

Civil Jury Instructions Committee
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

February 3, 2021
3:00 to 5:00 pm
Virtual Meeting

Minutes (Approved [DATE])

MEMBER ATTENDANCE:

P = present in person; V = present virtually; A= absent.

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|---------------------------|---|-------------------|---|
| Alicia Funkhouser (Chair) | V | Daniel Torrens | V |
| Kara Klima (Secretary) | V | Hon. Kenton Jones | A |
| Rodney Ott | A | Jack Klecan | V |
| Lincoln Combs | V | David Shughart | V |
| Ben Cooper | V | Steve Kramer | V |
| Dominic Gomez | V | Sara Regan | V |
| Richard Langerman | V | Hon. Pamela Gates | V |
| Patrick Lopez | V | | |
| Hon Scott McCoy | A | | |
| Hon. Roger Brodman | V | | |
| Nate Meyer | V | | |
| | | | |

OTHER ATTENDEES:

None

State Bar Staff: Iona Kukan

Minutes taken by Kara Klima

I. CALL TO ORDER

Called to Order by Alicia Funkhouser

Time: 3:05p.m.

II. AGENDA ITEMS

1. Damages Subcommittee Report: Two versions of a Proposed Comment to RAJI Personal Injury Damages 1 were presented to the full Committee. After discussion, Judge Gates proposed a third version of the comment, and additional modifications to Version 3 were proposed by Ben Cooper and PJ Lopez. The subcommittee will draft two versions of Version 3, one utilizing bracketed language and one without, within the full instruction and present them to the full committee at the next meeting.

The next Damages Subcommittee meeting is set for February 16 at 2:00 p.m.

2. Vicarious Liability Subcommittee Report: PJ Lopez reported that the subcommittee is still working through revisions to the instructions, and while drafts are being circulated, it does not yet have anything to provide to the full Committee.

The next Vicarious Liability subcommittee meeting is set for February 17 at 2:00 p.m.

3. Employment Law Instructions Subcommittee Report: No report.

4. Bad Faith Instructions Subcommittee Report: Bad Faith 3: The central issue in this instruction is how best to capture the second/subjective element of the instruction. The current language of the instruction is “failed to perform an investigation or evaluation adequate to determine whether its actions was supported by a reasonable basis.” Part of the subcommittee has suggested revising it to use the phrase “recklessly disregard,” arguing that “failing to perform an investigation or evaluation adequate to determine” was too fact-specific and too close to a negligence standard. After discussion, it was decided that the subcommittee would continue to revise the instruction to include both the current language and the “reckless disregard” phrasing in the proposed instruction.

Discussion of the “fairly debatable” language revision was tabled until the next meeting.

The next Bad Faith Instructions Subcommittee meeting is set for February 24 at 2:00 p.m.

5. Any Other Business

- a. Invasion of Privacy instructions: Richard Langerman reported that the Court of Appeals has issued two new opinions regarding this instruction and suggested that these cases be incorporated into source and/or comment material.
- b. Punitive Damages instruction: Alicia Funkhouser reported the Court of Appeals case that directly addresses the RAJI is still pending.
- c. Personal Injury Admitted Fault instructions: Steve Kramer will modify these jury instructions once the Committee has determined the final version of the Damages instruction.
- d. Ben Cooper reported that he has had a request for the Committee to draft a Statute of Limitations instruction.

Agenda Items Not Reached: N/A.

CALL TO THE PUBLIC

Individuals addressing the Board. None present.

Meeting adjourned by: Motion to adjourn by Alicia Funkhouser. Seconded by Ben Cooper. Motion carried. Alicia Funkhouser adjourned meeting at 4:52 p.m.

Next Meeting: March 3, 2021 at 3:00 p.m.