

MINUTES
Advisory Committee on Model Civil Jury Instructions
May 10, 2021
4:00 p.m.

Present: Ruth A. Shapiro (chair), Judge Keith A. Kelly, Judge Kent Holmberg, Nancy J. Sylvester (staff), Marianna Di Paolo, Douglas G. Mortensen, Randy Andrus, Ricky Shelton, Joel Ferre , Adam D. Wentz (recording secretary).
Also present: Tracy Fowler, Paul Simmons

Excused: Samantha Slark, Lauren A. Shurman, Alyson McAllister

1. *Welcome.*

Ruth Shapiro welcomed everyone to the meeting.

2. *Approval of Minutes.*

Ruth Shapiro asked for a motion on the April meeting minutes. Judge Stone's name was removed and with that change the minutes were unanimously approved.

3. *Timeline.*

The committee discussed the timeline and decided to continue discussing product liability.

4. *Discussion of Product Liability Instructions.*

- CV1015 (Conformity with Government Standard)
 - The committee discussed optional changes to the wording of Element 2 to add clarity and provide jury with clear instructions on what to do. Settled on the following:
 - “However, [name of plaintiff] may overcome this presumption by proving by a preponderance of evidence that the [product] was defective even though the manufacturer followed government laws, standards, or regulations.
 - The committee informally approved CV1015 with the above changes to element 2.
- CV1016 (Product Misuse)
 - The two groups agreed on this instruction as presented to the committee.
 - There were no objections to the language in this instruction.
 - The committee informally approved CV1016 as written.
- CV1017 (Product Alteration)
 - The two groups agreed on this instruction as presented to the committee.

- Ruth Shapiro questioned the basis of the final sentence: “If [name of defendant] proves these things, you must consider this defense when allocating fault on the Special Verdict form.” She suggested that it remain consistent with the similar language from CV1016.
- Judge Kelly agreed that the last sentences from 1016 and 1017 be consistent. The committee amended 1017 accordingly.
- The committee informally approved CV1017 as amended.
- CV1018 (Unreasonable Use)
 - Judge Kelly suggested that the last sentence regarding the special verdict form should be made consistent with CV1016 as well.
 - Marianna Di Paolo suggested changing the “proves” to the past tense “has proved” on the last sentence. Committee agreed.
 - The committee informally approved CV1018 as amended.
- CV1019 (Comparative fault of Plaintiff)
 - The two groups agreed on this instruction as presented to the committee.
 - Ruth Shapiro suggested making the final paragraph of CV1019 consistent with the similar language from CV211.
 - Marianna noted a disconnect between the third and fourth paragraphs. Paul Simmons suggested adding the following sentence at the beginning of the fourth paragraph to remedy this disconnect:
 - “If you decide that [name of plaintiff] has fault, you must decide how much fault.”
 - The committee informally approved CV1019 as amended.
- CV1020 (Allocation Between Strict Liability Defendants and Other at Fault Parties/Third Parties)
 - Judge Holmberg suggested simplifying the final paragraph by removing the last sentence, which he argued will already be clear on the special verdict form.
 - Judge Kelly and Paul Simmons suggested the alternative of including “plaintiff” in any bracket where it lists only “other defendants” and “third parties.” This would create a more comprehensive allocation of fault. The committee agreed.
 - The committee also added “plaintiff” to the title of CV1020.
 - The committee informally approved CV1020 as amended.
- CV1021 (Product unavoidably unsafe)
 - **Tracy Fowler suggested that the committee first review CV1054 as it addresses disagreements between the subcommittee that are relevant to 1021.**
- CV1054 (Product unavoidably unsafe)
 - The committee made several changes to the language of this instruction for clarity.

- The following sentence was added after the first, bracketed sentence, and then the entire paragraph was moved to be the final sentence of the instruction:
 - “This defense does not apply to plaintiff’s separate claims that the product was improperly manufactured or contained inadequate directions or warnings.”
 - The committee decided that this final paragraph should be in brackets.
- The committee informally approved CV1054 as amended.

5. *Adjournment.*

The meeting concluded at 5:57 PM.