CHAPTER 8

LIABILITY BASED ON AGENCY AND RESPONDEAT SUPERIOR

A. DEFINITIONS

8:1 Agency Relationship — Defined
8:2 Disclosed or Unidentified Principal — Defined
8:3 Undisclosed Principal — Defined
8:4 Employer and Employee — Defined
8:5 Independent Contractor — Definition
8:6 Loaned Employee
8:7 Loaned Employee — Determination
8:8 Scope of Employment of Employee — Defined
8:9 Scope of Authority of Agent — Defined
8:9A Actual Authority
8:9B Express Authority
8:10 Incidental Authority — Defined
8:11 Implied Authority — Defined
8:12 Apparent Authority (Agency by Estoppel) — Definition and Effect
8:13 Scope of Authority or Employment — Departure
8:14 Ratification — Definition and Effect
8:15 Knowledge of Agent Imputable to Principal
8:16 Termination of Agent's Authority
8:17 Termination of Agent's Authority — Notice to Third Parties

B. LIABILITY ARISING FROM AGENCY AND RESPONDEAT SUPERIOR

8:18 Principal and Agent or Employer and Employee — Both Parties Sued — Issue as to Relationship and Scope of Authority or Employment — Acts of Agent or Employee as Acts of Principal or Employer
8:19 Principal and Agent or Employer and Employee — Only Principal or Employer Sued — No Issue as to Relationship — Acts of Agent or Employee as Acts of Principal or Employer
8:20 Principal and Agent or Employer and Employee — Only Principal or Employer Sued — Issue as to Relationship and/or Scope of Authority or Employment — Acts of Agent or Employee as Acts of Principal or Employer
8:21 Principal and Agent or Employer and Employee — Both Parties Sued — Liability of Principal or Employer When No Issue as to Relationship or Scope of Authority or Employment

8:22 Principal and Agent or Employer and Employee — Both Parties Sued — Liability When Issue as to Relationship and/or Scope of Authority or Employment

8:23 Act of Corporate Officer or Employee as Act of Corporation

A. DEFINITIONS

8:1 AGENCY RELATIONSHIP — DEFINED

An agency relationship is created when an agreement, written or oral, express or implied, between two persons establishes that one of them is to act on behalf of and subject to the control of the other. The person who agrees to act on behalf of another is called the agent, and the other is called the principal.

Notes on Use

None.

Source and Authority

1. This instruction is supported by **City of Aurora v. Colorado State Engineer**, 105 P.3d 595 (Colo. 2005) (agency is a consensual relationship); **City & County of Denver v. Fey Concert Co.**, 960 P.2d 657 (Colo. 1998) (agency results from consensual arrangement in which one person consents to act on behalf of another and be subject to other's control); **Stortroen v. Beneficial Finance Co.**, 736 P.2d 391, 395 (Colo. 1987) ("Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."); **Rohauer v. Little**, 736 P.2d 403 (Colo. 1987) (absent written agreement creating different relationship, in a typical multiple listing real estate transaction, the selling or "cooperating" broker or salesperson functions as agent of the listing broker and consequently is in a subagency relationship with the seller; the selling broker is not an agent of the buyer); **Villalpando v. Denver Health & Hospital Authority**, 181 P.3d 357 (Colo. App. 2007); **Rush Creek Solutions, Inc. v. Ute Mountain Ute Tribe**, 107 P.3d 402 (Colo. App. 2004); **Filho v. Rodriguez**, 36 P.3d 199 (Colo. App. 2001); **In re Marriage of Robbins**, 8 P.3d 625 (Colo. App. 2000) (agency results from manifestation of consent to act on behalf of and subject to control of another); **Turkey Creek, LLC v. Rosania**, 953 P.2d 1306 (Colo. App. 1998) (agent is one who acts for or in place of another); **Gorsich v. Double B Trading Co.**, 893 P.2d 1357 (Colo. App. 1994); **Winston Financial Group, Inc. v. Fults Management., Inc.**, 872 P.2d 1356 (Colo. App. 1994) (cooperating broker was sub-agent of lessor in commercial leasing context); **Cole v. Jennings**, 847 P.2d 200 (Colo. App. 1992); **Governor's Ranch Professional Center, Ltd. v. Mercy of Colorado, Inc.**, 793 P.2d 648 (Colo. App. 1990) (agent is one who has the authority to act for or in place of another, or one who is entrusted with the business of another); **Montano v. Land Title Guarantee Co.**, 778 P.2d 328, 331 (Colo. App. 1989) ("Agency is a fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to so act."); **Real Equity Diversification, Inc. v. Coville**, 744 P.2d 756 (Colo. App. 1987) (the existence alone of an agreement between a seller's broker and a buyer's broker to share a real estate commission does not make the buyer's broker an agent of the seller); **Victorio Realty Group, Inc. v. Ironwood IX**, 713 P.2d 424 (Colo. App. 1985) (agent is one who acts for or in place of another by that person's authority; existence of an agency relationship is ordinarily a question of fact to be determined by the fact finder, though it may be determined as a question of law by the court

where there is no dispute or conflict in the facts; the existence of an agency may be established by the conduct of the parties); **Hart v. Colorado Real Estate Commission**, 702 P.2d 763 (Colo. App. 1985); **Cheney v. Hailey**, 686 P.2d 808 (Colo. App. 1984) (citing this instruction); **Shriver v. Carter**, 651 P.2d 436 (Colo. App. 1982); and RESTATEMENT (SECOND) OF AGENCY § 1 (1958). *See also* RESTATEMENT (THIRD) OF AGENCY § 1.01 (2006) (defining agency).

2. Whether an agency relationship exists is ordinarily a question of fact. **Christoph v. Colo. Commc'ns Corp.**, 946 P.2d 519 (Colo. App. 1997); *see also* RESTATEMENT (THIRD) OF AGENCY § 1.02 (2006) (whether relationship is characterized as agency in agreement between parties or in context of industry or popular usage is not controlling). However, if evidence as to an agent's authority is undisputed, or if only one reasonable and logical inference could be drawn from the evidence, the question of the existence of the agency relationship is one of law to be determined by the trial court. **Kelly v. Cent. Bank & Tr. Co.**, 794 P.2d 1037 (Colo. App. 1989); *see* **Johnson Realty v. Bender**, 39 P.3d 1215 (Colo. App. 2001); **Filho**, 36 P.3d at 200.

3. In determining whether an agency relationship exists, the most important factor is the right to control, not the fact of control. **Moses v. Diocese of Colo.**, 863 P.2d 310 (Colo. 1993); **W. Fire Truck, Inc. v. Emergency One, Inc.**, 134 P.3d 570, 575 (Colo. App. 2006) ("The control a principal exercises over the agent's work performance is evidence that an agency relationship exists."); **Gorsich**, 893 P.2d at 1361.

4. An agency relationship can exist even where the parties "do not subjectively intend that legal consequences flow from their relation. The critical determination is whether the parties materially agreed to enter into a particular relation to which the law of agency attached." **W. Fire Truck, Inc.**, 134 P.3d at 576.

5. For a discussion as to the distinction between a servant and a non-servant agent, see **Grease Monkey International, Inc. v. Montoya**, 904 P.2d 468 (Colo. 1995) (agent represents principal contractually; servant works physically for another called the master and is subject to the master's supervision and control, but has no power to bind the master contractually).

6. Generally, an agent is entitled to indemnification from the principal for losses incurred because of the agency relationship if such losses should be borne by the principal. **Johnson Realty**, 39 P.3d at 1218.

7. An agency relationship can exist between a treating doctor and a covering doctor, if the treating doctor supervises and directs the covering doctor in a patient's care. **Hall v. Frankel**, 190 P.3d 852 (Colo. App. 2008).

8. In most circumstances, an agent owes a fiduciary duty to the principal, including a duty of loyalty to not compete with the principal concerning the subject matter of the agency. **DA Mountain Rentals, LLC v. Lodge at Lionshead Phase III Condo. Ass'n**, 2016 COA 141, ¶ 43, 409 P.3d 564 (in context of homeowner's association and homeowners); **Smith v. Mehaffy**, 30 P.3d 727 (Colo. App. 2000) (in context of attorney-client relationship). For breach of fiduciary duty jury instructions, see Chapter 26.

8:2 DISCLOSED OR UNIDENTIFIED PRINCIPAL — DEFINED

When a person knows or has notice that (he) (she) (it) is dealing with the agent of a principal and knows or has notice of who the principal is, the principal is a "disclosed principal."

When a person knows or has notice that (he) (she) (it) is dealing with the agent of a principal, but does not know who the principal is, the principal is an "unidentified principal."

A person has notice of a fact if the person knows the fact, has reason to know the fact, has received an effective notification of the fact, or should know the fact to fulfill a duty owed to another person.

Notes on Use

1. Either one or both paragraphs of this instruction may be used as necessary.

2. As a result of the adoption of the RESTATEMENT (THIRD) OF AGENCY, the phrase "unidentified principal" replaces the phrase "partially disclosed principal" formerly appearing in the second paragraph.

