20.10 FUTURE DAMAGES ­ NO REDUCTION TO PRESENT VALUE

As I have instructed you, you may decide it is reasonably probable that the plaintiff will have some future [non-economic] losses resulting from the (accident). In fixing an amount for future [non-economic] losses, you must disregard the fact that any amount you award the plaintiff may be paid before the actual loss occurs. You must also disregard the fact that the value of money may change over time.

# Use Note

Instruction 20.10 is intended for use in cases in which future losses are claimed, but some or all of the damage awards are not to be reduced to present value.

Under AS 09.17.040, the ordinary rule is that future economic losses must be reduced to present value. In such a case, Instruction 20.04 (Inflation and Present Value) must be given. Future non-economic losses are not reduced to present value. Therefore, if future non-economic losses are also being claimed, Instruction 20.10 must also be given and the bracketed language must be used.

Cases may arise in which none of the future damages are to be reduced to present value. For example, plaintiff may not claim any future economic losses, but only future non-economic losses. Alternatively, the parties may have agreed pursuant to AS 09.17.040(c) to use the Beaulieu rule in awarding future economic loss. In such a case, Instruction 20.04 will not be given. Instruction 20.10 will be given and the bracketed language must be omitted.

# Comment

In 1967, the Alaska Supreme Court held that damage awards for loss in future earning capacity should not be reduced to present value. Beaulieu v. Elliott, 434 P.2d 665, 670-671 (Alaska 1967). The court reasoned that the annual inflation rate would offset any earnings from investments. The court also held that damage awards for future pain and suffering are not to be reduced to present value. Id. at 676.

As 09.17.040(b), enacted in 1986, provides that future economic damages shall be reduced to present value, unless the parties stipulate to use the Beaulieu rule. This statute does not affect future non-economic loss.

A damage award for loss of retirement benefits may result in a double recovery if not reduced to present value. This is so because a figure for total retirement benefits is based on the result of the investment and return upon employer contributions over many years. The plaintiff would have the opportunity to invest an award, the size of which is based on projected investment. See Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 933 (Alaska 1977).

The court has suggested that in a case in which the award of damages for loss in earning capacity is to be based on the difference in earning potential between pre- and post-injury employment of the plaintiff, the award might be reduced to present value if it can be shown that the actual gap in earnings between the jobs will remain constant in the future, as then inflation would have no effect. Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 934 (Alaska 1977). If both sets of wages were to increase by the same percentage, the actual gap in wages would increase and a reduction to present value would be improper. Id. at 934.