**07.01 PRODUCTS LIABILITY – PLAINTIFF'S CLAIMS**

In this case, the plaintiff claims that a product (manufactured) (sold) (rented to (insert lessee)) by the defendant (injured) (damaged) the plaintiff. [The plaintiff's claim is based upon (insert number of legal theories) separate theories. These theories are:

(1) defect in a product;

(2) negligence of the defendant; and

(3) the defendant's breach of warranty.

I will instruct you separately on each of these theories and you must decide each theory separately.] In order to recover, the plaintiff must establish [the elements of this claim] [the elements of at least one of these theories] by a preponderance of the evidence. I will now explain preponderance of the evidence to you.

Use Note

Instruction 07.01 should be used to introduce every products liability case. This instruction should be followed by the preponderance of evidence instruction.

Appropriate bracketed language should be used when the plaintiff asserts more than one legal theory of recovery.

Comment

Strict liability in tort was accepted by the Alaska Supreme Court in Clary v. Fifth Avenue Chrysler Center, Inc., 454 P.2d 244, 248 (Alaska 1969), as "the most logical, least technical, and most comprehensive" legal theory for products liability. But, other theories including negligence and warranty under the Alaska Uniform Commercial Code, AS 45.02.313-315, are still available. The court has indicated in another context that in complex cases the jury should be informed of separate legal theories. Poulin v. Zartman, 542 P.2d 251, 271 (Alaska 1975).

In Swenson Trucking & Excavating, Inc. v. Truckweld Equipment Co., 604 P.2d 1113 (Alaska 1980), the court refused to apply strict liability to the repairer of a product noting that strict liability "generally applies to products not services." 604 P.2d at 1117. See also Saddler v. Alaska Marine Lines, Inc., 856 P.2d 784 (Alaska 1993) (strict liability not applied to provider of service).

Kodiak Electric Association v. DeLaval Turbine, Inc., 694 P.2d 150 (Alaska 1984), held that where the product has undergone extensive repair, inspection and testing at the hands of the seller prior to resale, the seller can be strictly liable even if the goods were used prior to resale.

The extent to which a seller must be involved in the sale of goods has not been resolved. In Bachner v. Pearson, 479 P.2d 319, 328 (Alaska 1970), the court noted that strict liability is not imposed in cases of single transaction, non-commercial sales or isolated leases outside the usual course of the lessor's business.

For those desiring a chronological list of Alaska cases deciding strict product liability issues, it follows:

Clary v. Fifth Avenue Chrysler Center, 454 P.2d 244 (Alaska 1969)

Bachner v. Pearson, 479 P.2d 319 (Alaska 1970)

Butaud v. Suburban Marine & Sporting Goods, Inc., 543 P.2d 209 (Alaska 1975) (Butaud I)

Butaud v. Suburban Marine & Sporting Goods, Inc., 555 P.2d 42 (Alaska 1976) (Butaud II)

Caterpillar Tractor Co. v. Beck, 593 P.2d 871 (Alaska 1979) (Beck I)

Sturm, Ruger & Co., Inc. v. Day, 594 P.2d 38 (Alaska 1979) (Sturm Ruger I) (same date as Beck I)

Heritage v. Pioneer Brokerage & Sales, Inc., 604 P.2d 1059 (Alaska 1979)

Swenson Trucking, Etc. v. Truckweld Equip., 604 P.2d 1113 (Alaska 1980)

Northern Power & Engineering v. Caterpillar Tractor, 623 P.2d 324 (Alaska 1981)

Caterpillar Tractor Co. v. Beck, 624 P.2d 790 (Alaska 1981) (Beck II)

Patricia R. v. Sullivan, 631 P.2d 91 (Alaska 1981)

Yukon Equipment, Inc. v. Gordon, 660 P.2d 428 (Alaska 1983)

Brinkerhoff v. Swearingen Aviation Corp., 663 P.2d 937 (Alaska 1983)

Hiller v. Kawasaki Motors Corp. U.S.A., 671 P.2d 369 (Alaska 1983)

Shooshanian v. Wagner, 672 P.2d 455 (Alaska 1983)

State for Use of Smith v. Tyonek Timber, Inc., 680 P.2d 1148 (Alaska 1984)

Prince v. Parachutes, Inc., 685 P.2d 83 (Alaska 1984)

Kodiak Electric Association v. DeLaval Turbine, Inc., 694 P.2d 150 (Alaska 1984)

Dura Corporation v. Harned, 703 P.2d 396 (Alaska 1985)

Lamer v. McKee Industries, Inc., 721 P.2d 611 (Alaska 1986)

Ross Laboratories v. Thies, 725 P.2d 1076 (Alaska 1986)

Keogh v. W.R. Grasle, Inc., 816 P.2d 1343 (Alaska 1991)

Colt Industries Operating Corp. v. Frank W. Murphy Manufacturer, Inc., 822 P.2d 925 (Alaska 1991)

Shanks v. Upjohn Co., 835 P.2d 1189 (Alaska 1992)

Pratt & Whitney Canada, Inc. v. Sheehan, 852 P.2d 1173 (Alaska 1993)

Saddler v. Alaska Marine Lines, Inc., 856 P.2d 784 (Alaska 1993).