Source and Authority

1. This instruction is supported by **Rocky Mountain Exploration, Inc. v. Davis Graham & Stubbs LLP,** 2018 CO 54, ¶ 30, 420 P.3d 223, 230 (applying RESTATEMENT (THIRD) OF AGENCY § 1.04(2) (2006), and stating principal is disclosed "if a third party has notice that the agent with whom it is interacting is acting for a principal and if the third party has notice of the principal's identity" and is unidentified "if the third party has notice that the agent is acting for a principal but does not have notice of the principal's identity" (citing RESTATEMENT § 1.04(2) and applying RESTATEMENT (THIRD) OF AGENCY § 1.04(4) (notice definition))). *See* RESTATEMENT (SECOND) OF AGENCY § 4(1) and (2) (1958); RESTATEMENT (THIRD) OF AGENCY § 1.04(2)(a), (c) (2006) (defining disclosed and unidentified principals); *see also* **Water, Waste & Land, Inc. v. Lanham**, 955 P.2d 997 (Colo. 1998) (recognizing definitions of disclosed principal and partially disclosed principal set out in this Instruction); **Beneficial Fin. Co. v. Bach**, 665 P.2d 1034 (Colo. App. 1983) (recognizing definition set out in first paragraph of this instruction and applying rule that when agent, acting within his or her authority, enters into contract for a disclosed principal, agent is not personally liable on contract); **Bidwell v. Jolly**, 716 P.2d 481 (Colo. App. 1986) (following the same rule). *Cf.* **Flatiron Paving Co. v. Wilkin**, 725 P.2d 103 (Colo. App. 1986) (recognizing definitions set out in both paragraphs of this instruction and applying rule relating to partially disclosed principals, that an agent who enters into contract disclosing existence of agency but not true name or identity of his or her principal may be held personally liable on contract). For historical discussion of definitions, see W. SEAVEY, AGENCY § 4 (1964).

2. Whether principal is partially or completely disclosed is question of fact. **Water, Waste & Land, Inc. v. Lanham**, 955 P.2d 997 (Colo. 1998) (agents for limited liability company who did not identify their principal by name were not shielded from personal liability on contract by notice provisions of Limited Liability Act).

3. An officer of a corporation is not individually liable for debts of the corporation unless the corporate principal is undisclosed. **Mountain States Commercial Collections, Inc. v. 99¢ Liquidators, Inc.**, 940 P.2d 934 (Colo. App. 1996).

4. A person who contracts with an agent acting with authority from a disclosed or partially disclosed principal (now referred to as unidentified) is liable to the principal on the contract unless the principal is excluded by the contract. **Filho v. Rodriguez**, 36 P.3d 199 (Colo. App. 2001); *see also* **Rocky Mountain Expl., Inc.**, 2018 CO 54, ¶ 33 (stating that narrow exception set forth in RESTATEMENT (THIRD) OF AGENCY § 6.11(4) for false representations made concerning undisclosed principals does not apply to unidentified principals).

8:3 UNDISCLOSED PRINCIPAL — DEFINED

When a person does not know or have notice that (he) (she) (it) is dealing with an agent for a principal, the principal is an "undisclosed principal."

A person has notice of a fact if the person knows the fact, has reason to know the fact, has received an effective notification of the fact, or should know the fact to fulfill a duty owed to another person.

Notes on Use

None.

Source and Authority

1. This instruction is supported by **Rocky Mountain Exploration, Inc. v. Davis Graham & Stubbs LLP**, 2018 CO 54, ¶ 30, 420 P.3d 223, 230 ("A principal is undisclosed if the third party has no notice that the agent is acting for a principal." (citing RESTATEMENT (THIRD) OF AGENCY § 1.04(2) (2006) and applying RESTATEMENT (THIRD) OF AGENCY § 1.04(4) (notice definition))); **Mackey v. Briggs**, 16 Colo. 143, 26 P. 131 (1891); RESTATEMENT (SECOND) OF AGENCY § 4(3) (1958); and RESTATEMENT (THIRD) OF AGENCY § 1.04(2)(b) (2006) (defining undisclosed principal). *See also* **Flatiron Paving Co. v. Wilkin**, 725 P.2d 103 (Colo. App. 1986); **Hott v. Tillotson-Lewis Constr. Co.**, 682 P.2d 1220 (Colo. App. 1983) (holding that agent who enters into a contract for an undisclosed principal may be held personally liable on the contract); **Conner v. Steel, Inc.**, 28 Colo. App. 1, 470 P.2d 71 (1970). For historical discussion of definitions, see W. SEAVEY, AGENCY § 4 (1964).

2. Agents routinely act on behalf of undisclosed principals, and an agent's purchase on behalf of an undisclosed principal is a legal method of dealing with a hold-out seller. **Rocky Mountain Expl., Inc.**, 2018 CO 54, ¶¶ 31-33.

3. A third party who contracts with an agent acting with authority from an undisclosed principal is liable to the principal on the contract unless the principal is excluded by the contract, the principal's existence is fraudulently concealed, or there is a setoff or similar defense against the agent. **Filho v. Rodriguez**, 36 P.3d 199 (Colo. App. 2001); *see also* RESTATEMENT (THIRD) OF AGENCY § 6.03 (2006) (setting forth parties to contract where agent acting with actual authority makes contract on behalf of undisclosed principal).

4. A narrow exception to the rule set forth in paragraph 3 applies where (1) the agent falsely represents to the third party that it does not act on behalf of a principal and (2) the principal or agent had notice that the third party would not have dealt with the principal. **Rocky Mountain Expl., Inc.,** 2018 CO 54, ¶ 33 (citing RESTATEMENT (THIRD) OF AGENCY § 6.11(4) (2006)). Under these circumstances, the third party may avoid, or rescind, the contract. *Id*.

8:4 EMPLOYER AND EMPLOYEE — DEFINED

The terms "employer" and "employee" refer to the relationship that exists when one (person) *(insert appropriate description of entity)***, the employer, employs another, the employee, to do certain work.**

In determining whether the relationship exists you should consider whether *(name of alleged employer)* **selected or employed** *(name of alleged employee)***; whether** *(name of alleged employer)* **was to pay** *(name of alleged employee)* **or paid** *(name of alleged employee)* **wages or other consideration; whether** *(name of alleged employer)* **had the power or right to dismiss and the right to control** *(name of alleged employee)***.**

The central element is the right to control the details of performance. It does not matter whether *(name of alleged employer)* **actually exercised any right to control** *(name of alleged employee)* **(he) (she) (it) may have had.**

Notes on Use

1. When an employee of one person has been loaned to another and the issue is whose employee that employee was at a particular time, Instructions 8:6 and 8:7 should also be given.

2. When the issue is whether the person employed is an employee or independent contractor, Instruction 8:5 should also be given.

3. These definitions of employee and employer differ from those used in the Colorado Revised Statutes. *See, e.g.*, Colorado Wage Act, §§ 8-4-101 to -123, C.R.S.; Colorado Wage Equality Regardless of Sex Act, §§ 8-5-101 to -105, C.R.S.; Workers' Compensation Act of Colorado, §§ 8-40-101 to -302, C.R.S.; Colorado Employment Security Act, §§ 8-70-101 to -143, C.R.S.; Colorado Anti-Discrimination Act, §§ 24-34-401 to -403, C.R.S.

Source and Authority

1. This instruction is supported by **Norton v. Gilman**, 949 P.2d 565 (Colo. 1997) (most important factor in determining whether employment relationship exists is whether alleged employer had right to control details of performance); **Moses v. Diocese of Colorado**, 863 P.2d 310 (Colo. 1993) (discussing factors to be considered in determining whether an employment relationship exists); **Jacobson v. Doan**, 136 Colo. 496, 319 P.2d 975 (1957); **Colorado Compensation Insurance Authority v. Jones**, 131 P.3d 1074 (Colo. App. 2005) (unpaid person can be an employee where there is a right to control); **Tunget v. Board of County Commissioners**, 992 P.2d 650 (Colo. App. 1999) (right to control is determinative factor in deciding whether employer-employee relationship exists); **Veintimilla v. Dobyanski**, 975 P.2d 1122 (Colo. App. 1997) (in determining whether employer-employee relationship exists, which party furnishes necessary tools is relevant); **Perkins v. Regional Transportation District**, 907 P.2d 672 (Colo. App. 1995); and **Koontz v. Rosener**, 787 P.2d 192 (Colo. App. 1989) (dismissing the lost compensation claims of employees of a licensed real estate brokerage against

the majority shareholder of the brokerage because the employees' claims lay against the brokerage as the employer). *See* **Mulberger v. People**, 2016 CO 10, ¶ 15, 366 P.3d 143 (using definition of employee to interpret section 16-10-103(1)(k), C.R.S. (requiring court to sustain challenge for cause where potential juror is "compensated employee of a public law enforcement agency or public defender's office")); RESTATEMENT (THIRD) OF AGENCY § 7.07(3)(a) (2006) (defining employee).

2. Because of the control the statute requires a licensed real estate broker to retain over the broker's licensed real estate salespersons, such persons are, as a matter of law, the employees of the broker for whom they work. **Olsen v. Bondurant & Co.**, 759 P.2d 861 (Colo. App. 1988).

8:5 INDEPENDENT CONTRACTOR — DEFINITION

An independent contractor is (a person who) *(insert appropriate description of entity* **that***)* **contracts with another to accomplish a result using (his) (her) (its) own, rather than the other's, methods with respect to the physical conduct involved in the performance of the work, and, except as to the result of the work, is not subject to the control of the (person who)** *(insert appropriate description of entity* **that***)* **engaged (him) (her) (it).**

In determining whether *(alleged contractor name)* **was an independent contractor or an employee, you should consider whether or not** *(contracting party name),* **in engaging** *(alleged contractor name),* **had the right to control not only the result of the work, but also the manner in which it was to be performed.**

You may consider: the terms of the contract between the parties; the nature of the parties' business or occupation; which party furnished the instrumentality or tools for the work; the place of the work; the length of time of the engagement; the method of payment; the right, if any, of *(contracting party name)* **to summarily discharge** *(alleged contractor name)***; the extent to which** *(contracting party name)* **exercised supervision over the work, if any; and any and all of the circumstances surrounding the relationship.**

Notes on Use

1. The factors listed in the second and third paragraphs should be omitted where the evidence does not support including them in the instruction.

