

4055 SERVANT: VICARIOUS LIABILITY OF EMPLOYER

In this case, (employer) is liable for the negligence of its employee(s). If, after considering all of the evidence, you find that (employee) was negligent, then (employer) was negligent.

COMMENT

This instruction was approved by the Committee in 1995. The comment was updated in 2004.

For a discussion of vicarious liability arising out of agency, see Kerl v. Rasmussen, 2004 WI 86, 273 Wis.2d 106, 682 N.W.2d 328.

Franchisor Liability. Kerl, supra, discusses the vicarious liability of a franchisor. In Kerl, the court stated:

(¶ 36) Quality and operational standards and inspection rights contained in a franchise agreement do not establish a franchisor's control or right of control over the franchisee sufficient to ground a claim for vicarious liability as a general matter or for all purposes.

(¶ 39) The franchisor must control or have the right to control the daily conduct or operation of the particular "instrumentality" or aspect of the franchisee's business that is alleged to have caused the harm before vicarious liability may be imposed on the franchisor . . . The quality and operational standards typically found in franchise agreements do not establish the sort of close supervisory control or right to control necessary to support imposing vicarious liability on a franchisor . . .

(¶ 50) . . . (T)he quality, marketing, and operational standards and inspection and termination rights commonly included in franchise agreements do not establish the close supervisory control or right to control over a franchisee necessary to support imposing vicarious liability against the franchisor. A franchisor may be subject to vicarious liability for the tortious conduct of its franchisee only if the franchisor had control or a right of control over the daily operation of the specific aspect of the franchisee's business that is alleged to have caused the harm.