### IDJI 10.01.5 - Defense of “reasonable care” inapplicable

INSTRUCTION NO. \_\_\_\_\_

 The exception to the duty to inspect on the part of a seller other than the manufacturer does not apply if the plaintiff proves one, or more, of the following:

1. The defendant knew or should have known that the product was defective;
2. The defendant altered, modified, or installed the product, and such alteration, modification or installation was (a) not authorized or requested by the manufacturer, [“or” see note.] (b) was not performed in compliance with the manufacturer’s directions or specifications, and (c) that such alteration or installation was a proximate cause of the incident giving rise to the injuries or damage.
3. The defendant designed the product, or provided the design of the product to the manufacturer, and that the design of the product was a proximate cause of the plaintiff’s injuries [damages]; or
4. The defendant expressly represented to the plaintiff that he had, in fact, inspected the product.

Comments:

Idaho Code §6-1407(1). This statute connects two conditions of element 2 above, that the alteration, modification or installation was not authorized by the manufacturer and that it was not in accordance with specifications, with the conjunction “and”. The Committee observes that the conjunctive “and” should perhaps be the disjunctive “or” for logical symmetry.