

**Civil Jury Instructions Committee**

State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016

October 7, 2020  
3:00 to 5:00 pm  
Virtual Meeting

**Minutes (Approved (date))**

**MEMBER ATTENDANCE:**

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

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

**I. Call to Order**

Steve Kramer chaired the committee because Chair, Alicia Funkhouser, was unable to attend. Steve called the meeting to order and asked for members of the public to announce their presence. No members of the public were present.

**II. Approval of Minutes from September 2, 2020 meeting.**

Richard Langerman noted several inaccuracies in the minutes from the September 2, 2020 meeting. A discussion was held. A motion was made by P.J. Lopez to adopt the minutes as amended in the discussion. The motion was seconded and approved. The changes as adopted:

Richard Langerman noted that the Introduction is a long comment that is used only by lawyers and judges. The last paragraph of the Introduction concerns the ~~insurer's~~ insured's breach of the duty of good faith and fair dealing.

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Ben Cooper spoke regarding Bad Faith 3. The word “intentionally” was removed, and intentionality is dealt with specifically in Bad Faith 4.

Ben stated that “recklessly disregarded” was introduced in the 2013 version and what is before the Committee now went to public comment. This change was made to the instruction because it was felt that The ~~new proposed~~ language ~~in the Noble case is from the Noble case and~~ best established the elements the Supreme Court used in *Deese* and *Zilisch*.

Ben further stated that proposed Bad Faith 3 ~~contains a~~ includes a revision to the comment on “Fair Debatability” because ~~there is no instruction for fair debatability.~~

Richard Langerman stated that the 2015 proposed changes inserted “reckless disregard” and that this ~~was an intentional decision to insert words that had been omitted in 1991~~ phrase was intentionally omitted in the existing instructions. There were 16 public comments regarding objecting to this phrase. While ~~this~~ the existing instruction is not quite the exact language of Rawlings, there has been no appellate objection to the ~~original~~ existing formulation. The question is which phrasing would be more helpful to a jury.

### **III. Agenda Items.**

#### **1. Update from Vicarious Liability Subcommittee.**

Chair, P.J. Lopez, reported on the work of the Vicarious Liability Subcommittee. P.J. reported that the subcommittee met and reviewed the *Engler* case in which the Arizona Supreme Court adopted Restatement (3<sup>rd</sup>) of Agency §7.07. The subcommittee concluded that the Respondeat Superior Liability Instruction would be ready for consideration by the full Committee.

#### **2. Update Regarding Employment Instructions.**

Judge Brodman reported that the state bar Employment Law Section is working on instructions for employment cases. The Employment Law Section has started work on instructions for minimum wage claims.

#### **3. Update from Bad Faith Subcommittee.**

Chair, Ben Cooper, reported on the work of the Bad Faith Subcommittee. Ben reported that a scheduled subcommittee meeting was cancelled due to a last-minute conflict.

#### **4. Report from Damages Subcommittee.**

Chair, Richard Langerman, reported on the work of the Damages Subcommittee. Richard reported that the subcommittee had reviewed the history and case law regarding the medical expense element of Personal Injury Damages No. 1. The subcommittee reported that no legal precedent could be identified for the existing language of the instruction which states that one element of an injury plaintiff’s damages is “the reasonable expenses of necessary medical care.” Some members of the subcommittee objected to any change to the language of the instruction.

A lengthy discussion ensued. There was a general consensus that the RAJI instructions must be based on existing precedent as expressed in a published opinion from an Arizona appellate court.

There was also a consensus that the subcommittee should continue its work on the instruction and present a proposal to the full committee. The committee discussion did not reach any conclusion regarding the merits of any change to the instruction and no vote was taken regarding whether any revision to the instruction is necessary or appropriate.

**5. Other Business.**

Acting chair, Steve Kramer, inquired whether there was any other business to be discussed. There being none, a motion to dismiss was approved.