04.07 WRONGFUL DEATH DAMAGES — LOSS OF ASSISTANCE OR SERVICES

The \_\_\_\_\_ and \_\_\_\_\_ items of economic loss claimed by the plaintiff are the past and future loss of assistance or services that [decedent] reasonably could have been expected to give to [statutory beneficiary], if [decedent] had continued to live. A past loss of assistance or services refers to a loss from the date of death, [insert date], to the date of trial, [insert date]. A future loss of assistance or services refers to a loss from the date of trial to the end of [decedent]’s ordinary life expectancy.

In fixing this amount for each individual beneficiary, you may consider, along with other evidence, the willingness of [decedent] to provide assistance or services; the nature of the assistance or services customarily provided by [decedent] in the past; the assistance or services reasonably expected to be provided by a [insert relationship of deceased to the beneficiar(y)(ies), e. g., husband to his wife, mother to her adult son]; and how long [decedent] would have provided such assistance or services. You make an award for assistance or services even though [decedent] was under no legal obligation to provide such assistance or services.

[Any award for future loss of assistance or services must be reduced to present cash value. I will explain in a few minutes the meaning or present cash value and how to reduce to present cash value.]

# **Use Note**

This instruction should be used in a wrongful death action with surviving statutory beneficiaries where a claim is made on behalf of one or more beneficiaries for the loss of assistance or services of the deceased.

Under AS 09.17.040(c), future economic losses must be adjusted for inflation and reduced to present value, unless the parties have agreed to apply the *Beaulieu* rule. If the parties have not agreed to apply the *Beaulieu* rule, the final bracketed paragraph should be included in the instruction, and the instruction should be followed by Instruction 20.05, which is the general damage instruction on inflation and present value. If the parties have agreed to apply the *Beaulieu* rule, the final bracketed paragraph should be excluded.

# **Comment**

AS 09.55.580(c) provides that the items of loss which must be considered by the jury include damages for:

(3) loss of assistance or services irrespective of age or relationship of decedent to the beneficiary or beneficiaries.

The Alaska Supreme Court let stand an award of damages for loss of services measured to the age of majority of a surviving child and to the date of death of a surviving spouse, *State v. Phillips*, 470 P.2d 266, 271 (Alaska 1970), notwithstanding the “irrespective of age” phraseology of AS 09.55.580(c)(3).

*See also* Comment to Instructions 04.03 and 04.06A.