2. When this instruction is given, Instruction 8:4 should also be given.

Source and Authority

1. This instruction is supported by **Brush Hay & Mill Co. v. Small**, 154 Colo. 11, 388 P.2d 84 (1963); **Dumont v. Teets**, 128 Colo. 395, 262 P.2d 734 (1953); **Farmers' Reservoir & Irrig. Co. v. Fulton Inv. Co.**, 81 Colo. 69, 255 P. 449 (1927); **Arnold v. Lawrence**, 72 Colo. 528, 213 P. 129 (1923); **Dana's Housekeeping v. Butterfield**, 807 P.2d 1218 (Colo. App. 1990); RESTATEMENT (SECOND) OF AGENCY § 220 (1958). *See also* RESTATEMENT (THIRD) OF AGENCY § 7.07(3)(a) (2006) (defining employee).

2. The key fact in determining whether a person engaged to do work for another is an independent contractor or an employee depends on the kind of control the person engaging that person retains over the work to be done. If the power to control which is retained, whether exercised or not, is that of being able to control the details of how the work will be done, that is, the "means as well as the end," then the person engaged is an employee. On the other hand, if the person engaged has the right to control the manner in which the work will be done and is subject to the control of the other essentially only in terms of being responsible for a certain end product or result, then the person engaged is an independent contractor. **Dumont v. Teets**, 128 Colo. 395, 262 P.2d 734 (1953); **Farmers' Reservoir & Irrig. Co. v. Fulton Inv. Co.**, 81 Colo. 69, 255 P. 449 (1927); **Dana's Housekeeping v. Butterfield**, 807 P.2d 1218 (Colo. App. 1990)

(while no one factor is determinative as to whether a person is an employee as opposed to an independent contractor, the most important factor to consider is the right to control, not the fact of control); RESTATEMENT (SECOND) OF AGENCY § 2 (1958); *see also* RESTATEMENT (THIRD) OF AGENCY §§ 1.01 cmt. c & 7.07(3) (2006).

3. The indicia for determining the nature of the relationship set out in the second paragraph are based on RESTATEMENT (SECOND) OF AGENCY § 220 (1958). *See also* **Arnold v. Lawrence**, 72 Colo. 528, 213 P. 129 (1923).

4. An employer of an independent contractor is generally not liable for the torts of the independent contractor, but an exception exists if the employer retains the independent contractor to perform an inherently dangerous activity. An inherently dangerous activity is an activity that presents a special danger to others, different in kind from the ordinary risks that persons in the community commonly confront, which is inherent in the nature of the activity and is actually or constructively known by the employer. **Huddleston v. Union Rural Elec. Ass'n**, 841 P.2d 282 (Colo. 1992).

5. An employer may also be liable for negligence if it fails to follow the recommendations of its independent contractors. **Hildebrand v. New Vista Homes II, LLC**, 252 P.3d 1159 (Colo. App. 2010).

6. One may be personally liable for negligence for failing to use due care when selecting an independent contractor. **Western Stock Ctr., Inc. v. Sevit, Inc.**, 195 Colo. 372, 578 P.2d 1045 (1978).

7. A person who has been engaged as an independent contractor may nonetheless also be an agent, RESTATEMENT (SECOND) OF AGENCY § 14N (1958), and the person engaging such agent may be held vicariously liable for torts committed by the agent within the scope of the agency. **Cheney v. Hailey**, 686 P.2d 808 (Colo. App. 1984). In such circumstances, appropriate modifications in this instruction may be required. *See* RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt. c (2006).

8. *See* **Finlay v. Storage Technology Corp.**, 764 P.2d 62 (Colo. 1988), for test and factors to be considered in determining whether services performed constitute part of an employer's regular business.

8:6 LOANED EMPLOYEE

When an employee is loaned out by (his) (her) (its) employer to another person for some special service or project and the other person has the exclusive right to control the employee, the employee becomes the employee of that other person.

Notes on Use

1. This instruction is to be used in appropriate cases as an introductory instruction to Instruction 8:7.

2. When necessary, Instruction 8:4 should be given with this instruction.

3. When appropriate to the evidence, a more suitable word, e.g., "corporation," may be substituted for the word "person."

Source and Authority

Although the necessary control was not found to exist on the facts in each of them, this instruction is supported by **Bernardi v. Cmty. Hosp. Ass'n**, 166 Colo. 280, 443 P.2d 708 (1968); **Chartier v. Winslow Crane Serv. Co.**, 142 Colo. 294, 350 P.2d 1044 (1960); **Landis v. McGowan**, 114 Colo. 355, 165 P.2d 180 (1946); and **Thayer v. Kirchhof**, 83 Colo. 480, 266 P. 225 (1928). That control was found to exist, however, in **Jacobson v. Doan**, 136 Colo. 496, 319 P.2d 975 (1957), and there was sufficient evidence for a similar finding in **Kiefer Concrete, Inc. v. Hoffman**, 193 Colo. 15, 562 P.2d 745 (1977); **Morphew v. Ridge Crane Serv**., 902 P.2d 848 (Colo. App. 1995). *See* **Colwell v. Oatman**, 32 Colo. App. 171, 510 P.2d 464 (1973); RESTATEMENT (SECOND) OF AGENCY § 227 (1958); *see also* RESTATEMENT (THIRD) OF AGENCY § 7.03 cmt. d(2) (2006) (addressing "lent employees" or "borrowed servants").

8:7 LOANED EMPLOYEE — DETERMINATION

If you find that *(name of general employer)* **loaned out** *(name of employee)* **to** *(name of alleged special employer)* **for a special service or project and that** *(name of alleged special employer)* **had the exclusive right to control** *(name of employee)* **with respect to that (work) (service) (job), then you must find that** *(name of employee)* **was the employee of** *(name of alleged special employer).*

If you find that *(name of general employer)* **did not loan out** *(name of employee)* **to** *(name of alleged special employer***) for a special service or project or if** *(name of alleged special employer)* **did not have the exclusive right to control** *(name of employee),* **then you must find that** *(name of employee)* **was not the employee of** *(name of alleged special employer).*

Notes on Use

1. In appropriate cases, Instruction 8:6 should be given as an introduction to this instruction.

2. When necessary, Instruction 8:4 should be given with this instruction.

3. In the first paragraph, use whichever word, "work," "service," or "job," is most appropriate.

Source and Authority

1. This instruction is supported by **Kiefer Concrete, Inc. v. Hoffman**, 193 Colo. 15, 562 P.2d 745 (1977); **Bernardi v. Cmty. Hosp. Ass'n**, 166 Colo. 280, 443 P.2d 708 (1968); **Chartier v. Winslow Crane Serv. Co.**, 142 Colo. 294, 350 P.2d 1044 (1960); **Jacobson v. Doan**, 136 Colo. 496, 319 P.2d 975 (1957), **Landis v. McGowan**, 114 Colo. 355, 165 P.2d 180 (1946); and **Thayer v. Kirchhof**, 83 Colo. 480, 266 P. 225 (1928). **Morphew v. Ridge Crane Serv**., 902 P.2d 848 (Colo. App. 1995). *See also* **Colwell v. Oatman**, 32 Colo. App. 171, 510 P.2d 464 (1973). Control was found to exist in some, but not all, of the above cases. *See* RESTATEMENT (THIRD) OF AGENCY § 7.03 cmt. d(2) (2006) (addressing "lent employees" or "borrowed servants").

2. "Courts have traditionally considered several criteria to be relevant in the determination whether a loaned employment relationship exists. These include: (1) whether the borrowing employer has the right to control the employee's conduct; (2) whether the employee is performing the employer's work; (3) whether there was an agreement between the original and borrowing employer; (4) whether the employee had acquiesced in the arrangement; (5) whether the borrowing employer had the right to terminate the employee; (6) whether the borrowing employer furnished the tools and place for performance; (7) whether the new employment was to be for a considerable length of time; (8) whether the borrowing employer had the obligation to pay the employee; and (9) whether the original employer terminated its relationship with the employee." **Morphew v. Ridge Crane Serv.**, 902 P.2d 848, 850 (Colo. App. 1995).

3. "The element of control necessary to establish a borrowed employment relationship need not extend to directing the technical details of a skilled employee's activity. What is essential is the right to control the time and place of services, the person for whom rendered, and the degree and amount of services." **Morphew v. Ridge Crane Serv.**, 902 P.2d 848, 851 (Colo. App. 1995) (internal quotations omitted).

4. An employer's liability for a loaned employee depends on the claim asserted. *See* **Kiefer Concrete, Inc.**, 193 Colo. at 18, 562 P.2d at 746 ("The employer under whose exclusive control the loaned employee operates may then be held vicariously liable for the acts of the employee under ordinary principles of Respondeat superior."); **Morphew**, 902 P.2d at 850 (holding, in workers' compensation claim, that because a loaned employee is considered a co-employee of the employer's employees, both the loaned employee and the general employer are immune from tort liability where the conditions of loaned employment are met).

8:8 SCOPE OF EMPLOYMENT OF EMPLOYEE — DEFINED

An employee is acting within the scope of (his) (her) (its) employment when the employee is doing work that is:

1. Assigned by (his) (her) (its) employer; or

2. Proper, usual, and necessary to accomplish the assigned work; or

3. Customary in the particular trade or business to accomplish the assigned work.

Notes on Use

This instruction is to be used in tort cases in which the plaintiff is seeking to hold the defendant liable as an employer under the doctrine of respondeat superior. *See* Instruction 8:18.

