

MINUTES

Advisory Committee on Model Civil Jury Instructions

October 25, 2021

4:00 p.m.

Present: Ruth A. Shapiro (chair), Judge Keith A. Kelly, Stacy Haacke (staff), Gage Hansen (staff), Marianna Di Paolo, Douglas G. Mortensen, Randy Andrus, Ricky Shelton, Joel Ferre, Alyson McAllister, Adam D. Wentz (recording secretary).
Also present: Tracy Fowler

Excused: Samantha Slark, Lauren A. Shurman, Judge Kent Holmberg, Paul Simmons

1. *Welcome.*

Ruth Shapiro welcomed everyone to the meeting.

2. *Approval of Minutes.*

Ruth Shapiro asked for a motion on the June meeting minutes. Minutes unanimously approved.

3. *Timeline.*

Tracy Fowler provided background of the subcommittee's work on strict liability instructions. Suggested that we start this month with CV1060.

4. *Discussion of Product Liability Instructions.*

CV1060 (Enhanced Injury):

Marianna and Alyson expressed concern that the "over and above" language is included in both the introduction and element sections. Committee agreed that using both "increased" and "enhanced" in the introduction is also redundant. Tracy suggested that if we are to use the "over and above" language only once, it should be in the element section and not the introduction as we want the jury focused on the elements. Judge Kelly agreed. Tracy explained that defense members initially thought that the "over and above" should be used in all three places in the instruction. Plaintiff members struck it from the element section and final paragraph with no explanation.

Alyson suggested striking the second sentence of the introduction and keeping the "over and above" language in both the element section and final paragraph, but only if that language is consistent with precedent. The committee discussed at length whether the "over and above" language is consistent with precedent. Committee discussed whether the phrase from precedent "beyond that which would have resulted from other causes" is better than the "over and above the harm that would have resulted" language.

Committee suggested to remove the second sentence of the introduction. Committee suggested to revise the second element to replace the "over and above" language to "beyond the harm that would have otherwise resulted from the event." Committee suggested to revise the final paragraph as follows:

“If you find that a product defect was a substantial factor in increasing the harm [name of plaintiff] experienced, beyond the harm that would have otherwise resulted from the event, then you must apportion the harm caused by the defect and other harms caused by the event.”
Committee approved above-suggested changes.

CV10__ (Implied Indemnity - Introduction):

With regard to the indemnity-related instructions in the context of product liability, Tracy pointed out that there were a few members of the plaintiff subcommittee who did not believe these instructions should be included because indemnification issues rarely, if ever, come up in product liability. Tracy countered that it is important to be prepared for any such contingency and that relevant instructions should be available to juries when applicable.

The committee discussed whether indemnification instructions should be included elsewhere or if appropriate here in the context of product liability specifically. The committee considered the possibility of including specific introductory or committee note instructions as to when to apply indemnification instructions.

The committee concluded that it would be best to revisit these issues at a later meeting when more members of the subcommittee are present.

5. *Adjournment.*

The meeting concluded at 5:38 PM.