**07.06 STRICT LIABILITY IN TORT – COMPARATIVE NEGLIGENCE**

In response to the plaintiff's claim, the defendant alleges that the plaintiff's loss resulted from the plaintiff's own negligence. In order to establish this claim, the defendant must prove that it is more likely true than not true that:

(1) the plaintiff was negligent, and

(2) negligence of the plaintiff was a legal cause of the plaintiff's (injury) (damage).

I will explain what "negligence" means and what "legal cause" means in a moment.

Use Note

Instruction 07.06 must be given when comparative negligence is in issue. Instruction 07.06 must be followed by Instruction 03.03A, which establishes the test for negligence, and Instruction 07.07 which defines legal cause.

Comment

AS 09.17.060 adopts comparative negligence. AS 09.17.080 requires the finder of fact to determine (1) the total amount of damages established by a preponderance of the evidence for each claimant and (2) the percentage of fault attributable to each party and persons who have been released. From these jury findings the court must calculate the award of damages to each claimant.

AS 09.17.900 defines fault to include acts or omissions which are in any measure negligent or which subject a person to strict liability. Accordingly, sections .060 and .080 appear to apply to strict products liability cases and Article 07.06 is drafted according to that assumption.

However, prior to the adoption of AS 09.17.060, the Alaska Supreme Court had created a body of comparative negligence law applicable to strict liability cases. See Bachner v. Pearson, 479 P.2d 319 (Alaska 1970); Butaud v. Suburban Marine and Sporting Goods, Inc., 555 P.2d 42 (Alaska 1976); Caterpillar Tractor Co. v. Beck, 593 P.2d 871 (Alaska 1979); Dura Corporation v. Harned, 703 P.2d 396 (Alaska 1985). It should be noted that the Alaska Supreme Court has not yet addressed the precise extent to which AS 09.17.060 and .080 affect that prior body of case law.