee note had argument in it, which the committee simplified.
 - Where should the definition of "unreasonably dangerous" be?
- Motions to approve instructions were held until our next meeting.

5. *Adjournment.*

The committee adjourned at 6:02 p.m.

6. *Next Meeting.*

February 8, 2020 @ 4pm via Webex.