

PENNSYLVANIA DEFENSE INSTITUTE (PDI)
PRESS RELEASE – FOR IMMEDIATE DISSEMINATION
February 19, 2018

On Friday, February 16, 2018, the Superior Court in Tincher v. Omega Flex, Inc., ___ A.3d ___, No. 1285 EDA 2016 (Pa. Super. Feb. 16, 2018) (“Tincher II”), unanimously held that it is fundamental error in a strict product liability case to use an “Azzarello” jury charge that employs the now-overruled “any element” defect test and that tells the jury the defendant was the “guarantor” of product safety.

Like the Superior Court, the Pennsylvania Defense Institute believes that, after Tincher I, it is obvious that giving the Azzarello charge constitutes reversible error. For undisclosed reasons, however, the Pennsylvania Bar Institute retained most of the Azzarello language and omitted the “unreasonably dangerous” defect principle that was central to Tincher I when it published updated Suggested Standard Civil Jury Instructions (“SSJI”). As did the trial court in Tincher II, the Pennsylvania Bar Institute’s SSJI simply “undervalues the importance of the Supreme Court’s decision” in Tincher I.

For that reason, PDI (with the help of a panel of some of the most experienced and knowledgeable product liability practitioners in the state) has developed alternative suggested jury instructions that faithfully follow Tincher I. Tincher II reinforces that PDI’s alternative suggested jury instructions are well grounded and should be utilized by courts and practitioners in product liability trials in this Commonwealth.

PDI’s alternative suggested jury instructions are available from PDI by making your request for a copy of the instructions at: Pennsylvania Defense Institute, P.O. Box 6099, Harrisburg, PA 17112 or via email to cwasilefski@padefense.org or lgamby@padefense.org .

Pennsylvania Defense Institute
Scott Millhouse, President