**03.03D NEGLIGENCE DEFINED – COMMON CARRIER**

The defendant is a common carrier. As a common carrier, the defendant owes a duty of utmost care and the vigilance of a very cautious person toward its passengers. A common carrier is responsible for any, even the slightest negligence, and is required to do all that human care, vigilance, and foresight reasonably can do under all the circumstances. Failure on the part of a common carrier to meet this standard of care is negligence.

In this case, you must decide whether the defendant exercised the level of care required of a common carrier under the circumstances.

Directions for Use

If the court determines that the defendant is a common carrier, this instruction must be given instead of the general negligence instruction (Instruction 3.03A). *See Widmyer v. Southeast Skyways, Inc*., 584 P.2d 1 (Alaska 1978)(failure to give a common carrier instruction upon the plaintiff's request constituted plain error); *Barrett v. ERA Aviation, Inc*., 996 P.2d 101 (Alaska 2000)(error to give both the general negligence instruction and an instruction on the higher standard of care applicable to common carriers).

Comment

This instruction is based on the instruction proposed by the plaintiffs in *Widmyer v. Southeast Skyways, Inc.*, 584 P.2d 1 (Alaska 1978). The supreme court noted that the proposed instruction was in accord with pre-statehood Alaska law. *Id*. at 6 n.14. A substantially similar instruction was given in *Barrett v. ERA Aviation, Inc*., 996 P.2d 101 (Alaska 2000). Although the court approved the giving of a common carrier instruction, it did not comment on the language of the instruction.