**06.02 LANDOWNER LIABILITY ­­­- ELEMENTS WHEN THE LANDOWNER’S LIABILITY IS LIMITED BY AS 09.65.200 (LIABILITY FOR INJURIES OCCURRING ON UNIMPROVED LAND)**

Plaintiff claims that [he][she] was harmed because of the defendant’s failure to follow the standard of conduct that governs owners of land. In order to find in favor of the plaintiff on this claim, you must decide that each of the following elements is more likely true than not true:

1. The defendant failed to guard against unreasonable risks created by a dangerous condition on the property.

2. The defendant’s failure constituted gross negligence, reckless misconduct, or intentional misconduct. This element is not established if the defendant engaged in conduct that constituted only ordinary negligence. In a moment, I will explain each of these terms.

3. The plaintiff was harmed; and

4. The defendant’s failure was a substantial factor in causing the plaintiff’s harm.

Ordinary negligence is the failure to use reasonable care, which is the amount of care that a reasonably careful person would use in the same situation.

Gross negligence is an extreme departure from the amount of care that a reasonably careful person would use in the same situation. Gross negligence means more than ordinary inadvertence or inattention.

Reckless misconduct occurs when a person consciously disregards a substantial and unjustifiable risk. Disregard of this risk must be a gross deviation from the way that a reasonable person would act.

Intentional misconduct is when a person acts, or fails to act, with the purpose of harming another person, or knowing that [his] [her] act or failure to act was substantially certain to harm that person.

**Use Note**

Instructions 6.02 and 3.07 (Substantial Factor) should be given when the plaintiff claims an injury on unimproved land, and it is undisputed (or the court has ruled) that the defendant qualifies for limited liability under AS 09.65.200.

If one or more elements of the limited liability defense are disputed, do not use Instruction 6.02. Instead, the jury must be instructed on the required elements using Instructions 6.03 and Instruction 3.07.

**Comment**

AS 09.65.200 limits the tort liability of owners of unimproved land.

Limited liability for owners of unimproved land requires proof of three elements: 1) the accident site is “unimproved land”; 2) the injury occurred because of a natural condition, or during recreational activity; and 3) plaintiff had no legal responsibility to pay defendant for occupancy or use of the property. If these three elements are established, the owner is liable only for damages caused by its gross negligence, reckless misconduct, or intentional misconduct.