**23.06 EMPLOYER LIABILITY – INDEPENDENT CONTRACTOR – DANGEROUS WORK**

[Employer] hired [independent contractor] to perform work. The plaintiff claims that [he][she][it] was harmed because [employer] failed to take special precautions with regard to [independent contractor]’s performance of the work.

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

(1) [employer] knew or reasonably should have known that [independent contractor]’s work involved an unusual risk of bodily harm unless special precautions were taken. A risk that a contractor routinely encounters in its line of work is not an unusual risk, and the contractor’s employer is not required to take special precautions to address the risk;

(2) [employer] failed to exercise reasonable care to take special precautions to address the unusual risk; and

(3) [employer]’s failure to use reasonable care to take these special precautions was a substantial factor in causing the plaintiff's injuries.

**Use Note**

This instruction should be used when the plaintiff claims that the employer of an independent contractor is liable for failing to take special precautions to address unusual risks posed by the work of an independent contractor.

**Comment**

This instruction addresses the liability of an employer of an independent contractor when the employer knows or reasonably should know that the work involves a peculiar risk of physical harm to others unless special precautions are taken. The employer may be liable for failing to take reasonable care to take these special precautions. *Moloso v. State*, 644 P.2d 205, 214-15 (Alaska 1982) (following Restatement (Second) of Torts § 413).

Peculiar risks of harm must be risks that are not routinely encountered in the contractor’s line of work. *Sievers v. McClure*, 746 P.2d 885, 890 (Alaska 1987). As an illustration, roofing contractors routinely encounter the risk that a roofer will fall off a roof. Consequently, this is not a “peculiar harm” for these contractors, and the contractor’s employer is not liable for failing to take precautions to address this risk. *Id*. *Cf. Matomco Oil Co. v. Arctic Mechanical, Inc.*, 796 P.2d 1336 (Alaska 1990) (recognizing an issue of fact regarding tank owner’s obligation to inform a tank repair contractor regarding the risk arising from the owner’s prior use of tank to store explosive fuel).