**416.46 PROMISSORY ESTOPPEL**

**A party who has not entered a contract to do something, but who has promised to do something, sometimes has a legal obligation to fulfill the promise, but only when specific conditions are met. This is sometimes called “promissory estoppel.” To recover damages from** (defendant) **for promissory estoppel,** (claimant) **must prove all of the following:**

**1.** (Defendant) **promised to [describe subject matter of alleged promise];**

**2.** (Defendant) **should have expected the promise to change** (claimant)**’s behavior;**

**3. In reliance on** (defendant)**’s promise,** (claimant) **changed [his] [her] [its] behavior; and**

**4. Injustice can be avoided only if the promise is enforced.**

**To “change behavior” means to do something of significance that the person otherwise would not have done, or to refrain from doing something of significance that the person otherwise would have done.**

**A claim of this kind must be proved by clear and convincing evidence, not just by the greater weight of the evidence. Your verdict will be for** (claimant) **on this claim only if you find by clear and convincing evidence each of the elements that I just described to you.**

**NOTES ON USE FOR 416.46**

1. The definition of the clear and convincing evidence standard is set forth in Standard Jury Instruction—Civil 405.4.

2. No Florida court has directly decided the issue of whether the court or a jury should decide the issues related to a promissory estoppel claim; however, there are several Florida appellate decisions that have indicated that it is appropriate to submit such a claim to a jury. See, *e.g*., *Sunshine Bottling Co. v. Tropicana Prods. Inc*., 757 So. 2d 1231, 1232 (Fla. 3d DCA 2000) (concluding that trial court erred in entering a judgment notwithstanding the verdict and reversing and remanding for reinstatement of the jury’s award on the promissory estoppel claim); *W.R. Townsend Contracting, Inc. v. Jensen Civil Constr., Inc*., 728 So. 2d 297, 306 (Fla. 1st DCA 1999) (reversing order dismissing promissory estoppel claim and remanding with instructions for a jury trial).

**SOURCES AND AUTHORITIES FOR 416.46**

1. The Florida Supreme Court recognized the existence of an affirmative cause of action for promissory estoppel in *W.R. Grace & Co. v. Geodata Servs., Inc*., 547 So. 2d 919 (Fla. 1989). The Court held that the doctrine applies “where the promise is definite, of a substantial nature, and established by clear and convincing evidence.” *Id*. at 920. The Court further stated that “[t]he basic elements of promissory estoppel are set forth in Restatement (Second) of Contracts sec. 90 (1979),” and quoted the following from the Restatement: “A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promise or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.” *Id*. at 924. But see*,* *State, Dep’t of Health and Rehabilitative Servs. v. Law Offices of Donald W. Belveal*, 663 So. 2d 650, 652 (Fla. 2d DCA 1995) (“The law of this state recognizes that the theory of promissory estoppel applies to the sovereign only under exceptional circumstances.”).

2. In *Doe v. Univision Television Grp., Inc*., 717 So. 2d 63, 65 (Fla. 3d DCA 1998), the court held that “the doctrine of promissory estoppel comes into play where the requisites of contract are not met, yet the promise should be enforced to avoid injustice.”

3. A cause of action for promissory estoppel is not available where the claim would be barred by the statute of frauds. *Coral Reef Drive Land Dev., LLC v. Duke Realty Ltd. P’ship*, 45 So. 3d 897, 906 n. 8 (Cope, J., dissenting), citing *Tannenbaum v. Biscayne Osteopathic Hosp., Inc*., 190 So. 2d 777, 779 (Fla. 1966).