**03.12B INJURY RESULTING FROM COMMISSION OF A CRIME –WITHOUT CONVICTION**

The defendant claims that the plaintiff was injured while [committing a crime] [fleeing after committing a crime] [being apprehended after committing a crime]. You may not award damages to the plaintiff if the defendant proves by clear and convincing evidence that:

(1) the plaintiff was injured while [committing the crime of \_\_\_\_\_\_\_\_\_\_] [fleeing after committing the crime of \_\_\_\_\_\_\_\_\_\_] [being apprehended for committing the crime of \_\_\_\_\_\_\_\_\_\_]; and

(2) the plaintiff’s [criminal conduct] [conduct during flight or apprehension] substantially contributed to the plaintiff’s injury.

To prove that the plaintiff committed the crime of \_\_\_\_\_\_\_\_\_\_, the defendant must prove by clear and convincing evidence each of the following elements:

[insert appropriate criminal instruction]

An alleged fact is established by clear and convincing evidence if the evidence leads you to conclude that the alleged fact is highly probable. It is not necessary that the alleged fact be certainly true or true beyond a reasonable doubt or conclusively true. However, it is not enough to show that the alleged fact is more likely than not true.

Directions for Use

This instruction should be used when the plaintiff may not be able to recover under AS 09.65.210(2), (3) or (5). This instruction will need to incorporate the criminal pattern instruction(s) stating the elements of the crime at issue. If the plaintiff was convicted of the crime, Instruction 3.12A (Injury Resulting from Commission of a Crime) should be used instead of this instruction.

Comment

*See* AS 09.65.210 (2), (3) and (5).