# 55.00

# CONSTRUCTION NEGLIGENCE

*PERMISSION TO PUBLISH GRANTED IN 2002*

## *INTRODUCTION*

Prior to February 14, 1995, workers injured in construction related settings had a number of avenues under the law by which to pursue a cause of action. Among those were the Illinois Structural Work Act, 740 ILCS 150/1 through 150/9, repealed by P.A. 89-2 §5, effective Feb. 14, 1995, Restatement (Second) of Torts §343 & §343A and Restatement (Second) of Torts §414. Construction negligence law has existed for some time, however it was rarely used due to the availability of the Illinois Structural Work Act. Following the Act's repeal in 1995, construction negligence actions have been thrust into the forefront. The law is currently in a state of flux and continues to be an area that is changing and developing.

Restatement (Second) of Torts §414 remains a viable remedy for some construction related injuries. This section is an exception to the general rule of agency dealing with independent contractors. The Restatement is as follows:

One who entrusts work to an independent contractor, but who retains control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.

Comment a. If the employer of an independent contractor retains control over the operative detail of doing any part of the work, he is subject to liability for the negligence of the employees of the contractor engaged therein, under the rules of that part of the law of Agency which deals with the relation of master and servant. The employer may, however, retain a control less than that which is necessary to subject him to liability as master. He may retain only the power to direct the order in which the work shall be done, or to forbid its being done in a manner likely to be dangerous to himself or others. Such a supervisory control may not subject him to liability under the principles of Agency, but he may be liable under the rule stated in the Section unless he exercises his supervisory control with reasonable care so as to prevent the work which he has ordered to be done from causing injury to others.

Comment b. The rule stated in this Section is usually, though not exclusively, applicable when a principal contractor entrusts a part of the work to subcontractors, but himself or through a foreman superintends the entire job. In such a situation, the principal contractor is subject to liability if he fails to prevent the subcontractors from doing even the details of the work in a way unreasonably dangerous to others, if he knows or by the exercise of reasonable care should know

that the subcontractors' work is being so done, and has the opportunity to prevent it by exercising the power of control which he has retained in himself. So too, he is subject to liability if he knows or should know that the subcontractors have carelessly done their work in such a way as to create a dangerous condition, and fails to exercise reasonable care either to remedy it himself or by the exercise of his control cause the subcontractor to do so.

Comment c. In order for the rule stated in this Section to apply, the employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled as to his methods of work or as to operative detail. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.

Restatement (Second) of Torts §414 (West 2000).

"Control over any part of the work" is the key element imposing liability under §414. The term "control" has been compared to the "in charge of" requirement under the Structural Work Act, 740 ILCS 150/1 through 150/9, repealed by P.A. 89-2 §5, effective Feb. 14, 1995. Adopted by the Illinois Supreme Court in *Larson v. Commonwealth Edison*, 33 Ill.2d 316, 211 N.E.2d 247 (1965), §414 was most notably discussed and clarified in the cases of *Weber v. Northern Illinois Gas Co.*, 10 Ill.App.3d 625, 295 N.E.2d 41 (1st Dist.1973) and *Pasko v. Commonwealth Edison Co.*, 14 Ill.App.3d 481, 302 N.E.2d 642 (1st Dist.1973). These cases set the early standard for §414's interpretation and application in Illinois.

In *Larson*, the court held that a general contractor who retains control of any part of the work of a subcontractor will be liable for injuries resulting from his failure to exercise this control with reasonable care. *Id.* 33 Ill.2d 316, 325; 211 N.E.2d at 252-253. Although a defendant's conduct is an appropriate consideration under §414, the most significant question to analyze is whether the defendant retained the authority to control the work. *Larson*, 33 Ill.2d 316, 324-335; 211 N.E.2d at 252. (emphasis added). At common law, retention of the right to control the work is sufficient to subject one to duty and tort responsibility. *Id.* 211 N.E.2d at 252-253, *citing* Restatement of Torts, §414.