Source and Authority

1. This instruction is supported by **Lytle v. Kite**, 728 P.2d 305 (Colo. 1986); **Hynes v. Donaldson**, 155 Colo. 456, 395 P.2d 221 (1964); **Cooley v. Eskridge**, 125 Colo. 102, 241 P.2d 851 (1952). *See also* **Moses v. Diocese of Colo.** 863 P.2d 310 (Colo. 1993) (clergyman was acting outside scope of his employment when he engaged in sex with parishioner); **Connes v. Molalla Transport Sys., Inc.**, 831 P.2d 1316 (Colo. 1992) (intentional tort against customer outside scope of employment); **Destefano v. Grabrian**, 763 P.2d 275 (Colo. 1988); **Montoya v. Grease Monkey Holding Corp.**, 883 P.2d 486 (Colo. App. 1994), *aff'd on other grounds sub nom*. **Grease Monkey Int'l, Inc. v. Montoya**, 904 P.2d 468 (Colo. 1995); **Spencer v. United Mortg. Co.**, 857 P.2d 1342 (Colo. App. 1993) (theft by employee outside scope of employment); **Goettman v. North Fork Valley Rest (In re Goettman)**, 176 P.3d 60, 66 (Colo. 2007) (out-of-state employee of foreign corporation was sufficiently within scope of employment when he got into a car accident while intoxicated on his way to a motel in order to establish minimum contacts for the corporation with Colorado for personal jurisdiction). *See* RESTATEMENT (THIRD) OF AGENCY § 7.07(2) (2006) (defining when employee acts outside of scope).

2. In determining whether a negligent act or omission of an employee was within the scope of his or her employment, the test is whether the act or omission was done in furtherance of the employer's business and not whether the manner of performance was authorized by the employer. **Pham v. OSP Consultants, Inc.**, 992 P.2d 657 (Colo. App. 1999) (employee on out-of-town work assignment was not acting within scope of employment when involved in automobile collision after leaving bar, where purpose of trip to bar was personal entertainment).

3. "The question of whether an employee is acting within the scope of the employment is a question of fact." **Raleigh v. Performance Plumbing & Heating**, 130 P.3d 1011, 1019 (Colo. 2006).

8:9 SCOPE OF AUTHORITY OF AGENT — DEFINED

An agent is acting within the scope of (his) (her) (its) authority when the agent is carrying (on business) (out a business transaction) for (his) (her) (its) principal which the principal has expressly authorized or which is within the (incidental) (or) (implied) (or) (apparent) authority of the agent.

Notes on Use

1. Use whichever parenthesized words and phrases are appropriate.

2. For the definitions of "incidental," "implied," and "apparent" authority, see Instructions 8:10, 8:11, and 8:12, respectively.

3. This instruction is primarily for use in contract cases. When the plaintiff is seeking to hold a defendant liable in tort as a principal under the doctrine of respondeat superior, either this instruction should be given or Instruction 8:8 should be used, changing, in that Instruction, the word "employee" to "agent" and the word "employer" to "principal."

Source and Authority

1. This instruction is supported by **Willey v. Mayer**, 876 P.2d 1260 (Colo. 1994); **Independence Indem. Co. v. International Trust Co.**, 96 Colo. 92, 39 P.2d 780 (1934); **Montoya v. Grease Monkey Holding Corp.**, 883 P.2d 486 (Colo. App. 1994), *aff'd on other grounds sub nom.* **Grease Monkey Int'l, Inc. v. Montoya**, 904 P.2d 468 (Colo. 1995); **Savage v. Pelton**, 1 Colo. App. 148, 27 P. 948 (1891). For additional cases, see Source and Authority to Instruction 8:18. For historical discussion of these principles, see H. REUSCHLEIN & W. GREGORY, AGENCY AND PARTNERSHIP §§14, 15 (1979); W. SEAVEY, AGENCY § 8 (1964).

2. The scope of an agent's authority depends upon the intent of the parties, and may be general or specific, involving a broad or narrow delegation of authority from principal to agent. **Fey Concert Co. v. City & County of Denver**, 940 P.2d 972 (Colo. App. 1996), *rev'd on other grounds*, 960 P.2d 657 (Colo. 1998). An attorney does not have the authority to settle a case without his client's knowledge and consent. **Siener v. Zeff**, 194 P.3d 467 (Colo. App. 2008).

3. Under Colorado law, the use and interpretation of a "power of attorney" and "statutory form power of attorney," by which a principal confers express authority on an agent, is governed by §§ 15-14-500.3, *et seq.*, C.R.S., effective January 1, 2010 (§§ 15-14-601, *et seq.*, and 15-1-1301, *et seq.*, until January 1, 2010); **In re Trust of Franzen**, 955 P.2d 1018 (Colo. 1998). *See also* §§ 15-14-503, *et seq.*, C.R.S. (authority under Colorado Patient Autonomy Act); §§ 15-18.5-103 and 104, C.R.S. (health care proxy); §§ 15-18-101, *et seq.*, C.R.S. (Colorado Medical Treatment Decision Act), effective August 11, 2010; **Moffett v. Life Care Ctrs. of Am.**, 219 P.3d 1068 (Colo. 2009) (agent has authority to enter into arbitration agreement as a part of nursing home admission process under written medical durable power of attorney); **Lujan v. Life Care Ctrs. of Am.**, 222 P.3d 970 (Colo. App. 2009) (power of person acting as health

proxy does not include authority to agree to arbitration because that is not a "medical treatment" decision).

4. An agent may invoke a jury waiver provision in the principal's contract with a third party. **Colorado Coffee Bean, LLC v. Peaberry Coffee Inc.**, 251 P.3d 9 (Colo. App. 2010).

5. Agency principles may not apply where an agent has independent authority to take action. **In re Estate of Sandstead**, 2016 COA 49, ¶¶ 38-39, 412 P.3d 799, *rev'd on other grounds sub nom*. **Sandstead-Corona v. Sandstead**, 2018 CO 26, 415 P.3d 310.

8:9A ACTUAL AUTHORITY

An agent acts with actual authority when, at the time of taking action that affects the principal, the agent reasonably believes (his) (her) (its) actions are consistent with the way the principal wishes the agent to act. In determining whether the agent's belief is reasonable, you should consider the principal's words (and) (or) conduct directed to the agent.

Notes on Use

1. The rule of actual authority should not be confused with the rules governing express and implied authority. *See* Instruction 8:9B and 8:11.

2. When applicable, this instruction should be used with Instructions 8:9B, 8:10, and 8:11.

Source and Authority

This instruction is supported by **State Farm Mutual Automobile Insurance Co. v. Johnson**, 2017 CO 68, ¶ 21, 396 P.3d 651 (citing RESTATEMENT (THIRD) OF AGENCY § 2.01 (2006)); and **Willey v. Mayer**, 876 P.2d 1260 (Colo. 1994) (holding actual authority incorporates concepts of both express and implied authority).

8:9B EXPRESS AUTHORITY

An agent acts with express authority when the principal directly states that the agent may perform a particular act on the principal's behalf.

Notes on Use

The rule of express authority should not be confused with the rules governing actual authority. *See* Instruction 8:9A.

Source and Authority

This instruction is supported by **State Farm Mutual Automobile Insurance Co. v. Johnson**, 2017 CO 68, ¶ 21, 396 P.3d 651; and **Willey v. Mayer**, 876 P.2d 1260 (Colo. 1994).

8:10 INCIDENTAL AUTHORITY — DEFINED

In addition to any express authority given by a principal to an agent, an agent has the incidental authority to do those acts that usually accompany, or are reasonably necessary to accomplish, the express authority.

Notes on Use

When applicable, this instruction should be used with Instructions 8:9 and 8:11.

Source and Authority

1. This instruction is supported by RESTATEMENT (SECOND) OF AGENCY § 35 (1958). *See also* **State Farm Mut. Auto. Ins. Co v. Johnson**, 2017 CO 68, ¶ 22, 396 P.3d 651; **Willey v. Mayer**, 876 P.2d 1260 (Colo. 1994); **Independence Indem. Co. v. International Trust Co.**, 96 Colo. 92, 39 P.2d 780 (1934); **Montoya v. Grease Monkey Holding Corp.**, 883 P.2d 486 (Colo. App. 1994), *aff'd on other grounds sub nom.* **Grease Monkey Int'l, Inc. v. Montoya**, 904 P.2d 468 (Colo. 1995); **Dyer v. Johnson**, 757 P.2d 178 (Colo. App. 1988); **Savage v. Pelton**, 1 Colo. App. 148, 27 P. 948 (1891); and RESTATEMENT (THIRD) OF AGENCY § 2.02(1) & cmt. d (2006) (stating that agent has authority to take action "implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives, as the agent reasonably understands the principal's manifestations and objectives when the agent determines how to act," and comment further clarifying the circumstances under which an agent may be granted incidental authority to accomplish the principal's objectives).

2. An agent's incidental authority may be limited or excluded by his or her principal. RESTATEMENT (SECOND) OF AGENCY § 35 (1958). A principal may nonetheless be bound under the doctrine of apparent authority. *See* **Independence Indem. Co. v. International Trust Co.**, 96 Colo. 92, 39 P.2d 780 (1934) and Instruction 8:12. When there is sufficient evidence of such limitation or exclusion, this instruction, and, if applicable, Instruction 8:12, should be appropriately modified. *See* RESTATEMENT (THIRD) OF AGENCY § 2.02 cmt. g (2006) (stating that a "principal may direct an agent to do or refrain from doing a specific act").

