

The Committee on Standard Jury Instructions in Civil Cases (Committee) has submitted its report proposing both new and revised civil jury instructions to be used in product liability actions. In re Standard Jury Instructions in Civil Cases – Report No. 09-10 (Products Liability), Case No. SC09-1264. The Committee’s proposals also include its new numbering system for standard civil jury instructions under the reorganization project, the subject of pending Case No. SC09-284, In re Standard Jury Instructions in Civil Cases – Report No. 09-01 (Reorganization of the Civil Jury Instructions). The Committee published the proposed product liability instructions for public comment in the December 15, 2008, edition of The Florida Bar News. Upon initial review, the Court has identified specific proposals that require further discussion, as identified below.

Accordingly, the Court invites all interested persons to comment on the proposed product liability standard jury instructions identified below, which are available in full online at

<http://www.floridasupremecourt.org/decisions/proposed.shtml#jurycivil>.

An original and nine paper copies of all comments must be filed with the Court on or before February 1, 2010, with a certificate of service verifying that a copy has been served on the Committee on Standard Jury Instructions in Civil Cases Chair, Tracy Raffles Gunn, Gunn Appellate Practice P.A., 400 North Ashley Drive Suite 2055, Tampa, FL 33602. A separate request for oral argument should also be filed if the person filing the comment wishes to participate in oral argument, which will be scheduled in this case at a later date and also limited to the proposed instructions identified below. The Committee has until February 22, 2010, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court’s administrative order in In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

For ease of reference, the specific proposals have been numbered. Comments filed with the Court should include the designated proposal number as indicated below.

Proposal #8 – Eliminate standard instructions PL4, PL5, PL5 Notes On Use and Comment, and add instruction 403.7, Strict Liability

Comments are sought including, but not limited to: (1) whether the proposal merges multiple theories of liability that are different; (2) whether the proposal addresses or should address the issue of foreseeable bystanders; (3) whether the Notes on Use to the instruction should comment on risk/benefit analysis; and (4) whether

the proposal should address the distinction between strict liability and negligence

Proposal #10 –instruction 403.9, Negligence

Comments are sought including, but not limited to: (1) whether the wording of the instruction should include reference to “defective product” with “evidence of negligence”; and (2) whether Notes on Use 1 regarding “dangerous product” is supported by the decisional law upon which the proposal is based

Proposal #11 –instruction 403.10, Negligent Failure to Warn (new)

Comments are sought including, but not limited to: (1) whether the decisional law requires that the instruction include a reference to a “defective product”

Proposal #12 –Notes on Use for instruction 403.11, Interference of Product Defect or Negligence

Comments are sought including, but not limited to: (1) whether a full instruction under 403.11 should be included in light of section 768.1256, Florida Statutes

Proposal #13 –instruction 403.16, Issues on Crashworthiness and “Enhanced Injury” Claim (new)

Comments are sought including, but not limited to: (1) whether the proposal fully and accurately conforms with the principle of law established in D’Amario v. Ford Motor Co., 806 So. 2d 424 (Fla. 2001)

Proposal #19 –instruction 403.18, Defense Issues (new):

Comments are sought pertaining to: (1) the elements and wording of all defensive issues

Proposal #21 – Eliminating Model Charge Nos. 7 and 8 and adding Model Instruction No. 7 and Special Verdict Form:

Comments are sought pertaining to: (1) all aspects of these proposed modifications