The *Weber* court found that §414 "is applicable to anyone with authority who entrusts work to an independent contractor, e.g., an owner, general contractor or architect." *Id.* 10 Ill.App.3d 625, 639; 295 N.E.2d at 50. Thus, more than one person may have "control" over a contractor's work. Further, "a contractor owes an independent contractor whom he employs and all the subcontractors' employees a non-delegable duty to provide a safe place to work." *Id.* 10 Ill.App.3d 625, 640; 295 N.E.2d at 51. This duty applies to anyone connected to a construction project who evidences the requisite level of control. *Damnjanovic v. United States*, 9 F.3d 1270 (7th Cir.1993).

In *Pasko*, the court stated that "[t]he power to forbid work from being done in a manner likely to be dangerous to himself or others is given as an illustration of the type of power retained

by an employer which could subject him to liability." *Id.* 14 Ill.App.3d 481, 488; 302 N.E.2d at 648. The *Pasko* court placed great emphasis on a defendant's ability to implement or enforce safety procedures. *Id.*

Due to the availability of the Structural Work Act, there was a long period of time where there were not many cases decided under §414. Since the repeal of the Act, conflicts have arisen regarding the application of §414, and, specifically, what control is sufficient to render a party liable for failing to exercise that control with reasonable care. These conflicts are most evident in the cases of *Fris v. Personal Products Company*, 255 Ill.App.3d 916, 627 N.E.2d 1265, 194 Ill.Dec. 623 (3d Dist.1994), *Rangel v. Brookhaven Constructors, Inc.*, 307 Ill.App.3d 835, 719 N.E.2d 174, 241 Ill.Dec. 313 (1st Dist.1999), *Brooks v. Midwest Grain Products of Illinois, Inc.*, 311 Ill.App.3d 871, 726 N.E.2d 153, 244 Ill.Dec. 557 (3d Dist.2000), and *Bokodi v. Foster Wheeler Robbins, Inc.*, 312 Ill.App.3d 1051, 728 N.E.2d 726, 245 Ill.Dec. 644 (1st Dist.2000).

The Third District in *Fris* focused on whether the defendant actually exercised its control over the means and methods of the work. Even though the *Fris* court acknowledged that the defendant retained the right to inspect the work, issue change orders, ensure that safety precautions were observed and ensure the work was done in a safe manner, it held that the defendant did not retain sufficient control over the "operative details" or "routine and incidental aspects" of the plaintiff's work. *Id.* 255 Ill.App.3d 916, 924-925; 627 N.E.2d at 1270; 194 Ill.Dec. 623. The term "routine and incidental aspects" has no progenitor and is not defined in the case.

In *Rangel*, a subcontract between the defendant and the plaintiff's employer provided that the defendant would exercise complete supervision and control over the plaintiff's work. *Id.*, 307 Ill.App.3d 835, 838; 719 N.E.2d at 177, 241 Ill.Dec. at 316. The First District stated that liability would not be imposed on the defendant unless it retained control over the "incidental aspects" of the plaintiff's work. *Id.* 307 Ill.App.3d 835, 839; 719 N.E.2d at 178; 241 Ill.Dec. at 316 (*citing Fris*, 255 Ill.App.3d at 924). The court held that the defendant never actually exercised its control over the "operative details" of the plaintiff's work and therefore the §414 exception did not apply. *Id*. 307 Ill.App.3d 835, 839; 719 N.E.2d at 177-178; 241 Ill.Dec. at 316. The court did not define "incidental aspects" of the work.

