

IN THE SUPREME COURT OF FLORIDA
SC09-1264

In Re Standard Jury Instructions (Civil)
Products Liability Instructions

Committee Report No. 09-10

COMMENTS TO PROPOSAL NUMBERS 8, 10, 11, 12, and 19

These comments are submitted by undersigned counsel, W.L. Kirk.

I. PROPOSAL NO. 8 – ELIMINATE STANDARD INSTRUCTIONS PL4, PL5, PL5 NOTES ON USE AND COMMENT, AND ADD INSTRUCTION 403.7, STRICT LIABILITY

It is amazing how, after years of thoughtful work and input by the American Law Institute, the Restatement Third can be totally ignored. The Restatement Third makes it clear that manufacturing and design claims are to be viewed separately. In fact, it makes it clear that the Restatement Second never intended for consumer expectations to apply to a design case. How can risk/utility test devolve to an affirmative defense from being at the pinnacle of design defect cases? It is just absurd.

II. PROPOSAL NOS. 10 and 11 – INSTRUCTION 403.9, NEGLIGENCE and INSTRUCTION 403.10, NEGLIGENT FAILURE TO WARN (new)

If there is no defect, how can there be a negligent failure to warn?

III. PROPOSAL NO. 12 – NOTES ON USE FOR INSTRUCTION 403.11, INFERENCE OF PRODUCT DEFECT OR NEGLIGENCE

And why shouldn't there be instruction on compliance with governmental standards?

IV. PROPOSAL NO. 19 – INSTRUCTION 403.18, DEFENSE ISSUE (new)

Again, how can risk utility evolve into an affirmative defense?

¹⁶⁴¹⁵⁵⁰ This abomination is what happens when one of our bar committees gets hijacked. This is going in the opposite direction of the way jury instructions should be going. The recent case out

of the First District Court of Appeal acknowledges, as it should, that the Restatement Third prevails, and that is what the Supreme Court should itself adopt.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by Federal Express Delivery to: Committee on Standard Jury Instructions in Civil Cases Chair, Tracy Raffles Gunn, Gunn Appellate Practice, P.A., 777 S. Harbour Island Blvd., Suite 770, Tampa, FL 33602, this 28th day of February, 2010.

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