INDEPENDENT CONTRACTOR.[1]

The defendant[2] contends that *(name other person)* was an independent contractor and was not *his* agent.[3]

A person for whom work is done is not liable for the negligent acts of an independent contractor.[4]

A person is an independent contractor when the person for whom he is performing services does not have the right or power to control the methods, manner or means in which the details of the work are performed.

In determining whether *(name other person)* was an independent contractor, you may consider several factors. An independent contractor usually

[is engaged in an independent business, calling or occupation]

[has the independent use of his special skills, knowledge or training in the performance of the work]

[does work for a fixed price, a lump sum, or upon a rate basis rather than on an hourly wage or salary basis]

[is not subject to discharge if he adopts one method of doing the work rather than another]

[does not regularly perform services for the person for whom the work is

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[1]The independent contractor contention is not a separate issue.

[2]If, in a rare case, it is the plaintiff who makes the independent contractor contention, this instruction must be varied accordingly.

[3]If the contention is that the plaintiff or other person was an employee of an independent contractor, this instruction must be varied accordingly.

[4]In some cases (e.g., inherently dangerous and ultrahazardous activities), a person may be held liable for the acts of an independent contractor. See Woodson v. Rowland, 329 N.C. 330, 352, 407 S.E.2d 222, 235 (1991).

INDEPENDENT CONTRACTOR. (Continued.)

being done]

[is free to use such assistance as he thinks proper]

[has full control over those assisting in the work]

[selects his own time for working]

The existence or non-existence of one or more of these factors is not necessarily controlling. These factors are to be considered by you along with all of the other evidence in determining whether the defendant had the right and power to control the methods, manner or means in which *(name other person)* performed the details of *his* work.[5]

[5] Youngblood v. North State Ford Truck Sales, 321 N.C. 380, 384, 364 S.E. 2d 433, 437 (1988); Hayes v. Elon College, 224 N.C. 11, 15, 29 S.E.2d 137, 139-140 (1944).