3. The Third Restatement provides that an agent's interpretation of the principal's manifestations must be reasonable. RESTATEMENT (THIRD) OF AGENCY § 2.02(2), (3) (2006).

8:11 IMPLIED AUTHORITY — DEFINED

In addition to any express authority given by a principal to an agent, an agent has implied authority to take actions:

(1. on behalf of his or her principal that are usual and customary practices in the trade or business involved, if the principal knew or should have known of such practices;) (and)

(2. that the agent had taken before on behalf of (his) (her) (its) principal that the principal knew of and by (his) (her) (its) conduct or lack of conduct impliedly approved).

Notes on Use

1. When applicable, Instruction 8:10 (defining incidental authority) should be used with this instruction.

2. Use whichever parenthesized portions of this instruction are appropriate.

Source and Authority

1. The first numbered paragraph of this instruction is supported by **State Farm Mutual Automobile Insurance Co. v. Johnson**, 2017 CO 68, ¶ 22, 396 P.3d 651 (citing RESTATEMENT (THIRD) OF AGENCY § 2.01 cmt. b); **Willey v. Mayer**, 876 P.2d 1260 (Colo. 1994); **Dyer v. Johnson**, 757 P.2d 178 (Colo. App. 1988); **Montoya v. Grease Monkey Holding Corp.**, 883 P.2d 486 (Colo. App. 1994), *aff'd on other grounds sub nom*. **Grease Monkey International, Inc. v. Montoya**, 904 P.2d 468 (Colo. 1995); **Gates Iron Works v. Denver Engineering Works Co.**, 17 Colo. App. 15, 67 P. 173 (1901). *See also* **Russell v. First Am. Mortg. Co.**, 39 Colo. App. 360, 565 P.2d 972 (1977); **Savage v. Pelton**, 1 Colo. App. 148, 27 P. 948 (1891); RESTATEMENT (SECOND) OF AGENCY § 36 (1958); RESTATEMENT (THIRD) OF AGENCY § 2.02(1) (2006) (stating that agent has "actual authority to take action designated or implied in the principal's manifestations").

2. The second numbered paragraph of this instruction is supported by **Moore v. Switzer**, 78 Colo. 63, 65, 239 P. 874, 875 (1925), in which the court stated:

> Implied authority of an agent is actual authority evidenced by conduct, that is, the conduct of the principal has been such as to justify the jury in finding the agent had actual authority to do what he did. This may be proved by evidence of acquiescence with knowledge of the agent's acts and such knowledge and acquiescence may be shown by evidence of the agent's course of dealing for so long a time that knowledge and acquiescence may be presumed. Knowledge of this course of conduct by dealing with the agent is irrelevant, but knowledge thereof by the principal is not only relevant but essential and must be proved either directly or indirectly as above.

Willey v. Mayer, 876 P.2d 1260, 1264 (Colo. 1994); **Citywide Banks v. Armijo**, 313 P.3d 647 (Colo. App. 2011).

3. An agent's implied authority may be limited or excluded by his or her principal. RESTATEMENT (SECOND) OF AGENCY § 36 (1958); *see also* RESTATEMENT (THIRD) OF AGENCY § 2.02 cmt. g (2006) ("A principal may direct an agent to do or refrain from doing a specific act."). A principal may nonetheless be bound under the doctrine of apparent authority. *See* **Independence Indem. Co. v. Int'l Trust Co.**, 96 Colo. 92, 39 P.2d 780 (1934), and Instruction 8:12. When there is sufficient evidence of such limitation or exclusion, this instruction and, if applicable, Instruction 8:12 should be appropriately modified.

4. "Implied authority" has also been defined as the authority to do "those acts which are incidental to, or are necessary, usual, and proper to accomplish or perform, the main authority expressly delegated to the agent." **Willey v. Mayer**, 876 P.2d 1260, 1264 (Colo. 1994); *see* **Johnson**, 2017 CO 68, ¶ 22; **Villalpando v. Denver Health & Hosp. Auth.**, 181 P.3d 357 (Colo. App. 2007); *see also* Instruction 8:10.

5. A co-named insured on automobile insurance policy has implied authority to waive UM/UIM benefits as result of express authority to purchase insurance policy on behalf of co-named insured. **Johnson**, 2017 CO 68, ¶¶ 22-24.

6. The Third Restatement provides that an agent's interpretation of the principal's manifestations must be reasonable. RESTATEMENT (THIRD) OF AGENCY § 2.02(2), (3) (2006).

8:12 APPARENT AUTHORITY (AGENCY BY ESTOPPEL) — DEFINITION AND EFFECT

An agent has apparent authority when a principal, by words or conduct, has caused another person to reasonably believe that the principal has authorized an agent to act on the principal's behalf, even though the principal may not have done so. When an agent has apparent authority, it is the same as if the principal had authorized the agent's actions.

Notes on Use

1. This instruction should not be used when the principal is undisclosed, since by the definition of apparent authority, it cannot exist when the principal is undisclosed. Such may not be true when the principal is unidentified, as in the case of a partnership where the third person is dealing with the partnership and knows some of its members but not all of them. For historical discussion of this principle, see W. SEAVEY, AGENCY § 4 (1964).

2. The rule of apparent authority should not be confused with the rules governing incidental or implied authority. *See* Instructions 8:10 and 8:11.

Source and Authority

1. This instruction is supported by **State Farm Mutual Automobile Insurance Co. v. Johnson**, 2017 CO 68, ¶ 20, 396 P.3d 651, 656 ("An agent has apparent authority to affect a principal's relations with a third party when the third party reasonably believes, based on the principal's manifestations, that the agent has authority to act on behalf of the principal.") (citing RESTATEMENT (THIRD) OF AGENCY § 2.03 (2006)); **Bowser v. Union Bag Co.**, 112 Colo. 373, 149 P.2d 800 (1944); **Wilson v. Mosko**, 110 Colo. 127, 130 P.2d 927 (1942); **Burck v. Hubbard**, 104 Colo. 83, 88 P.2d 955 (1939); **Zeller v. Taylor**, 95 Colo. 503, 37 P.2d 391 (1934) (by implication); **Rush Creek Solutions, Inc. v. Ute Mountain Ute Tribe**, 107 P.3d 402 (Colo. App. 2004); **In re Marriage of Robbins**, 8 P.3d 625 (Colo. App. 2000); and **Russell v. First American Mortgage Co.**, 39 Colo. App. 360, 565 P.2d 972 (1977). *See also* **Kuehn v. Kuehn**, 642 P.2d 524 (Colo. App. 1981); RESTATEMENT (THIRD) OF AGENCY § 2.03 (defining apparent authority).

2. For a general historical discussion of apparent authority and the typical situations in which it may exist, see W. SEAVEY, AGENCY § 8, at 13-14 (1964); P. MECHEM, OUTLINES OF THE LAW OF AGENCY §§ 84-95 (4th ed. 1952).

3. For the distinction between apparent and implied authority, see **Johnson**, 2017 CO 68, ¶¶ 20-22; **Moore v. Switzer**, 78 Colo. 63, 239 P. 874 (1925); **Sigel-Campion Live Stock Commc'n Co. v. Ardohain**, 71 Colo. 410, 207 P. 82 (1922) (awareness of, and reliance on, a "holding out" by the principal required for apparent authority).

4. Where a third party has dealt with an agent and has established the existence of apparent authority, it is incumbent upon the principal who seeks to escape liability for the agent's actions to show that the third party had knowledge or was charged with notice that the agent was

acting beyond the scope of the agent's authority. **Bowser**, 112 Colo. at 379-80, 149 P.2d at 803; **Zambruk v. Perlmutter 3rd Generation Builders, Inc.**, 32 Colo. App. 276, 510 P.2d 472 (1973). *See also* **White v. Brock**, 41 Colo. App. 156, 584 P.2d 1224 (1978).

5. For a discussion as to when a principal may be held liable for the false representations of an agent under the rule of apparent authority, see **Grease Monkey International, Inc. v. Montoya**, 904 P.2d 468 (Colo. 1995).

6. "Apparent authority thus flows only from the acts and conduct of the principal." **Johnson**, 2017 CO 68, ¶ 20 (citation omitted).

7. Colorado courts have used the terms "ostensible agency," "apparent agency," "apparent authority," and "agency by estoppel" interchangeably. **Carl's Italian Rest. v. Truck Ins. Exch.**, 183 P.3d 636 (Colo. App. 2008); **Daly v. Aspen Ctr. for Women's Health, Inc.**, 134 P.3d 450 (Colo. App. 2005).

8:13 SCOPE OF AUTHORITY OR EMPLOYMENT — DEPARTURE

An agent is acting outside the scope of (his) (her) (its) (authority) (employment) when the agent substantially departs from (his) (her) (its) principal's business by doing an act intended to accomplish an independent purpose of the agent's own or for some other purpose which is unrelated to the business of the principal and not reasonably included within the scope of the agent's (authority) (employment). Such departure may be of short duration, but during such time the agent is not acting within the scope of (his) (her) (its) (authority) (employment).

