

502 So.2d 1378, 12 Fla. L. Weekly 695
(Cite as: 502 So.2d 1378)

District Court of Appeal of Florida,
Fourth District.

R.G. INDUSTRIES, INC., Petitioner,
v.

Honorable James B. BALSIGER, as Acting Circuit
Court Judge, Respondent.
No. 4-86-2906.

March 4, 1987.

Defendant in a wrongful death, products liability action unsuccessfully sought protective order when personal representative sought discovery from it in the separate estate proceeding, and filed petition for writ of prohibition. The District Court of Appeal, treating petition as petition for certiorari, held that discovery in the wrongful death, products liability suit was not relevant, and could not be had, in the estate proceeding.

Certiorari granted.

West Headnotes

Pretrial Procedure 307A 31

[307A](#) Pretrial Procedure

[307AII](#) Depositions and Discovery

[307AII\(A\)](#) Discovery in General

[307Ak31](#) k. Relevancy and Materiality.

[Most Cited Cases](#)

Discovery in wrongful death, products liability suit was not relevant, and could not be had, in separate estate proceeding. [West's F.S.A. RCP Rule 1.280\(b\)\(1\)](#).

***1378** Gregory W. Hootman of Dickinson, O'Riorden, Gibbons, Quale, Shields & Carlton, P.A., Sarasota, for petitioner.

Clifford M. Miller of Miller & Miller, Vero Beach, for personal representative of the estate of Jack O. Beck.

PER CURIAM.

We treat this petition for writ of prohibition as a peti-

tion for certiorari. [Fla.R.App.P. 9.040\(c\)](#).

Jack Beck was killed by the accidental discharge of a handgun. Two proceedings resulted:

***1379** 1. A petition for the administration of his estate was filed in Indian River County in December, 1985.

2. In November 1986, the personal representative filed a wrongful death/products liability action against the handgun manufacturer, R.G. Industries, Inc., in Brevard County.

Before the wrongful death action was filed the personal representative sought discovery in the estate proceeding from R.G. Industries, which discovery could only be relevant to the wrongful death claim. R.G. Industries unsuccessfully sought a protective order and it now seeks review here. ^{FN1}

^{FN1} We think that this controversy may well be moot inasmuch as the personal representative has now filed the wrongful death suit accompanied by fulsome discovery efforts.

The simple answer to the instant question is found in [Florida Rule of Civil Procedure 1.280\(b\)\(1\)](#):

Parties may obtain discovery regarding any matter, not privileged, *that is relevant to the subject matter of the pending action*, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things.... [Emphasis added.]

Since R.G. Industries, Inc. is not a party to the estate proceeding and since the wrongful death/products liability action and its issues can not be litigated in the estate proceeding, we hold that discovery in the wrongful death/products liability suit is not relevant and can not be had in the estate proceeding.

We grant certiorari and remand with instructions to grant protection to R.G. Industries, Inc. from the dis-

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covery and efforts made by the personal representative
in the estate proceeding.

Certiorari granted.

HERSEY, C.J., and LETTS and WALDEN, JJ.,
concur.

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