**20.06 NON-ECONOMIC LOSSES**

The (first, second, etc.) item of loss claimed by the plaintiff is for non-economic losses. You may award the plaintiff a fair amount to compensate the plaintiff for [pain and suffering] [loss of enjoyment of life] [disfigurement] [physical impairment] [other qualifying loss] [and] [inconvenience] resulting from the injury.

Such an award should fairly compensate the plaintiff for the non-economic losses (he) (she) has experienced from the date of the injury until the date of trial [and for non-economic losses that (he) (she) is reasonably probable to experience in the future]. [In deciding how long the plaintiff may experience such losses in the future, you may need to consider (his) (her) current life expectancy.]

[If a person’s injury requires medical care, that injury is necessarily accompanied by some amount of pain and suffering. Therefore, if you award the plaintiff any damages for past or future medical expenses, you must also award damages for pain and suffering. This means that if you award any medical expenses to the plaintiff, you cannot award zero for the plaintiff’s non-economic damages. If you do so, the case will be returned to you for further deliberation.]

The law does not establish a definite standard for deciding the amount of compensation for non-economic losses, and the law does not require that any witness testify as to the dollar value of non-economic losses. You must exercise your reasonable judgment to decide a fair amount in light of the evidence and your experience.

**Use Note**

This instruction should be used with Instruction 20.01A or 20.01B.

The list of items included in the concept of non-economic damages may be tailored for the particular case. The consolidation of these items in a single non-economic loss instruction is not intended to suggest that evidence or argument may not focus on particular items rather than on a general category of "non-economic loss."

The bracketed language concerning future non-economic losses should be given in cases where future losses are alleged. In such a case, Instruction 20.10 (Future Damages) should also be given.

The bracketed sentence on life expectancy should be given only when it is claimed that the injury is permanent. In that event, Instruction 20.13 should be given.

The purpose of the third paragraph is to avoid situations where the jury finds liability and awards medical expenses for an injury that was caused by the defendant’s conduct, but makes no award for pain and suffering associated with this injury. Most injuries that include medical care also involve pain and suffering. *See Grant v. Stoyer*, 10 P.3d 594, 599 n.34 (Alaska 2000). In an atypical case that did not involve any pain and suffering, this paragraph may be omitted, or altered to address the particular situation.

**Comment**

The list of items included in the concept of non-economic loss is derived from AS 09.17.010(a), which states that "damages for non-economic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life and other non-pecuniary damage." In a case where the evidence supports an additional descriptive term, and where the law permits such a recovery, other terms could be added.

The category of non-economic loss most frequently discussed in the Alaska cases is pain and suffering. The plaintiff is not required to prove pain and suffering damages with great precision. *Morrison v. State*, 516 P.2d 402, 406 (Alaska 1973). There is no fixed measure for the amount of an award, and its calculation rests with the good sense and deliberate judgment of the fact finder. *Patrick v. Sedwick*, 413 P.2d 169 (Alaska 1966); *see also* *Beaulieu v. Elliott*, 434 P.2d 665, 676 (Alaska 1967). A per diem formula may be used. *Id*. A separate award may be appropriate for loss of non-market services, such as performance of household chores. Such an award does not necessarily duplicate an award for loss of enjoyment of life. *Dura Corp. v. Harned*, 703 P.2d 396, 412 (Alaska 1986).

“[W]here negligence and causation of compensable physical injury are conceded or proved, and where evidence of at least some pain and suffering is substantial and uncontroverted, some damages must ordinarily be awarded.” *Grant v. Stoyer,* 10 P.3d 594, 598 (Alaska 2000)(new trial required when jury failed to award any damages, including pain and suffering, for undisputed injuries caused by accident). *See also Walker v. Alaska Road Commission*, 388 P.2d 406 (Alaska 1964).