Less than one year later, the First District decided *Bokodi*. In *Bokodi*, the defendant superintended the entire job and retained a right of supervision such that the subcontractors were not free to do their work without compliance with safety regulations. *Id.* 312 Ill.App.3d 1051, 1064; 728 N.E.2d at 736; 245 Ill.Dec. at 658. Additionally, the defendant discussed safety matters in meetings, was responsible for the overall construction schedule and coordination of subcontractors. *Id.* 312 Ill.App.3d 1051, 1053-1054; 728 N.E.2d at 728 245 Ill.Dec.at 647. Further, the defendant retained the authority to stop the work of any subcontractor if they witnessed a potential safety hazard and subsequently would not allow work to resume until they were satisfied safety issues were in compliance. *Id.* 312 Ill.App.3d 1051, 1054; 245 Ill.Dec. 644, 728 N.E.2d at 728-729. The court specifically found the general contractor's authority over job site safety to be a determining factor and found the general contractor had "control" for purposes of §414 as a matter of law.

In Brooks, the Third District reviewed the standard for control under §414 as set forth by both *Fris* and *Rangel*. The defendant was present on the construction site and retained the authority to stop the work if safety rules were not followed. *Id.* 311 Ill.App.3d 871, 873; 726 N.E.2d at 154; 244 Ill.Dec. at 558. The Brooks court specifically pointed to §414, which states that a general contractor "who retains the control of any part of the work, is subject to liability for physical harm to others caused by the [plaintiff's] employer's failure to exercise his control with reasonable care." *Id.* 311 Ill.App.3d 871, 874; 726 N.E.2d at 155, 244 Ill.Dec. at 558. Thus, the defendant need not affirmatively direct the subcontractor's work. Rather, a defendant's omission in regards to its retained right of control is determinative in deciding whether a duty existed and whether that duty was breached.

The *Brooks* court distinguished the holdings in both *Rangel* and *Fris* and reversed the trial court's finding that the defendant did not owe the plaintiff a duty of care. The committee had difficulty reconciling *Fris* and *Rangel* with *Brooks* and *Bokodi*.

Illinois courts have identified a number of factors to be considered in determining whether a defendant is in control of the work. These include, but are not limited to: (1) the right to stop work for safety reasons; (2) authority to implement safety rules/procedures; (3) safety consultant consistently present on job site; (4) supervision and control of the work; (5) retention of the right to supervise and control the work; (6) supervision and coordination of subcontractors; (7) responsibility for taking safety precautions at the job site; (8) authority to issue change orders; (9) holding meetings in which safety issues are discussed; (10) ownership of the equipment used at the job site; and (11) authority to order unsafe equipment removed. *See Haberer v. Village of Sauget*, 158 Ill.App.3d 313, 511 N.E.2d 805, 110 Ill.Dec. 628 (5th Dist.1987); *Sobczak v. Flaska*, 302 Ill.App.3d 916, 706 N.E.2d 990, 236 Ill.Dec. 116 (1st Dist.1998); *Weber*; *Pasko*; *Brooks*; and *Bokodi*.

Cases in which the defendant did not retain sufficient control include *Rogers v. West Construction Co.*, 252 Ill.App.3d 103, 623 N.E.2d 799, 191 Ill.Dec. 209 (4th Dist.1993) (defendant completely vacated the construction site prior to plaintiff's arrival); *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill.App.3d 351, 726 N.E.2d 1171, 244 Ill.Dec. 860 (4th Dist 2000) (insufficient control because plaintiff could not establish causation in fact based on surmise or conjecture as to the cause of injury); *Fris v. Personal Products Company*, 255 Ill.App.3d 916, 627 N.E.2d 1265, 194 Ill.Dec. 623 (3d Dist.1994) (defendant did not retain sufficient control over the "operative details" or "routine and incidental aspects" of the plaintiff's work); and *Rangel v. Brookhaven Constructors, Inc.*, 307 Ill.App.3d 835, 719 N.E.2d 174, 241 Ill.Dec. 313 (1st Dist.1999) (defendant never exercised its control over the "operative details" of the plaintiff's work).

Due to the lack of consensus among the appellate courts and no Supreme Court cases on this subject since *Larson* in 1965, the concept of "control" caused the committee great difficulty. The committee chose to concentrate on the area of "safety" in these instructions. The committee believed that the overriding consideration throughout all of these cases is the ability of the controlling entity to affect overall job safety. It would appear that the ability to stop unsafe work and not permit it to be resumed until done to the satisfaction of the controlling entity satisfies both the requirement of "control" and demonstrates that the contractor is "not entirely free to do

the work in his own way."