Notes on Use

1. Use whichever parenthesized word, "authority" or "employment," is more appropriate.

2. When more appropriate, substitute the word "employee" for "agent" and the word "employer" for "principal."

3. When appropriate, this instruction should be given with Instruction 8:8 or 8:9.

Source and Authority

1. This instruction is based on **Kirkpatrick v. McCarty**, 112 Colo. 588, 152 P.2d 994 (1944), and **Marron v. Helmecke**, 100 Colo. 364, 67 P.2d 1034 (1937). For additional cases, see Source and Authority to Instruction 8:18. *See also* RESTATEMENT (SECOND) OF AGENCY § 228(2) (1958); RESTATEMENT (THIRD) OF AGENCY § 7.07(2) (2006) (defining when act is within or outside scope of authority).

2. A servant who is lodging in a public accommodation, preparing to eat, or going to or returning from a meal is performing an act necessarily incident to his employment. **Hynes v. Donaldson**, 155 Colo. 456, 395 P.2d 221 (1964).

3. As to when a departure may not be substantial, see **Gibson v. Dupree**, 26 Colo. App. 324, 144 P. 1133 (1914).

8:14 RATIFICATION — DEFINITION AND EFFECT

A person may act as the agent for another without authority. If the person for whom the act was done has full knowledge of all the important facts, that person may, by words or conduct, ratify or accept the action after it was done. Ratification after the action is the same as authorization before the action.

Notes on Use

1. Where a person expressly ratifies an act under circumstances that make it appear that person is assuming the risk of any lack of complete knowledge, such ratification may still be effective even though the person lacks full knowledge. **Western Inv. & Land Co. v. First Nat'l Bank**, 64 Colo. 37, 172 P. 6 (1918). In such circumstances, this instruction should be appropriately modified.

Source and Authority

1. This instruction is supported by **Nunnally v. Hilderman**, 150 Colo. 363, 373 P.2d 940 (1962); **Fiscus v. Liberty Mortgage Corp.**, 2014 COA 79, ¶ 40, 373 P.3d 644; **Siener v. Zeff**, 194 P.3d 467 (Colo. App. 2008); **DeBose v. Bear Valley Church of Christ**, 890 P.2d 214 (Colo. App. 1994), *rev'd on other ground*, 928 P.2d 1315 (Colo. 1996); **Hauser v. Rose Health Care Sys.**, 857 P.2d 524 (Colo. App. 1993); **M.S.P. Indus., Inc. v. Diversified Mortg. Servs., Inc.**, 777 P.2d 237 (Colo. App. 1989) (discusses both requirements and effect of a ratification).

2. The legal effect of a ratification as set out in the last sentence of this instruction is supported by **Poudre Valley Furniture Co. v. Craw**, 80 Colo. 353, 251 P. 543 (1926). *See also* **Philips Indus., Inc. v. Mathews, Inc.**, 711 P.2d 704, 706 (Colo. App. 1985) (the legal effect of ratification of unauthorized sale by agent includes "the agent's entitlement to its usual commissions, fees, and expenses").

3. A failure to act to repudiate an agent's act may constitute ratification. **Siener**, 194 P.3d at 472 (acceptance of benefits, failure to repudiate, knowledge of circumstances all factors to consider in determining whether client whose attorney makes an unauthorized settlement has ratified it).

4. The burden of proving ratification with full knowledge of all material facts is on the party alleging ratification occurred. **Fiscus**, 2014 COA 79, ¶ 40; **Siener**, 194 P.3d at 472.

8:15 KNOWLEDGE OF AGENT IMPUTABLE TO PRINCIPAL

A principal is considered to know or have notice of information if the principal's agent, while acting within the scope of the agent's authority, learns or receives notice of the information.

Notes on Use

None.

Source and Authority

1. This instruction is supported by **Gray v. Blake**, 131 Colo. 560, 283 P.2d 1078 (1955); **Denver, S. P. & P. R.R. v. Conway**, 8 Colo. 1, 5 P. 142 (1884). *See also* **Hauser v. Rose Health Care Sys.**, 857 P.2d 524 (Colo. App. 1993).

2. In certain cases, knowledge acquired by an agent prior to becoming an agent may also be imputable to the agent's principal. **Schollay v. Moffitt-West Drug Co.**, 17 Colo. App. 126, 67 P. 182, 184 (1901) (dictum). In such cases this instruction should be appropriately modified.

3. When an agent acts adversely to the interests of its principal, there is an exception to the general rule that the knowledge of an agent is imputable to its principal. **Vail Nat'l Bank v. Finkelman**, 800 P.2d 1342 (Colo. App. 1990).

4. Generally, knowledge of, or notice to, a general partner of a limited partnership is imputable to the limited partners if such knowledge or notice concerns partnership business and was received or acquired by the general partner while transacting partnership business. **BMS P'ship v. Winter Park Devil's Thumb Inv. Co.**, 910 P.2d 61 (Colo. App. 1995), *aff'd on other grounds*, 926 P.2d 1253 (Colo. 1996). Also, the knowledge of a partner concerning general partnership business is imputable to all of the partners. **Zimmerman v. Dan Kamphausen Co.**, 971 P.2d 236 (Colo. App. 1998).

5. Imputed knowledge is different from actual knowledge. Actual knowledge requires an active or conscious belief or awareness. **Jehly v. Brown**, 2014 COA 39, ¶¶ 12-13, 327 P.3d 351; *see also* **Clown's Den, Inc. v. Canjar**, 33 Colo. App. 212, 518 P.2d 957 (1973) (differentiating between actual and imputed knowledge of principal).

8:16 TERMINATION OF AGENT'S AUTHORITY

The authority of an agent to represent (his) (her) (its) principal is terminated *(insert the appropriate terminating event, e.g., "upon the death of the principal")***. The party claiming the authority of an agent was terminated has the burden of proving it.**

Notes on Use

1. In certain cases, for example, the termination by a principal of the authority of a general agent may not be effective as against third persons unless they have been given notice. See Instruction 8:17.

2. This instruction is not applicable to agencies "coupled with an interest."

Source and Authority

1. This instruction is supported by **Stortroen v. Beneficial Finance Co.**, 736 P.2d 391 (Colo. 1987) (partial list of grounds for termination) (citing RESTATEMENT (SECOND) OF AGENCY §§ 105-07, 117-19); **Lowell v. Hessey**, 46 Colo. 517, 105 P. 870 (1909) (principal's revocation of agency authority terminates only upon notice to the agent); **Boettcher DTC Bldg. Joint Venture v. Falcon Ventures**, 762 P.2d 788 (Colo. App. 1988) (agency terminates upon completion of the assigned task). *See* RESTATEMENT (THIRD) OF AGENCY §§ 3.06-3.11 (2006) (addressing termination of actual and apparent authority as well as irrevocable powers).

2. The burden of establishing a termination rests on the party who asserts it. **Paulsen v. Rourke**, 26 Colo. App. 488, 145 P. 711 (1915) (termination by revocation).

3. For a discussion of the irrevocability of an agency coupled with an interest, see **In re Estate of Gray**, 541 P.2d 336 (Colo. App. 1975).

4. *See also* § 4-4-405, C.R.S., dealing with the effect of the death or incompetency of a bank customer on the authority of a payor or collecting bank.

5. As to the appointment and termination of the authority of an insurance agent, that is, an "insurance provider," see §§ 10-2-416 and 10-2-416.5, C.R.S.

8:17 TERMINATION OF AGENT'S AUTHORITY — NOTICE TO THIRD PARTIES

Where *(name of third party)* **(had previously dealt with an agent of a known principal** *[name]***) (knew** *[name of agent]* **to be the principal** *[name of principal]***'s agent) (was likely to deal with** *[name of agent]* **on the basis of [his] [her] [its] knowledge that** *[name of agent]* **was an agent of the principal** *[name]***),** *(name of third person)* **had a right to assume the agent's authority would continue until (he) (she) knew or was notified of the principal's termination of the agent's authority.**

No particular form of notice of termination is required. Notice is sufficient if it provides information that would cause a reasonable person to investigate the possible termination of the agent's authority.

Notes on Use

1. The rule set out in this instruction is generally applicable only in the case of a general, as opposed to a special, agent. Only in rare instances does a special agent's authority continue after termination without notice.

2. A principal's termination of an agent's authority does not revoke an agent's apparent authority. The agent's apparent authority arises from the principal's manifestation of the agent's authority to deal with third parties. The right of third parties to deal with an agent based on the agent's apparent authority remains unaffected until the third parties have knowledge or have been notified that the agent's authority has been terminated. The specific notice required depends upon the facts.

3. Use whichever one or more of the parenthesized clauses are appropriate to the facts of the case.

4. If there is a dispute as to any of the facts contained in the parenthetical clauses, this instruction should be phrased conditionally, e.g., "If *(name of third person)* (had previously dealt with an agent of a known principal) (knew *[name of agent]* to be *[name of alleged principal]*'s agent, and *[name of agent]* in fact had been *[name of alleged principal]'s agent)*," etc.

Source and Authority

1. This instruction is supported by **West Denver Feed Co. v. Ireland**, 38 Colo. App. 64, 551 P.2d 1091 (1976); and RESTATEMENT (SECOND) OF AGENCY §§ 127-133, 135-136 (1958). For historical discussion of these principles, see W. SEAVEY, AGENCY §§ 51-53 (1964); *see also* RESTATEMENT (THIRD) OF AGENCY §§ 2.01 cmt. d, 3.11 (2006).

2. There is sufficient notice of termination of the agency where a creditor learns, actually or constructively, that the former principal has ceased to do business or transferred the enterprise to another. **West Denver Feed Co.**, 38 Colo. App. at 67-68, 551 P.2d at 1093-94.

3. As to the appointment and termination of the authority of an insurance agent, that is, an "insurance provider," see §§ 10-2-416 and 10-2-416.5, C.R.S.

