**23.05 EMPLOYER LIABILITY – INDEPENDENT CONTRACTOR – RETAINED CONTROL**

[Employer] hired [independent contractor] to perform work. Plaintiff claims that [he][she][it] was harmed by [employer]’s negligence in exercising control over [independent contractor]’s performance of the work.

In order to find that the plaintiff is entitled to recover on this claim, you must find that it is more likely true than not true that:

1. [employer] had the right to control or exercised control over the manner in which [independent contractor] performed the work, and [independent contractor] was not free to do the work in [his][her][its] own way.
2. [employer] was negligent in [exercising] [failing to exercise] control over [independent contractor]’s performance of the work; and
3. [employer]’s negligence was a substantial factor in causing plaintiff’s harm.

**Use Note**

This instruction should be given when the plaintiff claims that the employer of an independent contractor is liable under a retained control theory. Instruction 3.03A (Negligence) and 3.07 (Substantial Factor) must be given along with this instruction.

**Comment**

Employers of independent contractors who retain the right to control the independent contractor’s work are liable for negligence in their exercise of their retained control. *See generally Anderson v. PPCT Management Systems, Inc.*, 145 P.3d 503, 510 (Alaska 2006) (summarizing Alaska cases). *See also* Restatement (Second) of Torts § 414. This is a direct liability theory based on the employer’s negligence, not a vicarious liability theory. *Anderson,* 145 P.3d at 510.

The employer’s right of control can be established by reference to provisions of the contract between employer and contractor, or by the employer’s actual exercise of control. *Martinson v. ARCO Alaska, Inc.*, 989 P.2d 733, 736 (Alaska 1999); *Dahle v. Atlantic Richfield Co.*, 725 P.2d 1069, 1072 (Alaska 1986).