**23.11 LIABILITY BASED ON PARTNERSHIP, WHERE THE EXISTENCE OF A PARTNERSHIP IS DISPUTED**

The plaintiff claims that [alleged partner A] is legally responsible for the conduct of [alleged partner B] because there was a business partnership between [alleged partner A] and [alleged partner B].

To evaluate this claim, you must first decide if there was a business partnership between [alleged partner A] and [alleged partner B].

A business partnership is an association of two or more persons to conduct a business for profit, as co-owners of the business.

In order to find that a business partnership existed between [alleged partner A] and [alleged partner B], you must find that each of the following three elements is more likely true than not true:

1) [alleged partner A] and [alleged partner B] agreed to combine their property, money, skill and knowledge to conduct a business;

2) [alleged partner A] and [alleged partner B] intended to make a profit from the business; and

3) [alleged partner A] and [alleged partner B] were co-owners of the business. Co-ownership of a business is shown by shared authority to manage the business, and agreement to share profits from the business.

If all three of these elements are more likely true than not true, the relationship between [alleged partner A] and [alleged partner B] was a business partnership. If any of these elements is not more likely true than not true, the relationship between [alleged partner A] and [alleged partner B] was not a business partnership.

These three required elements can be established through the transactions, conduct or words of the parties. Existence of a business partnership does not require a written agreement between the parties, or proof that the parties intended to form a business partnership.

Written or spoken words that the parties used to describe their relationship do not control whether their relationship was a business partnership. If you find all three required elements, the parties had a business partnership, even if the parties never used the words partner or partnership to describe their relationship. By the same token, if you do not find all three required elements, the parties did not have a business partnership, even if the parties used the words partner or partnership to describe their relationship.

If you determine that [alleged partner A] was a business partner with [alleged partner B], [alleged partner A] is legally responsible for conduct by [alleged partner B] that is within the scope of authority given to [alleged partner B] by the partnership. If you determine that [alleged partner A] was not a business partner with [alleged partner B], [alleged partner A] is not legally responsible for [alleged partner B]’s conduct.

A partner acts within [his][her][its] scope of authority when the partner is acting in the ordinary course of business of the partnership, or when the partner does anything which is either expressly or impliedly authorized by the partnership.

**Use Note**

This instruction should be given when the plaintiff claims that one business partner is liable for the conduct of another business partner, but the defendant denies that he or she is a partner with the person who engaged in the conduct in question. If plaintiff claims that the partnership is liable for the conduct of an alleged partner, the instruction can be modified accordingly.

If the existence of a partnership relationship is conceded, Instruction 24.12 should be given instead.

**Comment**

Alaska adopted the Revised Uniform Partnership Act in 2000. Under this Act, “the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.” AS 32.06.202(a).

The statutory definition of a partnership has four key elements:
1) associational intent; 2) co-ownership of the resultant business; 3) the partners are in business; and 4) the business is intended to make a profit. *Recreational Data Services, Inc*. v. *Trimble Navigation Ltd*., 404 P.3d 120, 129 (Alaska 2017); *Hall v. TWS, Inc*., 113 P.3d 1207, 1211-12 (Alaska 2005). The first element, associational intent, requires an agreement to combine the partners’ property, money, effects, skill and knowledge to carry out a business enterprise. *Recreational Data*, 404 P.3d at 130; *Hall*, 113 P.3d at 1211. The second element, co-ownership, is shown by shared management authority and profit sharing. *Recreational Data*, 404 P.3d at 130; *Hall*, 113 P.3d at 1211-12. This instruction incorporates the third element (existence of a business) into the other three elements. *See Chocknok v. State*, 696 P.2d 669, 675 (Alaska 1985) (existence of a business is shown “when a certain degree of activity is carried on or contemplated”). The statutory language “whether or not the persons intend to form a partnership” reflects that a partnership may be created regardless of the parties’ subjective intent to be “partners.” Parties may form a partnership, despite their subjective intent not to do so, if they associate with the intent to carry on as co-owners a business for profit. Uniform Partnership Act § 202 (1997), comment 1.

The words that parties use to describe their relationship are not determinative of the existence of a partnership. *Recreational Data*, 404 P.3d at 129, quoting *Parker v. Northern Mixing Co*., 756 P.2d 881, 887 n.11 (Alaska 1988).

A partner is the agent of the partnership. AS 32.06.301(1). The partnership is liable for loss or injury caused by the conduct of a partner acting in the ordinary course of business of the partnership, or with authority of the partnership. AS 32.06.305(a). With limited exceptions, a partner is jointly and severally liable for all obligations of the partnership. AS 32.06.306(a).