20.07N Limit on Non-Economic Damages – Severe disfigurement

Plaintiff claims that he/she was severely disfigured because of the defendant's conduct. The plaintiff had a severe disfigurement if a reasonable person would find that after passage of a reasonable healing period, the plaintiff had an injury that marred his/her physical appearance and caused a degree of unattractiveness sufficient to bring negative attention or embarrassment.

Use Note

This instruction should be given when the plaintiff is claiming non-economic damages in excess of the $400,000 cap in AS 09.17.010(b), and there is a factual question concerning whether the plaintiff may exceed this damage cap because of severe disfigurement. In such instances, the jury must determine whether the plaintiff has been severely disfigured. The special verdict form must provide a place for the jury to indicate its decision.

The jury is not instructed about the existence of the damages cap. Kodiak Island Borough v. Roe, 63 P.2d 1009, 1016-17 (Alaska 2003). See also Central Bering Sea Fishermen's Ass'n v. Anderson, 54 P.3d 271, 281 (Alaska 2002). The court will reduce the judgment if necessary in light of the verdict amount, and the jury's decision concerning the existence of severe disfigurement.

Comment

The trial court must make a threshold determination whether the plaintiff was severely disfigured. If no reasonable juror could find that the plaintiff was severely disfigured, the question of severe disfigurement is not submitted to the jury. The trial court's determination will be reversed only if there is an abuse of discretion. City of Bethel v. Peters, 97 P.3d 822 (Alaska 2004).

A "severe disfigurement" need not be permanent, but a reasonable healing period must have passed before disfigurement can be assessed. Id. at 828.

The determination of severe disfigurement is based on an objective standard. Severe disfigurement exists "if a reasonable person would find that the injury mars the plaintiff's physical appearance and causes a degree of unattractiveness sufficient to bring negative attention or embarrassment." Id. at 829. The plaintiff is not required to introduce evidence showing how particular people reacted to the injury. The court and jury assess this issue based on their own experience. Id.