**24.08D AFFIRAMTIVE DEFENSE – DURESS**

[Defendant] claims that the contract is void because [plaintiff’s] wrongful conduct put [defendant] into a position where [defendant] had no choice but to accept the contract on [plaintiff’s] terms. To find in [defendant’s] favor on this defense, you must conclude that each of the following elements has been established by clear and convincing evidence:

1. [Defendant] entered into the contract because [he she it] believed that [he she it] did not have any reasonable alternative to agreeing to the contract terms proposed by [plaintiff];
2. [Plaintiff] engaged in wrongful conduct in connection with [describe relevant transaction with defendant]; and
3. [Plaintiff’s] wrongful conduct put [defendant] in a position where [he she it] did not have any reasonable alternative to agreeing to the contract terms proposed by [plaintiff].

Wrongful conduct may be illegal conduct, conduct that is intended to harm another person, conduct that does not observe standards of reasonable care, or conduct that is morally wrong.

An alleged fact is established by clear and convincing evidence if the evidence leads you to believe 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 true than not true.

If you decide that all three elements have been established by clear and convincing evidence, the contract between [plaintiff] and [defendant] is void and you must return a verdict for [defendant].

Otherwise, the contract is not void and you must decide other questions that I will explain to you.

**Use Note**

This instruction should be given when a party claims that a contract is void because the party entered into the contract because of duress.

**Comment**

Alaska law recognizes duress as an affirmative defense to formation and enforcement of a contract. The essential elements of the defense are: 1) involuntary acceptance of the contract terms by one of the parties; 2) circumstances gave the party no other alternative to acceptance of the other party’s terms; and 3) the circumstances were the result of coercive conduct of the other party. *Hawken Northwest, Inc. v. State, Dep’t of Administration*, 76 P.3d 371, 377 (Alaska 2003); *Zeilinger v. SOHIO Alaska Petroleum Co*., 823 P.2d 653, 657 (Alaska 1992).

The first element focuses on a party’s subjective belief that the party had no choice but to enter into the contract. *Hawken Northwest*, 76 P.3d at 377.

The second element is evaluated under an objective standard: did the party have a reasonable alternative? *Id*.; *Zeilinger*, 823 P.2d at 658.

The third element (requiring coercive conduct) embodies two requirements: coercive acts, and a causal link between the coercive acts and the circumstances of economic duress. *Hawken Northwest*, 76 P.3d at 377, 380; *Zeilinger*, 823 P.2d at 658. The term “coercive acts” is broadly construed to include conduct that is criminal, tortious, or even “wrongful in the moral sense.” *Hawken,* 76 P.3d at 377; *Zeilinger,* 823 P.2d at 658.

The party asserting the duress defense has the burden of proving the required elements by clear and convincing evidence. *Hawken Northwest*, 76 P.3d at 377.