20.07M Limit on Non-Economic Damages – Severe Permanent Physical Impairment

Plaintiff claims that the defendant's conduct caused him/her to have a severe permanent physical impairment. The plaintiff has a severe permanent physical impairment if he/she has a physical condition that substantially and permanently limits one or more of his/her major life activities. Major life activities include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Use Note

This instruction should be given when the plaintiff is claiming non-economic damages in excess of the $400,000 damage 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 permanent physical impairment. In such instances, the jury must determine whether the plaintiff has a severe permanent physical impairment. 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 a severe permanent physical impairment.

Comment

The question whether a plaintiff suffers from a severe permanent physical impairment is normally a question of fact for the jury. State v. Johnson, 2 P.3d 56, 64 (Alaska 2000). However, the trial court must make a threshold determination whether the plaintiff has a severe permanent physical impairment. If no reasonable juror could find that the plaintiff has a severe permanent physical impairment, the question of severe permanent physical impairment is not submitted to the jury. Cf. City of Bethel v. Peters, 97 P.3d 822 (Alaska 2004) (dealing with severe disfigurement claims under the same statute). On the other hand, if no reasonable juror could find that the plaintiff does not have a severe permanent physical impairment, the court should grant a directed verdict in favor of the plaintiff on this issue. State v. Johnson, 2 P.3d at 64 (permanently losing the normal use of a body system necessary for day-to-day life constitutes severe physical impairment as a matter of law).

The Alaska Supreme Court has not adopted a specific standard for instructing the jury concerning severe permanent physical impairment. However, in State v. Johnson, the supreme court considered the pre-1997 version of AS 09.17.010. Under the pre-1997 version of AS 09.17.010, the application of the damages cap depended upon whether the plaintiff had a "severe physical impairment". In deciding that Johnson had a severe physical impairment, the Court cited federal regulations that define the term "physical impairment", and a related U.S. Supreme Court case, School Board of Nassau County v. Arline, 107 S.Ct. 1123 (1987). Johnson, 2 P.3d at 65 n. 42. The definition of "severe permanent physical impairment" in this instruction is based on the federal regulations cited in Johnson. See 45 CFR § 84.3(j). The 1997 amendment to AS 09.17.010(b) added the word "permanent". This instruction accounts for the amendment to AS 09.17.010(b) by including the word "permanent" in the definition.