

## ***MINUTES***

Advisory Committee on Model Civil Jury Instructions

April 12, 2021

4:30 p.m.

Present: Ruth A. Shapiro (chair), Honorable Andrew H. Stone (chair), Honorable Keith A. Kelly, Honorable Judge Kent Holmberg, Nancy J. Sylvester (staff), Marianna Di Paolo, Douglas G. Mortensen, Lauren A. Shurman, Randy Andrus, Ricky Shelton, Alyson McAllister, Adam D. Wentz (recording secretary).  
Also present: Tracy Fowler, Peter Summerill

Excused: Joel Ferre, Samantha Slark

### *1. Welcome.*

Ruth Shapiro welcomed everyone to the meeting.

### *2. Approval of Minutes.*

Ruth Shapiro asked for a motion on the March meeting minutes. The minutes were unanimously approved.

### *3. Timeline.*

The committee discussed the timeline and decided to push back easement of boundary lines by at least another month.

### *4. Discussion of Product Liability Instructions.*

- 1013
  - Deferred until next meeting.
- 1047 (Sophisticated User)
  - The two groups agreed on this instruction.
  - Judge Kelly initially moved to adopt.
  - Ricky Shelton initially seconded.
  - The committee unanimously and informally approved the instruction.
  - After approval, Marianna Di Paolo raised concerns about the wording of the second sentence. Specifically, she argued that the phrase “[t]o establish this defense” is difficult to understand for a layperson.
  - Judge Holmberg is concerned that causation is not sufficiently addressed in the instruction and questioned whether or not it should be.
    - The committee discussed at length several optional edits to address Judge Holmberg’s and Marianna’s concerns.
    - In the end, the committee determined to re-word the top paragraph, second sentence as follows: “To establish that [name of

plaintiff] was a sophisticated user, [name of defendant] must prove that [name of plaintiff] either: . . . .”

- The committee also made changes to both subparts (1) and (2) to address Judge Holmberg’s concerns:
  - “(1) had special knowledge or expertise about [the dangerous or unsafe characteristic of the product] or (2) belonged to a group or profession that generally knows about [the dangerous or unsafe characteristic of the product].”
- Judge Kelly asked whether the subcommittee needed time to review and provide feedback on the modifications.
  - Neither Peter Summerill nor Tracy Fowler believe that further time is needed as the suggested modifications were agreeable.
- Judge Kelly moved to adopt the instruction as amended.
- Doug Mortensen seconded.
- The committee unanimously and informally approved the amended instruction.
- 1048 (Conformity with Government Standard)
  - The two groups agreed on this instruction.
  - Judge Kelly moved to adopt.
  - Ricky Shelton adopted.
  - The committee unanimously and informally approved the instruction.
  - After initial approval, Marianna Di Paolo raised concerns regarding the contradictory language found in the first and second sentences. She argued that the second sentence seemingly instructs the jury to disregard the first sentence.
    - She suggested re-wording the instruction to specifically tell the jury what they need to do.
    - Judge Holmberg referred the committee to the Colorado instruction which defined the term “presumption.”
    - Marianna questioned whether the jury really needs to understand the definition of presumption. Rather, she suggested that the instruction clearly state that the jury must first determine whether the product is compliant, and next decide whether the product is nevertheless defective despite being compliant.
  - Ruth Shapiro moved to retract the initial informal approval of this instruction, which was seconded by Judge Kelly.
  - The committee agreed to circle back to this instruction next meeting.

## 5. *Adjournment.*

The meeting concluded at 6:05 P.M.