B. LIABILITY ARISING FROM AGENCY AND RESPONDEAT SUPERIOR

8:18 PRINCIPAL AND AGENT OR EMPLOYER AND EMPLOYEE — BOTH PARTIES SUED — ISSUE AS TO RELATIONSHIP AND SCOPE OF AUTHORITY OR EMPLOYMENT — ACTS OF AGENT OR EMPLOYEE AS ACTS OF PRINCIPAL OR EMPLOYER

If you find that the defendant, *(name of alleged agent or employee)***, was the (agent) (employee) of the defendant,** *(name of alleged principal or employer)***, and was acting within the scope of (his) (her) (its) employment and authority at the time of the** *(insert appropriate description of events, e.g., "occurrence," "collision," "accident," etc.)***, then the (agent's) (employee's) acts or omissions are the acts or omissions of the (principal) (employer).**

Notes on Use

1. When this instruction is given, either Instruction 8:8 or 8:9, whichever is appropriate, should also be given. When the evidence is conflicting regarding the issue as to whether an employee or agent was acting in the course and scope of employment or authority at the time of the occurrence the issue should be submitted to the jury and one of the other instructions in this chapter should also be given depending on which parties are sued.

2. When the principal or employer is a corporation, Instruction 8:23 should be used rather than this instruction, together with one of the other instructions in this chapter depending on which parties have been sued and whether the scope of employment authority is at issue.

3. This instruction may be used in contract as well as tort cases when appropriate, but generally Instructions 8:1 through 8:17 are more applicable to contract cases.

Source and Authority

1. This instruction is supported by **Raleigh v. Performance Plumbing & Heating**, 130 P.3d 1011 (Colo. 2006); **McDonald v. Lakewood Country Club**, 170 Colo. 355, 461 P.2d 437 (1969) (non-profit corporate employer liable for torts of employee committed while employee acting within scope of employment); **Bernardi v. Community Hospital Ass'n**, 166 Colo. 280, 443 P.2d 708 (1968) (hospital employer liable for negligence of employee nurse while latter acting within scope of employment whether or not nurse was also acting in a professional capacity); **Hynes v. Donaldson**, 155 Colo. 456, 395 P.2d 221 (1964) (corporate principal liable if employee's tort committed while employee engaged in an activity incidental to his employment); **Gibbons & Reed Co. v. Howard**, 129 Colo. 262, 269 P.2d 701 (1954) (corporate principal not liable when employee not within scope of employment); **Cooley v. Eskridge**, 125 Colo. 102, 241 P.2d 851 (1952) (employer not liable when employee not within scope of employment); **Marron v. Helmecke**, 100 Colo. 364, 67 P.2d 1034 (1937) (same); **Crosswaith v. Thomason**, 95 Colo. 240, 35 P.2d 849 (1934) (principal liable for civil penalty because of agent's violation of civil rights statute); **Lovejoy v. Denver & Rio Grande Railroad**, 59 Colo. 222, 146 P. 263 (1915) (corporate employer liable for negligence of employee); **Novelty Theater Co. v. Whitcomb**, 47 Colo. 110, 106 P. 1012 (1909) (employer not liable when

employee not within scope of authority); **Pierce v. Conners**, 20 Colo. 178, 37 P. 721 (1894) (employer held liable for negligence of employee); and **Denver, South Park & Pacific Railroad v. Conway**, 8 Colo. 1, 5 P. 142 (1884) (corporate employer held liable for negligence of employee).

2. In **Western Stock Center, Inc. v. Sevit, Inc.**, 195 Colo. 372, 578 P.2d 1045 (1978), the court recognized the "inherently dangerous activity" exception to the general rule that employers of independent contractors are not vicariously liable for the torts of such contractors. *See* **Huddleston v. Union Rural Elec. Ass'n**, 841 P.2d 282 (Colo. 1992); **Vikell Inv'rs Pac., Inc. v. Kip Hampden, Ltd.**, 946 P.2d 589 (Colo. App. 1997); *see also* **Bennett v. Greeley Gas Co.**, 969 P.2d 754 (Colo. App. 1998); **Schell v. Navajo Freight Lines, Inc.**, 693 P.2d 382 (Colo. App. 1984) (federal administrative regulation requiring independent contractor be treated as employee). A person who has been engaged as an independent contractor may, nonetheless, also be an agent, RESTATEMENT (SECOND) OF AGENCY § 14N (1958), and the person engaging such agent may be held vicariously liable for torts committed by the agent within the scope of the agency. **Cheney v. Hailey**, 686 P.2d 808 (Colo. App. 1984); s*ee also* RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt. c (2006).

3. A supervising employee, not being the employer, is not liable under the doctrine of respondeat superior for torts committed by subordinate employees. **Bauer v. Sw. Denver Mental Health Ctr., Inc.**, 701 P.2d 114 (Colo. App. 1985).

4. The fact that an employer may be vicariously liable for an employee's tort does not relieve the employee from the employee's personal liability for the tort if he or she approved of, directed, actively participated in, or cooperated in the wrongful conduct. **JW Constr. Co. v. Elliott**, 253 P.3d 1265 (Colo. App. 2011) (fraud, excessive lien); **Hildebrand v. New Vista Homes II, LLC**, 252 P.3d 1159 (Colo. App. 2010) (negligence, negligent misrepresentation); **Colo. Coffee Bean, LLC v. Peaberry Coffee Inc.**, 251 P.3d 9 (Colo. App. 2010) (fraudulent nondisclosure); **Hoang v. Arbess**, 80 P. 3d 863 (Colo. App. 2003) (negligence, negligent misrepresentation, negligent nondisclosure); **Galie v. RAM Assocs. Mgmt. Servs., Inc.**, 757 P.2d 176 (Colo. App. 1988) (negligence, negligent misrepresentation); **Sanford v. Kobey Bros. Constr. Corp.**, 689 P.2d 724 (Colo. App.1984) (negligence of employee).

5. Although an employer may not be liable under the doctrine of respondeat superior for a tort committed by an employee acting outside the scope of employment, the employer may be liable for the harm caused by the employee if it resulted from the employer's negligent supervision of the employee. **Destefano v. Grabrian**, 763 P.2d 275 (Colo. 1988); *see also* **Moses v. Diocese of Colo.**, 863 P.2d 310 (Colo. 1993) (negligent hiring and supervision).

6. However, regardless of whether a claim against an employer is based on the doctrine of respondeat superior or negligent supervision, the employer can be held liable only if damages to the injured party resulted from the wrongful action of the employee. **Arnold v. Colo. State Hosp.**, 910 P.2d 104 (Colo. App. 1995).

7. Further, since an employer's liability under the doctrine of respondeat superior is derivative in nature, the employer and employee are not joint tortfeasors, and therefore the Uniform Contribution Among Tortfeasors Act, §§ 13-50.5-101 to -106, C.R.S., is not applicable

to their joint liabilities. **Arnold**, 910 P.2d at 107. Also, where the employer's liability is predicated on the doctrine of respondeat superior, a release of the employee of liability releases the employer. *Id*.

8. Under section 13-21-108, C.R.S., when the defense of acting as a "Good Samaritan" in an emergency would be applicable to the conduct of the employee, that defense may also be applicable to the employer. *See* § 13-21-108(5) (effective as "to causes of action arising on or after" August 9, 2005).

9. For a discussion of the distinction between the liability of a master for the tortious conduct of a servant under the doctrine of respondeat superior and the vicarious liability of a principal for the misrepresentations of an agent acting with apparent authority, see **Grease Monkey International, Inc. v. Montoya**, 904 P.2d 468, 473 (Colo. 1995) (generally, actions against a principal for the misrepresentations and fraud of an agent do not "lie within the scope and principles of respondeat superior").

10. An action against an employer based on respondeat superior is not necessarily barred because an affirmative defense, such as the statute of limitations, would bar an action against the employee. **Gallegos v. City of Monte Vista**, 976 P.2d 299 (Colo. App. 1998).

11. For a discussion of the applicability of the doctrine of respondeat superior to medical professional service corporations, see **Pediatric Neurosurgery, P.C. v. Russell**, 44 P.3d 1063 (Colo. 2002) (interpreting statute governing the formation and operation of medical professional service corporations, § 12-36-134, C.R.S.). However, in 2003, the General Assembly declared that the supreme court's decision in **Russell** would "no longer" reflect the law of section 12-36-134. Ch. 240, sec. 1, § 12-36-134, 2003 Colo. Sess. Laws 1598. *But see* **Daly v. Aspen Ctr. For Women's Health, Inc.**, 134 P.3d 450 (Colo. App. 2005) (common-law corporate practice of medicine doctrine precluded imposing vicarious liability on corporation for negligence of doctor).

12. For cases discussing the "going to and coming from work" rule, see **Stokes v. Denver Newspaper Agency, LLP**, 159 P.3d 691 (Colo. App. 2006) (discussing going to and coming from work rule as applied in negligence and workers' compensation cases); and **Beeson v. Kelran Constructors, Inc.**, 43 Colo. App. 505, 608 P.2d 369 (1979) (ordinarily employees using their own cars while traveling from place of work to home or other personal destination is not acting within scope of employment).

13. Statutes as well as common-law rules may impose vicarious liability on one person for damages caused by the acts of another. *See, e.g.*, Drug Dealer Liability Act §§ 13-21-801 to -813, C.R.S. (imposing vicarious liability on one who makes illegal drugs available to a user when the use of such drugs causes damages to others); *see also* Chapter 11, Part C (vicarious liability — motor vehicles). However, because a "party whose liability is based on respondeat superior is not a joint tortfeasor," section 13-50.5-105(1)(a) (Colorado's proportionate fault statute) does not apply. **Marso v. Homeowners Realty, Inc.**, 2018 COA 15M, ¶¶ 16-17, 418 P.3d 542, 545-46.