In addition, the committee was cognizant of the fact that the term "having charge of the work" was never defined in the Structural Work Act IPI instructions. *See* Illinois Pattern Jury Instructions 180.16 (2000). In *Larson* the Supreme Court chose not to define "having charge of" stating it was a "generic term of broad import". *Id.* 33 Ill.2d 316, 321, 323; 211 N.E.2d at 251-252. Whether the term "control" will be treated similarly will depend on further judicial interpretation to help guide the committee.

The instructions that follow allow the jury to determine whether the defendant retained sufficient "control" to give rise to the duty to exercise that control in a reasonable manner.

## 55.01 Construction Negligence--Work Entrusted To Another

A[n] [owner] [contractor] [other] who entrusts work to a [subcontractor] [contractor] [other] can be liable for injuries resulting from the work if the [owner] [contractor] [other] retained some control over the safety of the work and the injuries were proximately caused by the [owner's] [contractor's] [other's] failure to exercise that control with ordinary care.

### Notes on Use

This instruction should be given as an introduction to the subject of construction negligence.

### Comment

For the relevant cases see: *Jones v. DHR Cambridge Homes, Inc*., 381 Ill.App.3d 18, 885 N.E.2d 330, 319 Ill.Dec. 59 (1st Dist. 2008); *Diaz v. Legat Architects, Inc*., 397 Ill.App.3d 13, 920 N.E.2d 582, 336 Ill.Dec. 373 (1st Dist. 2009); *Calloway v. Bovis Lend Lease, Inc*., 2013 IL App (1st) 112746, 995 N.E.2d 381, 374 Ill.Dec. 242. *But see Ramirez v. FCL Builders, Inc*., 2014 IL App (1st) 123663, 6 N.E.3d 193, 379 Ill.Dec. 116; *Lee v. Six Flags Theme Parks, Inc*., 2014 IL App (1st) 130771, 10 N.E.3d 444, 381 Ill.Dec. 359.

In addition, see *Restatement (Second) of Torts* § 414 (West 2000), and the Introduction to this section.

The use of the IPI 55.00 Series instructions has been upheld in *Jones v. DHR Cambridge Homes, Inc*., 381 Ill.App.3d 18, 885 N.E.2d 330, 319 Ill.Dec. 59 (1st Dist. 2008); *Diaz v. Legat Architects, Inc*., 397 Ill.App.3d 13, 920 N.E.2d 582, 336 Ill.Dec. 373 (1st Dist. 2009) and *Calloway v. Bovis Lend Lease, Inc*., 2013 IL App (1st) 112746, 995 N.E.2d 381, 374 Ill.Dec. 242.

In *Jones v. DHR Cambridge Homes, Inc.,* 381 Ill.App.3d 18*,* the defendant general contractor appealed, in part, the trial court's refusal to give a non-pattern jury instruction that had been patterned on the holding from *Martens v. MCL Constr.*, 347 Ill.App.3d 303, 807 N.E.2d 480 (1st Dist. 2004). See *Jones*, 381 Ill.App.3d at 37. The non-pattern jury instructions proposed by the defendant general contractor replaced "safety" with "the means and methods or operative detail" in IPI 55.01-55.02.

In upholding the trial court's denial to give the non-pattern instructions, the *Jones* court rejected the general contractor's argument that the construction negligence instructions no longer reflect the common law on construction negligence. *Jones,* 381 Ill.App.3d at 38. The *Jones* court stated that the *Martens* court's citation to the pattern instructions on construction negligence did not suggest that the court intended its decision to mean that the pattern instructions no longer reflected an accurate statement of the law. *Id.* at 39-40. The court further noted that the *Martens* court referred to IPI 55.02 (2005) ("A party who retains some control over the safety of the work has a duty to exercise that control with ordinary care.") without criticism. *Id.* at 37-38.

