**23.07 EMPLOYER’S VICARIOUS LIABILITY BASED ON “AIDED-IN-AGENCY” THEORY**

[Employer] is legally responsible for the conduct of [employee] if you find that it is more likely true than not true that:

(1) [employee]’s work as [employer] employee gave [employee] substantial power or authority over [plaintiff]’s [describe relevant important aspects of plaintiff’s life/livelihood]; and

(2) this power and authority played a substantial role in bringing about [claimed event].

**Use Note**

This instruction should be given when the plaintiff claims that an employer is vicariously liable for the conduct of an employee, even though the employee’s conduct was outside the course and scope of employment, based on an “aided-in-agency” theory. Under Alaska law, aided-in-agency liability (outside the employee/supervisor relationship) is limited to situations where by reason of his or her employment, the employee has substantial power or authority to control important elements of a vulnerable individual’s life or livelihood. *Ayuluk v. Red Oaks Assisted Living, Inc.*, 201 P.3d 1183, 1199 (Alaska 2009) (defendant controlled plaintiff’s important needs, including food, comfort, hygiene and medication). “Whether a particular type of case falls within this category should be a question for the court, not a jury”. *Id*. A description of the relevant elements of plaintiff’s life or livelihood should be inserted in paragraph 1 of the instruction, as indicated.

**Comment**

The Alaska Supreme Court held that an “aided-in-agency” instruction should have been given in a case in which an individual with impaired mental capacity alleged that an assisted living facility was vicariously liable for the conduct of an employee who engaged in non-consensual sexual activity with her. *Ayuluk v. Red Oaks Assisted Living, Inc.*, 201 P.3d 1183 (Alaska 2009). This is a separate vicarious liability theory from “course and scope” vicarious liability.

Similar principles govern vicarious liability of employers for sexual harassment of employees by their supervisors. *Veco, Inc. v. Rosebrock*, 970 P.2d 906, 911-15 (Alaska 1999); *Mills v. Hankla*, 297 P.3d 158 (Alaska 2013).