**23.10 LIABILITY OF PRINCIPAL – AGENT WITH ACTUAL AUTHORITY**

The plaintiff claims that the defendant is legally responsible for the conduct of [alleged agent]. The defendant denies that [he][she][it] is legally responsible for [alleged agent]’s conduct.

In order to find that the defendant is legally responsible for [alleged agent]’s conduct, you must find that each of the following is more likely true than not true:

(1) by words or conduct, [the defendant] authorized [alleged agent] to act on the defendant’s behalf, subject to [his][her][its] control;

(2) by words or conduct, [alleged agent] agreed to do so; and

(3) [alleged agent’s] conduct was within the scope of what the defendant authorized [alleged agent] to do.

To determine if [alleged agent]’s conduct was within the scope of what the defendant authorized [alleged agent] to do, you must consider the following factors:

(1) whether the defendant expressly authorized [alleged agent]’s conduct, or [alleged agent]’s conduct was similar to conduct that the defendant authorized, or [alleged agent]’s conduct was not a remote or improbable occurrence in connection with authorized conduct;

(2) whether [alleged agent]’s conduct occurred substantially within the time and place authorized by the defendant; and

(3) whether [alleged agent]’s conduct was motivated, at least in part, by an intent to serve the defendant.

The presence of a factor suggests that [alleged agent]’s conduct was within the scope of what the defendant authorized [alleged agent] to do. On the other hand, the absence of a factor suggests that [alleged agent]’s conduct was not within the scope of what the defendant authorized [him] [her] [it] to do.

In evaluating the factors, you may consider the following facts:

● the time, place and purpose of [alleged agent]’s conduct;

* any previous situations that involve the defendant’s authorization to [alleged agent];
* whether [alleged agent]’s conduct was outside the defendant’s area of business activity;
* whether the defendant had reason to expect that [alleged agent] would engage in the conduct;
* the similarity of [alleged agent]’s conduct to any conduct that the defendant expressly authorized;
* whether the defendant supplied any equipment or tools that [alleged agent] used when engaging in the conduct;
* whether [alleged agent] departed from the normal method of accomplishing an authorized result; and
* whether the [alleged agent]’s conduct involved a serious crime.

**Use Note**

This instruction should be given when plaintiff claims that defendant is liable based on the conduct of an agent acting within the scope of the agent’s actual authority. In situations involving apparent authority, Instruction 23.08 should be given instead of this Instruction.

**Comment**

Existence of an principal/agency relationship requires proof that the principal has manifested to the agent (through words or conduct) that the agent may act on behalf of the principal, and proof that the agent has agreed to do so. *Harris v. Keys*, 948 P.2d 460, 464 (Alaska 1997); *Bruton v. Automatic Welding & Supply Corp.*, 513 P.2d 1122, 1126 (Alaska 1973). The concept that the agent acts on the principal’s behalf means that the principal has the right to control the conduct of the agent with respect to matters that are entrusted to the agent. *Harris*, 948 P.2d at 465; *Manes v. Coats*, 941 P.2d 120, 124 (Alaska 1997); *Nicholas v. Moore*, 570 P.2d 174, 176 (Alaska 1977). *See also* Restatement (Third) of Agency § 1.01 (principal/agency relationship requires mutual assent that agent will act on principal’s behalf, and subject to principal’s control).

A principal is liable for the conduct of an agent within the scope of the agent’s authority. Restatement (Third) of Agency § 7.04; Restatement (Second) of Agency § 212. Actual authority is created by words or conduct by a principal which, reasonably interpreted, cause the agent to believe that the principal wants the agent to act on the principal’s behalf. *Anderson v. PPCT Management Systems, Inc.*, 145 P.3d 503, 508 (Alaska 2006) (following Restatement (Second) of Agency § 26). *See also* Restatement (Third ) of Agency § 2.01.

With respect to the factors that determine whether an agent’s conduct was within the course and scope of the agent’s employment, see the Comment to Instruction 23.02.