In *Diaz v. Legat Architects, Inc*., 397 Ill.App.3d 13, 920 N.E.2d 582, 336 Ill.Dec. 373 (1st

Dist. 2009), defendant Boller appealed the trial court's refusal to give non-pattern jury instructions. The non-pattern jury instructions proposed by the Defendant replaced "safety" of the work with "manner" in which the work was done in IPI 55.01-55.03. Defendant further objected to the giving of IPI 55.04. *Diaz*, 397 Ill.App.3d at 37-39.

Boller tendered a modified IPI 55.02 (2006), which defined "retained control" using the language from Comment C of the *Restatement (Second) of Torts* § 414 as follows:

> "A party who retained some control over the manner in which the work is done, has a duty to exercise that control with ordinary care.
>
> When I use the words, 'retained control' the party must have retained at least some degree of control over the manner in which the work is done. To be liable, a party must have more than a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work his own way."

*Diaz,* 397 Ill.App.3d at 38.

The Appellate Court rejected defendant's argument that the IPI instructions on construction negligence do not accurately state the law because they failed to qualify the term "some control over the work." The Court concluded that "the IPI construction negligence instructions continue to reflect an accurate statement of the law." *Id.* at 39.

In *Calloway v. Bovis Lend Lease, Inc*., 2013 IL App (1st) 112746, 995 N.E.2d 381, 374 Ill.Dec. 242, Defendant Bovis claimed that the trial court abused its discretion when it gave the jury the IPI 55.00 (2006) Series instructions. The court noted that the instructions are based upon § 414 of the *Restatement* and informed the jury what plaintiffs had to prove in order for Bovis to be found liable. Plaintiffs had to prove that Bovis retained some control over the safety of the work and that Bovis acted or failed to act in a number of ways, including failing to stop Junior and Senior from working in the unprotected trench. The court held that the evidence supported giving the IPI 55.00 (2006) Series instructions and that the trial court did not abuse its discretion by doing so. *Calloway,* 995 N.E.2d at 419-20.

Recently, in 2014, the use of IPI 55.01 was challenged in *Ramirez v. FCL Builders, Inc*., 2014 IL App (1st) 123663, 6 N.E.3d 193, 379 Ill.Dec. 116 and *Lee v. Six Flags Theme Parks, Inc*., 2014 IL App (1st) 130771, 10 N.E.3d 444, 381 Ill.Dec. 359.

In *Ramirez v. FCL Builders, Inc*., 2014 IL App (1st) 123663, 6 N.E.3d 193, 379 Ill.Dec.116, the Defendant argued that it was error to give IPI 55.01. The court stated that the language in IPI 55.01 requiring only that the contractor retain "*some* control" over the safety of the work is not an accurate statement of the law as language in § 414 of the *Restatement (Second) of Torts* states that the section applies when one who entrusts work retains "*the* control" of any

part of the work. The court opined that the "use of the phrase 'the control,' then, implies that there is only one person or entity exercising control over a part of the work, something that is not true of the pattern instruction's requirement of 'some control.'" *Ramirez*, 6 N.E.3d at 225-26.

The court reached this opinion without citation to any prior precedent or reference to IPI 55.04, which reads "One or more persons may have some control over the safety of the work. Which person or persons had some control over the safety of the work under the particular facts of this case is for you to decide."

The court further concluded that the IPI language does not include the explanation of "retained control" found in the Comments to § 414. The court quoted Comment C in support of its rejection of the use of the "some control" language of IPI 55.01, but in its analysis and reasoning it omitted and did not comment on the first sentence of Comment C which reads "In order for the rule stated in this Section to apply, the employer must have retained at least **some** degree of control over the manner in which the work is done." *Restatement (Second) of Torts* § 414, cmt. c (emphasis added).

