

New jury instructions may help unravel contract disputes

By Robert Ankeny

New rules in the works will make it easier for Michigan judges and juries to sort out contract disputes between businesses, lawyers say.

Unlike past practices when judges and juries weighed implicit meanings of a contract and inserted terms based on what a party probably meant, new model instructions will tell juries to rely only on what is written.

"Businesspeople usually want to get deals done, and in the heat of the moment, they aren't too particular or concerned about all the nuances. They put together deals without counsel, or sometimes yelling at the lawyers, saying they believe the legal tail should not wag the business dog," said Steven Susser, partner and attorney with Young and Susser P.C. in Southfield.

Fearful of ruining a deal over the phrasing of an arbitration clause, or by not paying attention to such details, they later wind up wanting a jury to clear up mistakes, he said.

Susser is a litigator, but he admits that many contract disputes could be headed off by using care, caution and more patience in drafting agreements.

Diane Akers, a litigation attorney at Detroit-based Bodman L.L.P., said that during her nearly 20 years of practice, she was surprised that Michigan did not have standard jury instructions on contracts, even though the state has them on other civil matters.

But, Akers said, the proposed instructions may not be much help in large cases.

"People want to write their own instructions, to be more tailored to the facts of their case and the nature of their dispute."

Still, in smaller cases it may be more cost-effective for lawyers to refer to the model jury instructions, at least as a place to start.

Having lawyers insist on detail, specificity and completeness in contracts still is the best answer to avoid disputes, she said.

Marta Manildi of Detroit-based Miller, Canfield, Paddock and Stone plc, said Michigan law does not allow a party to offer testimony that contradicts plain, unambiguous language.

"Only where things are ambiguous will the dispute go to a jury," she said. "The terms of a contract that are plain and unambiguous will be enforced according to what they say."

The model rules also could reach into federal court, Manildi said.

"Federal courts look to state law to govern tort cases, they look to decisions and Michigan rules to what state law is on contracts," she said. Sometimes the contracts specify what state law governs.

Wayne County Circuit Judge William Giovan, chair of the Michigan Supreme Court's committee on model civil jury instructions, said interpretation of contracts has been more of an issue during appeals than during trials.

"In trials, the law is still that where there is plain and unambiguous language, it doesn't need interpretation," he said. But contracts are not always plain and unambiguous.

"If the judge decides the contract is ambiguous, then it does become a question of fact on what parties meant," Giovan said. "Also there's a rule, even in an ambiguous contract, that interpretation of contract writings should be construed against the person who drafted it." He said this often occurs in insurance policies, where ambiguous language is interpreted in favor of policy holders.

Once the committee has considered comments and suggestions from lawyers and judges, it can adopt the model instructions.