20.11 AGGRAVATION OF PRE-EXISTING CONDITION OR DISABILITY

A person who has a condition or disability at the time of an injury cannot recover damages for that condition or disability. However, (he) (she) is entitled to recover damages for an aggravation of such pre-existing condition or disability if the aggravation is the legal result of the injury.

This is true even if the person's condition or disability made (him) (her) more susceptible to the possibility of ill effects than a normally healthy person would have been, and even if a normally healthy person probably would not have suffered any substantial injury. In other words, the law provides that a defendant takes the plaintiff as (he) (she) (it) finds (him) (her) (it).

Where a pre-existing condition or disability is so aggravated, the damages as to such condition or disability are limited to the additional damages caused by the aggravation.

# Use Note

This instruction should be used only where a pre-existing condition or disability is alleged.

# Comment

Use of the above instruction was approved in LaMoureaux v. Totem Ocean Trailer Express, Inc., 632 P.2d 539 (Alaska 1981) and Tolan v. ERA Helicopters, Inc., 699 P. 2d 1265 (Alaska 1985). In LaMoureaux, the court held that in the ordinary case the plaintiff must show the degree to which a pre-existing condition has been aggravated, but the requirements of proof are relaxed so that plaintiff need not prove the amount of aggravation with great exactitude. In Tolan the court indicated that the above instruction should not be modified to expressly place the burden on the plaintiff unless there is qualification as to the relaxed requirement of proof. Id. at 1271-72.

In LaMoureaux, the court suggested that in some cases in which medical experts are unable to determine the amount of aggravation, it may be appropriate to put the burden on the defendant to show apportionment at the risk of being held liable for the entire damage. The court indicated that this reallocation of the burden is an extreme measure and should not be done absent a showing of compelling injustice to the plaintiff. 632 P.2d at 539.