



Jury Instructions and Conferences

What's the Point

- Accurately inform the jury of the governing law?
- Tell the jury how to find in favor of your client?



The Basics

Colorado Rules of Civil Procedure

- Rule 51 – Tender Jury Instructions
- Rule 16 – 7 days Prior to Trial
 - Stipulated
 - Challenged with “a brief statement of the legal authority” that supports the giving of the instruction or verdict form



Rule 51.1

- (1) In instructing the jury in a civil case, the court shall use such instructions as are contained in Colorado Jury Instruction (CJI) as are applicable to the evidence and the prevailing law.
- (2) In cases in which there are no CJI instructions on the subject, or in which the factual situation or changes in the law warrant a departure from the CJI instructions, the court shall instruct the jury as to the prevailing law applicable to the evidence in a manner which is clear, unambiguous, impartial and free from argument, using CJI instructions as models as to the form so far as possible.

Early Use of Jury Instructions

- Claims
- Defenses
- Written Discovery
- Depositions
- Motions practice
- How will it work practically – think early and communicate with opponent
 - Example offsets for partial payments, underlying settlement in UIM



Does My Client Have a Right to the Jury Instruction?

- Does the instruction clearly and accurately state the law?
- Is the instruction supported by competent evidence?



Pattern Instructions (general case law)

- The mere existence of a Pattern Jury Instruction does not mean it states the law accurately.
- Pattern Jury Instructions are not law, not authoritative, and are not binding on the Court.



Burden of Proof

- Are there multiple burdens of proof instructions?
- Can this be a basis to negotiate settlement of some claims to avoid confusion?
 - Examples – punitive damages, loss of consortium

Think Outside the Box

- Criminal Instructions define words that are undefined in CJI
 - i.e. willful
- Other states' instructions may be useful
- Federal instructions crafted individually by judges may be useful



Non-Pattern Instructions (case law)

- Other sets of instructions that have been given in similar cases?
- Is there a gap in the CJI?
- The Court disfavors Jury Instructions emphasizing specific evidence – helpful citation to get rid of plaintiff’s proposed instructions (including physical impairment).

The trial court “has no duty to select all the salient points in the evidence, favorable and unfavorable, and specifically call them to the attention of jurors.” These result in confusion and directives regarding evidentiary weight which are not the purpose of Jury Instructions. *Lowe v. People*, 76 Colo. 603, 615, 234 P. 169, 174 (1925).

Physical Impairment

- Undefined in CJI for good reason
- Strategy to defeat plaintiff's proposed definition – submit some different ones and argue to the court this is a matter of argument and the law does not define it for a reason.
- Find some case law definitions of physical impairment and look at WC
- What if company representative or employee agreed to definition – does not make it the law.

UIM/Breach of Contract

- Personal Injury Instructions vs. Breach of Contract Instructions
- Dealing with offsets (underlying settlements)
 - Jury
 - Judge
 - How's it going to work?

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An insurance company that unreasonably delays or denies benefits is subject to a penalty.

- That's why we're here!
- Comparable to telling the jury the effect of a finding of comparative fault.
- Part of the theory of the case – it's a setup!

Nonparty at fault vs. Multiple incidents

- Nonparty at fault is for fault split amongst different parties in same incident
- Aggravation of pre-existing injury and Subsequent injury for multiple incidents causing same injuries



Theory of the Case Instructions (case law)

- A civil litigant is entitled to a jury instruction on her theory of the case as long as she has offered evidence to support the theory. Yet the trial court need not offer the litigant's tendered instructions if the other instructions encompass the litigant's theory.

Hansen v. State Farm Mut. Auto. Ins. Co., 957 P.2d 1380, 1384 (Colo. 1998)

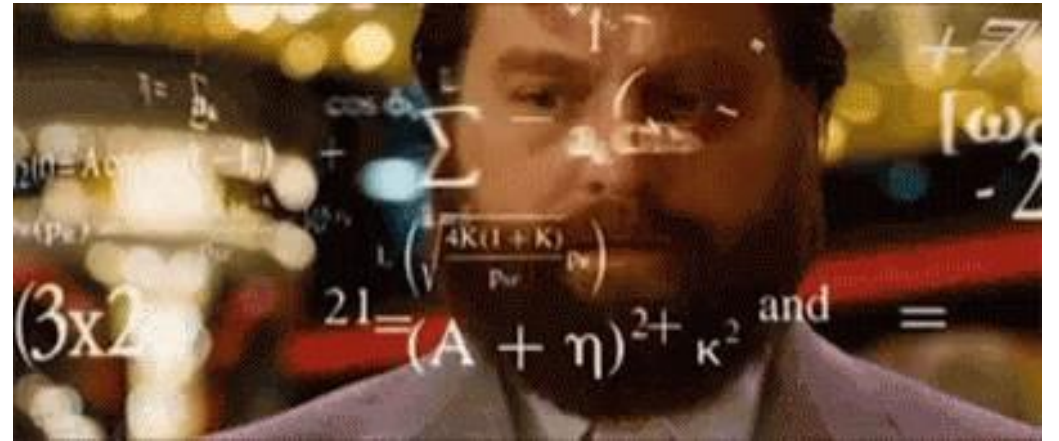
Example from Jury Instruction Conference Involving Subsequent Injury

Verdict Forms – a game of numbers

- How many numbers can I eliminate?

vs.

- How many numbers can my opponent add?
- Start with a question that allows jury to walk away with one answer
- Watch for an incorrect conclusion being conveyed to jury in verdict form
 - Example from UIM BF case



Preparation for Trial

- Stipulation (why or why not?)
- Objections
- Preparation of instructions that might be needed
 - Incorrect version by opposing party – do you need a correct one?
 - Alternate theories
 - Example: Causation versus Mitigation

Conference

- Judge research
- CJI books
- Control – who is the expert in the room – YOU ARE!
- Attitude – to get it right for the jury and avoid error
 - Provide examples of how certain instructions and/or verdict forms led to confusion
- Take your time
- Red rope for repeat counsel or repeat types of cases
 - Example red rope for certain bad faith counsel who used to be part of this group
- WL at your fingertips
- Do not be afraid to ask the Court or Clerk for something they probably have on hand

Tips and Tricks

- Brand new judge, first civil jury trial
- Experienced judge, I've seen this case a thousand times



Making a Formal Record



- Anything and everything
- Waiver – the contemporaneous objection rule

Reading the Instructions

- Before or After Closing Argument?
- Listen!
- If there is a problem, ask to approach
- Waiver



Questions & Comments



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