The court acknowledged the correctness of the comments of the IPI committee concerning "safety" contained in the Introduction to the 55.00 Series instructions, stating:

> The committee's statement that "[i]t would appear that the ability to stop unsafe work and not permit it to be resumed until done to the satisfaction of the controlling entity" would bring the contractor under the purview of section 414 is likely an accurate statement of the law because, under that scenario, the contractor would have the power to affect the methods by which the subcontractor alleviated the safety problem. See, e.g., *Calloway*, 2013 IL App (1st) 112746, [995 N.E.2d 381, 374 Ill.Dec. 242] (general contractor's authority included right "to stop any work that they saw being done in an unsafe manner and to direct that the work be done in a different manner"); *Bokodi v. Foster Wheeler Robbins, Inc*., 312 Ill.App.3d 1051, 1063, 728 N.E.2d 726, 245 Ill.Dec. 644 (2000) (general contractor's authority included right to "shut down the work of the subcontractors until a safety breach was alleviated to defendants' satisfaction").

*Ramirez*, 6 N.E.3d at 225.

Despite the court's statement that IPI 55.01 is not an accurate statement of the law, the court held that the issuance of the improper instruction did not result in serious prejudice and thus was not reversible error. *Id.* at 227.

In *Lee v. Six Flags Theme Parks, Inc.*, 2014 IL App (1st) 130771, 10 N.E.3d 444, 381 Ill.Dec. 359, the court agreed with the reasoning of *Ramirez v. FCL Builders, Inc*., 2014 IL App (1st) 123663, 6 N.E.3d 193, 379 Ill.Dec.116, which held that IPI 55.01 does not accurately state the law of construction negligence.

*Comment approved January 2015.*

## 55.02 Construction Negligence--Duty

A party who retained some control over the safety of the work has a duty to exercise that control with ordinary care.

### Notes on Use

This should be used in conjunction with IPI 55.03.

### Comment

See *Restatement (Second) of Torts* § 414, the Comment to IPI 55.01, and the Introduction to this section.

(*Cf. Restatement (Second) of Torts § 414*: "one who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.").

*Comment approved January 2015.*

## 55.03 Construction Negligence--Issues Made by the Pleadings/Burden of Proof

Plaintiff ____ seeks to recover damages from defendant[s] ____. In order to recover damages, the plaintiff has the burden of proving:

1. [The defendant] [Defendants __, __, and __] retained some control over the safety of the work;

2. Defendant[s] [acted] [or] [failed to act] in one or more of the following ways:
   a. ____; or

   b. ____; or

   c. ____.;

and in so [acting] [or] [failing to act], was [were] negligent in the manner in which it [exercised] [or] [failed to exercise] its control.

3. Plaintiff [name] was injured; and
4. [The defendant's] [Defendants' ____, ____, or ____] negligence was a proximate cause of plaintiff's injuries.

[You are to consider these propositions as to each defendant separately.] If you find that any of these propositions has not been proven as to [the defendant] [any one] [or more] [or all] [of the defendants], then your verdict should be for [the] [that] [those] defendant[s]. On the other hand, if you find that all of these propositions have been proven as to [the defendant] [any one] [or more] [or all] [of the defendants], then you must consider defendant['s] [s'] claim[s] that the plaintiff was contributorily negligent.

As to [that] [those] claim[s], defendant[s] has the burden of proving:

A. Plaintiff [name] acted or failed to act in one or more of the following ways:
   1. ____; or

   2. ____; or

   3. ____.;

and in so [acting] [or] [failing to act] was negligent, and

B. Plaintiff's negligence was a proximate cause of [his injury] [and] [damage to his property].

If you find that plaintiff has proven all the propositions required of [him] [her], and the defendant[s] ha[s][ve] not proven all of the propositions required of the defendant[s], then your verdict should be for the plaintiff as to [that] [those] defendant[s] and you will not reduce

plaintiff's damages.

If you find that defendant[s] [has] [have] proven all of the propositions required of [the] [those] defendant[s], and if you find that the plaintiff's contributory negligence was greater than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for [that] [those] defendant[s].

