**21.03 NEGLIGENT BAILMENT – SUBSTANTIAL FACTOR**

Negligence is a substantial factor in causing [damage to] [loss of] the [bailed property] if:

(1) the [damage] [loss] would not have occurred without the negligence; and

(2) the negligence was important enough in causing the [damage to] [loss] of the [bailed property] that a reasonable person would hold the negligent person responsible. The negligence cannot be a remote or trivial factor.

[Number (1) does not apply if two events operated to cause the [damage][loss], one because of the defendant’s negligence and the other not, and each event by itself was sufficient to cause the [damage][loss].]

**Use Note**

Instruction 21.3 should be given in a negligent bailment case when the defendant’s response to the plaintiff’s prima facie case includes a defense that the damage or loss to the bailed property was beyond the defendant’s control and the defendant used due care to protect the bailed property.

This is the general causation instruction for negligent bailment cases. It includes both fact and legal cause. The bracketed language should be given if two or more forces are claimed to have operated to bring about the injury, and each of them operating alone is sufficient to cause the injury.

If there is evidence of multiple causes, Negligence Instruction 3.08 (Multiple Causes) should also be given. If there is evidence of superseding cause, Negligence Instruction 3.09 (Superseding Cause) should be given. These instructions may need to be modified to use terminology consistent with a negligent bailment case.

**Comment**

This instruction is based on Negligence Instruction 3.07 (Substantial Factor) and Alaska case law.

If the defendant in a negligent bailment case puts on evidence that the damage to or loss of the bailed property was beyond his or her control and evidence allowing an inference of reasonable care, the plaintiff must meet the elements of a negligence case. *See, e.g*., *Coster v. Piekarski*, 3 P.3d 333, 334 (Alaska 2000); *Silvers v. Silvers*, 999 P.2d 786, 793 (Alaska 2000). Instruction 21.03 would be given in that case. If the defendant does not make such a showing, the plaintiff can rely on its prima facie case of negligent bailment, which requires only that the plaintiff show there was a bailment and that the bailed property was damaged or lost. *See, e.g*., *Coster,* 3 P.3d at 334; *State v. Stanley*, 506 P.2d 1284, 1288-89 (Alaska 1973). In the latter case, Instruction 21.03 would not be given.