**1A.10 LIMITING INSTRUCTION - INSURANCE**

 Whether or not a party has insurance is something that you may not consider in deciding whether the defendant must pay damages in this case. Your job is to decide whether the law requires the defendant to pay, and this is not a decision that is to be made out of sympathy or lack of sympathy for someone who has money available. It is a decision that is to be made according to the rules I give you. You may, however, consider whether the (insert proper use for insurance evidence).

 Use Note

 This instruction must not be used unless the jury has received some suggestion that either of the parties is insured. It should only be given at the request of the party whose insurance coverage has been disclosed or suggested. It is given in conformity with Alaska R. Evid. 411. For emphasis a judge might add that "All persons, those who have money available to them and those who do not, stand equal in the eyes of the law. All are equally entitled to a fair decision under the law."

 Comment

 The traditional practice in Alaska is to exclude evidence of a party's possession of insurance or lack thereof. See, Bertram v. Harris, 423 P.2d 909, 918 (Alaska 1967); Mallonee v. Finch, 413 P.2d 159, 163-64 (Alaska 1966); Cf., Aydlett v. Haynes, 511 P.2d 1311, 1315 n.8 (Alaska 1973) (which contains dictum indicating that evidence of insurance might be admissible should there be a conflict of interest between a party and his insurance carrier). This rule exists out of fear that the jury might misuse the evidence of insurance and so distort the factual determination of negligence or damages. The court has stated:

 Since a [party's] insurance coverage is irrelevant to the issue of fault, the jury should not consider it at all, and the introduction of any evidence on the point by either party should not be permitted unless in some extraordinary case its relevance should outweigh its prejudicial nature.

Poulin v. Zartman, 548 P.2d 1299, 1300 (Alaska 1976).

 In cases where evidence of insurance has intentionally or inadvertently been heard by the jury, however, a cautionary instruction should be given requiring the jury to disregard it. The jury should be instructed that its finding of fault is to be based solely on the evidence in the case without any regard whatsoever to the existence or nonexistence of insurance. See, Bertram v. Harris, 423 P.2d 909, 918-919 (Alaska 1967).

 In Drickersen v. Drickersen, 604 P.2d 1082 (Alaska 1979), a husband sued his wife for negligence on behalf of their child for injuries that the child sustained while riding in a vehicle operated by the wife. The Supreme Court held that the trial judge did not err in refusing to instruct the jury that no insurance company was a party to the suit and that voir dire questions about insurance were designed to test for bias. The Court so held, despite the fact that one prospective juror expressed concern over insurance rates before being excused; but it left open the question whether in a suit between a child and parent the jury should be told about insurance, as Senior Justice Dimond argued in dissent.