14. When a public entity is sued due to the conduct of its employee within the scope of the employment, the employee's willful and wanton conduct waives the employee's sovereign immunity, but not the public entity's. **Gray v. Univ. of Colo. Hosp. Auth.**, 2012 COA 113, ¶ 27, 284 P.3d 191.

15. Employees of a subsidiary corporation are not necessarily agents of the parent corporation, and determination of whether an agency relationship exists is a question of fact. **Reigel v. Savaseniorcare L.L.C.**, 292 P.3d 977 (Colo. App. 2011).

16. For a discussion of the relationship between the doctrine of respondeat superior and the Colorado Governmental Immunity Act's notice requirement, see **First National Bank of Durango v. Lyons**, 2015 COA 19, ¶¶ 42-49, 349 P.3d 1161.

17. Colorado's Premises Liability Act creates a non-delegable duty that burdens the landowner with full liability regardless of fault imputable to other parties or nonparties. The landowner's liability does not depend on vicarious liability for injuries caused by conditions created by a landowner's agent. **Reid v. Berkowitz**, 2016 COA 28, ¶ 22-23, 370 P.3d 644.

18. A principal is not liable under the doctrine of respondeat superior for an agent's actions taken independent of a power of attorney's scope. **In re Estate of Sandstead**, 2016 COA 49, ¶ 39, 412 P.3d 799, *rev'd on other grounds sub nom.* **Sandstead-Corona v. Sandstead**, 2018 CO 26, 415 P.3d 310.

19. A party may sue a principal on a theory of respondeat superior even if the party executes a covenant not to sue the agent and that covenant does not expressly reserve the right to sue the principal. **McShane v. Stirling Ranch Prop. Owners Ass'n, Inc.**, 2017 CO 38, ¶¶ 25-26, 393 P.3d 978 (citing **Dworak v. Olson Constr. Co.**, 191 Colo. 161, 551 P.2d 198 (1976)).

20. "Where an employer acknowledges vicarious liability for its employee's negligence, plaintiff's direct negligence claims against the employer are barred." **Ferrer v. Okbamicael**, 2017 CO 14M, ¶ 19, 390 P.3d 836. For further discussion of the rule's rationale, see *id.*, ¶¶ 26-34.

8:19 PRINCIPAL AND AGENT OR EMPLOYER AND EMPLOYEE — ONLY PRINCIPAL OR EMPLOYER SUED — NO ISSUE AS TO RELATIONSHIP — ACTS OF AGENT OR EMPLOYEE AS ACTS OF PRINCIPAL OR EMPLOYER

(Agent's or employee's name) **was the (agent) (employee) of the defendant,** *(principal's or employer's name)***, at the time of this** *(insert appropriate description of events, e.g., "occurrence," "collision," "accident," etc.)***. Therefore, any act or omission of (agent) (employee) (, if it was within the scope of the [agent's] [employee's] [authority] [employment],) was the act or omission of the defendant,** *(principal's or employer's name)***.**

Notes on Use

1. This instruction should not be used if the existence of the relationship is in dispute. In those circumstances, use Instruction 8:20.

2. When the principal or employer is a corporation, Instruction 8:23 should be used rather than this instruction.

3. Use whichever parenthesized or bracketed words are appropriate.

4. Omit the parenthesized phrase "if it was within the scope of the agent's authority" when that fact is not in issue.

5. When scope of employment or scope of authority is in dispute, either Instruction 8:8 or 8:9, whichever is appropriate, should be given with this instruction.

6. This instruction may be used in contract as well as tort cases when appropriate, but generally Instructions 8:1-8:17 are more applicable to contract cases.

Source and Authority

See Source and Authority to Instruction 8:18.

8:20 PRINCIPAL AND AGENT OR EMPLOYER AND EMPLOYEE — ONLY PRINCIPAL OR EMPLOYER SUED — ISSUE AS TO RELATIONSHIP AND/OR SCOPE OF AUTHORITY OR EMPLOYMENT — ACTS OF AGENT OR EMPLOYEE AS ACTS OF PRINCIPAL OR EMPLOYER

If you find that *(alleged agent's or employee's name)* **(was the [agent] [employee] of the defendant** *[principal's or employer's name]***) (and) (was acting within the scope of [his] [her] [its] [authority] [employment] as the [agent] [employee] of the defendant), at the time of the** *(insert appropriate description of events, e.g., "occurrence," collision," "accident," etc.)***, then any act or omission of** *(alleged agent's or employee's name)* **at that time was the act or omission of the defendant,** *(principal's or employer's name)***.**

Notes on Use

1. Use whichever parenthesized or bracketed words or clauses are appropriate, depending on whether either, or both, the relationship or the scope of authority has been denied, and depending on whether the case involves a principal and agent or an employer and employee.

2. When scope of employment or scope of authority is in dispute, either Instruction 8:8 or 8:9, whichever is appropriate, should be given with this instruction.

3. This instruction may be used in contract as well as tort cases when appropriate, but generally Instructions 8:1-8:17 are more applicable to contract cases.

Source and Authority

See Source and Authority to Instruction 8:18.

8:21 PRINCIPAL AND AGENT OR EMPLOYER AND EMPLOYEE — BOTH PARTIES SUED — LIABILITY OF PRINCIPAL OR EMPLOYER WHEN NO ISSUE AS TO RELATIONSHIP OR SCOPE OF AUTHORITY OR EMPLOYMENT

The defendants are sued as (principal and agent) (employer and employee). The defendant, *(principal's or employer's name)***, is the (principal) (employer) and the defendant,** *(agent or employee's name)***, is (his) (her) (its) (agent) (employee).**

If you find the defendant, *(agent or employee's name)***, is legally responsible, then you must find that the defendant,** *(principal or employer's name)* **is also legally responsible.**

However, if you find *(agent's or employee's name),* **is not legally responsible, then you must find that** *(principal's or employer's name)* **is not legally responsible.**

Notes on Use

1. This instruction should not be used if the existence of the relationship, or whether certain conduct was within its scope, is in dispute. In either of those circumstances, Instruction 8:22 should be used.

2. If the principal or employer's alleged liability is based on the wrongful conduct of an agent or employee who is not a party, this instruction must be appropriately modified.

3. Use whichever parenthesized words are appropriate.

4. This instruction may be used in contract as well as tort cases when appropriate, but generally Instructions 8:1-8:17 are more applicable to contract cases.

5. This instruction should not be used when there is an independent basis of liability claimed against the principal apart from the agency, as for example, when it is alleged the principal has been personally negligent.

Source and Authority

See Source and Authority to Instruction 8:18.

8:22 PRINCIPAL AND AGENT OR EMPLOYER AND EMPLOYEE — BOTH PARTIES SUED — LIABILITY WHEN ISSUE AS TO RELATIONSHIP AND/OR SCOPE OF AUTHORITY OR EMPLOYMENT

If you find that the defendant, *(alleged agent's or employer's name)***, (was the [agent] [employee] of the defendant,** *[principal's or employer's name]***,) (and) (was acting within the scope of [his] [her] [its] authority) at the time of the occurrence, and if you find** *(alleged agent's or employee's name)***, is legally responsible, then both are legally responsible. If you find that** *(alleged agent's or employee's name)* **is not legally responsible, then neither defendant is legally responsible.**

If you find that the defendant, *(alleged agent's or employee's name)***, is legally responsible but was not acting (as an agent of the defendant,** *[principal's or employer's name]***,) (or) (within the scope of [his] [her] [its] authority as an agent of the defendant,** *[principal's or employer's name]***,) at the time of the occurrence, then the defendant,** *(principal's or employer's name)***, is not legally responsible.**

Notes on Use

1. Use whichever parenthesized clauses are appropriate depending on whether either, or both, the relationship or the scope of authority or employment is in dispute.

2. Use whichever parenthesized or bracketed words are appropriate.

3. When the scope of employment or scope of authority is in dispute, either Instruction 8:8 or 8:9, whichever is appropriate, should be given with this instruction.

4. This instruction may be used in contract as well as tort cases when appropriate, but generally Instructions 8:1-8:17 are more applicable to contract cases.

5. This instruction should not be used when there is an independent basis of liability claimed against the principal or employer apart from the agency, as, for example, when it is alleged the principal or employer has been personally negligent.

Source and Authority

See Source and Authority to Instruction 8:18.

8:23 ACT OF CORPORATE OFFICER OR EMPLOYEE AS ACT OF CORPORATION

(The plaintiff) (The defendant), *(name),* **is a (municipal) corporation and can act only through its officers and employees. Any act or omission of an officer or employee while acting within the scope of (his) (her) (employment) (authority) is the act or omission of the (plaintiff) (defendant) corporation.**

Notes on Use

1. Use whichever parenthesized words are appropriate.

2. When scope of authority or employment is in dispute, either Instruction 8:8 or 8:9, whichever is appropriate, should be given with this instruction.

3. This instruction may be used in contract as well as tort cases when appropriate, but generally Instructions 8:1-8:18 are more applicable to contract cases.

4. For an example of how this instruction was correctly used, see **Lombard v. Colo. Outdoor Educ. Ctr.**, 266 P.3d 412, 419 (Colo. App. 2011).

Source and Authority

See Source and Authority to Instruction 8:18.