If you find that defendant[s] [has] [have] proven all of the propositions required of [the] [those] defendant[s], and if you find that the plaintiff's contributory negligence was less than 50% of the total proximate cause of the injury or damage for which recovery is sought, then your verdict should be for the plaintiff as to [that] [those] defendant[s] and you will reduce the plaintiff's damages in the manner stated to you in these instructions.

**Notes on Use**

This is a new instruction. In prior editions of the IPI, there were no specific instructions dealing with common law construction negligence cases. Most cases that could have been tried under that theory were typically tried as Structural Work Act cases. *Cf. IPI 180.01 et seq. (IPI 2000 ed.).*

This combined issue-burden instruction is designed for use in a common law construction negligence case. The committee drew heavily on Restatement (Second) of Torts, §414, and Illinois cases construing it. *E.g. Larson v. Commonwealth Edison* Co., 33 Ill.2d 316, 211 N.E.2d 247 (1965); *Weber v. Northern Ill. Gas Co.*, 10 Ill.App.3d 625, 295 N.E.2d 41 (1st Dist.1973); *Pasko v. Commonwealth Edison Co.*, 14 Ill.App.3d 481, 302 N.E.2d 642 (1st Dist.1973); *Ryan v. Mobil Oil Co.*, 157 Ill.App.3d 1069, 510 N.E.2d 1162, 110 Ill.Dec. 131 (1st Dist.1987); *Haberer v. Village of Sauget*, 158 Ill.App.3d 313, 511 N.E.2d 805, 110 Ill.Dec. 628 (5th Dist.1987); *Claudy v. City of Sycamore*, 170 Ill.App.3d 990, 524 N.E.2d 994, 120 Ill.Dec. 812 (1st Dist.1988); *Bezan v. Chrysler Motors Corporation*, 263 Ill.App.3d 858, 636 N.E.2d 1079, 201 Ill.Dec. 647 (2d Dist.1994); *Fris v. Personal Products Company*, 255 Ill.App.3d 916, 627 N.E.2d 1265, 194 Ill.Dec. 623 (3d Dist.1996); *Fancher v. Central Illinois Public Service Co.*, 279 Ill.App.3d 530, 664 N.E.2d 692, 216 Ill.Dec. 55 (5th Dist.1996); *Rangel v. Brookhaven Constructors, Inc.*, 307 Ill.App.3d 835, 719 N.E.2d 174, 241 Ill.Dec. 313 (1st Dist.1999); *Brooks v. Midwest Grain Prod. of Ill.*, 311 Ill.App.3d 871, 726 N.E.2d 153, 244 Ill.Dec. 557 (3d Dist.2000); *Bokodi v. Foster Wheeler Robbins, Inc.*, 312 Ill.App.3d 1051, 728 N.E.2d 726, 245 Ill.Dec. 644 (1st Dist. 2000); *Hutchcraft v. Independent Mechanical*, 312 Ill.App.3d 351, 726 N.E.2d 1171, 244 Ill.Dec. 860 (4th Dist. 2000).

This is a rapidly developing area of law due to the repeal of the Structural Work Act; 740 ILCS 150/1 through 150/9, repealed by P.A. 89-2 § 5, eff Feb. 14, 1995.

This instruction is designed to be given with IPI 10.01, “Negligence--Adult--Definition”, IPI 10.04 “Duty to use ordinary care--Adult-Defendant”, B10.03 “Duty to use ordinary care--Adult-Plaintiff--Definitions of contributory and comparative negligence--Negligence,” IPI

11.01 “Contributory negligence--adult--definition,” as appropriate. *See also*, premises liability cases arising under the deliberate encounter exception to the open and obvious doctrine, IPI 120.02.03.

## 55.04 Construction Negligence--More Than One Person Having Control

One or more persons may have some control over the safety of the work. Which person or persons had some control over the safety of the work under the particular facts of this case is for you to decide.

### Notes on Use

This instruction should be given with IPI 55.03 in cases where there is evidence that more than one person, whether or not a defendant, had some control over the safety of the work. *Cf.* Restatement (Second) of Torts, §414.