**20.20B AWARD OF PUNITIVE DAMAGES**

You have determined that the plaintiff is eligible for an award of punitive damages from [name]. Punitive damages are a separate amount of money awarded for the purpose of punishing the defendant and deterring the defendant and others from repeating similar acts. Because you have decided that the plaintiff is eligible for punitive damages, you are permitted to award punitive damages, but you are not required to do so.

In this proceeding you must decide whether to award punitive damages and, if so, the amount. In making your decision, you may consider the following factors:

* the likelihood at the time of the conduct that serious harm would result from the defendant’s conduct;
* the degree of the defendant’s awareness of the likelihood at the time of the conduct that serious harm would result from the defendant’s conduct;
* the amount of financial gain that the defendant gained or expected to gain as a result of the defendant’s conduct;
* the duration of the defendant’s conduct and any intentional concealment of the conduct;
* the attitude and conduct of the defendant upon discovery of the conduct;
* the amount of compensatory damages awarded to the plaintiff;
* the financial condition of the defendant; and
* the total deterrence of other damages and punishment imposed on the defendant as a result of the conduct, including compensatory and punitive damages awarded to other persons in situations similar to that of the plaintiff, and any criminal penalties to which the defendant has been or may be subjected.

After considering these factors, you must complete the verdict form.

Use Note

AS 09.10.020 provides for a two-phase procedure for awarding punitive damages. The first phase – eligibility for punitive damages – is addressed in the jury’s initial deliberations. If the jury decides that the plaintiff is eligible for punitive damages, the parties may present evidence and argument regarding whether punitive damages should be awarded, and the amount of the award, and the jury will deliberate a second time. Instruction 20.20B is intended for the second phase. It instructs the jury on the factors that it may consider in determining the amount of the punitive damages award.

In cases where a criminal conviction provides the basis for an award of punitive damages, the first sentence of this instruction should be changed to read: “The plaintiff is eligible for an award of punitive damages from [name].” *See Lamb v. Anderson*, 147 P.3d 736 (Alaska 2006).

There is an unresolved legal issue concerning whether the jury should be informed of the State's right to receive fifty percent of the punitive damages award. The Committee expresses no opinion concerning this legal issue. If the trial judge determines that the jury should be informed regarding the State's receipt of fifty percent of this award, this instruction must be modified accordingly.

A special verdict form is provided at 20.20C.

Comment

Factors to be considered by the jury in determining the amount of a punitive damage award are identified in AS 09.17.020(c). *See Central Bering Sea Fishermen's Ass'n v. Anderson*, 54 P.3d 271, 282 (Alaska 2002) (applying statutory factors).

Statutory caps limit the amount of punitive damages that may be awarded. AS 09.17.020(f), (g), (h). The jury is not instructed on the existence of the statutory caps. *Central Bering Sea Fishermen’s Ass’n v. Anderson*, 54 P.3d 271, 281 (Alaska 2002). In a case where the plaintiff claims that the higher caps allowed by AS 09.17.020(g) apply, the jury must answer questions relevant to the application of the higher caps. These questions must be incorporated into the special verdict form that is submitted to the jury at the end of the second phase. *See* Pattern Instruction 20.20C.

Other than the ratios stated in AS 09.17.020(f) and (g), Alaska law does not prescribe a fixed ratio, or range of ratios, between compensatory and punitive damages. *Casciola v. F.S. Air Service, Inc.*, 120 P.3d 1059, 1064 (Alaska 2005). The Alaska Supreme Court's reluctance to adopt a fixed ratio is motivated in part by the fact that punitive damage awards must be tailored to case-specific facts. Where compensatory damages may be small relative to the cost of litigation, or where the nature of a tortfeasor's scheme makes deterrence and punishment difficult, a higher ratio may be necessary. *Id*. at 1065.

The Supreme Court has reviewed punitive damage awards for excessiveness and has affirmed awards made at a variety of ratios of punitive damages to actual damages. *See, e.g., State v. Carpenter*, 171 P.3d 41, 65-66 (Alaska 2007) (30 to 1 ratio); *Casciola*, 120 P.3d at 1064-66 (10 to 1 ratio) and 1064 n.16 (compiling Alaska cases on punitive/compensatory damage ratio); *Central Bering Sea*, 54 P.3d at 285 (8 to 1 and 4 to 1 ratios); *IBEW v. Alaska Utility Constr. Inc.*, 976 P.2d 852 (Alaska 1999) (18 to 1 ratio); *Teamsters Local 959 v. Wells,* 749 P.2d 349, 361 n. 26 (Alaska 1988) (less than 3 to 1 ratio); *Alaska Insurance Co. v. Movin’ On Construction, Inc.,* 718 P.2d 472 (Alaska 1986) (3 to 1 ratio); *Ben Lomond, Inc. v. Campbell,* 691 P.2d 1042, 1048 (Alaska 1984) (2.38 to 1 ratio); *Alaska Statebank v. Fairco,* 674 P.2d 288, 291, 294 (Alaska 1983) (2.53 to 1 ratio); *Clary Insurance Agency v. Doyle,* 620 P.2d 194, 205 (Alaska 1980) (2 to 1 ratio). In some instances, the Supreme Court has ordered remittitur of punitive damage awards. *See, e.g., Laidlaw Transit, Inc. v. Crouse,* 53 P.3d 1093 (Alaska 2002) (affirming remittitur reducing punitive damages from $3.5 million to $500,000 on a compensatory damage award of $19,259); *Era Aviation, Inc. v. Lindfors,* 17 P.3d 40, 48 (Alaska 2000) (ordering trial court to remit $725,000 punitive damage award to $500,000 on $50,000 compensatory damage award); *Norcon, Inc. v. Kotowski,* 971 P.2d 158, 161, 174-77 (Alaska 1999) (ordering $3.7 million punitive damage award remitted to $500,000 on compensatory damages of $10,000); *Sturm, Ruger & Co. v. Day,* 594 P.2d 38, 48 (Alaska 1979) (reducing punitive award of $2,895,000 to $250,000).

Apart from standards derived from Alaska law, a punitive damage award is subject to review for excessiveness under federal due process standards. *See BMW of N. Am., Inc. v. Gore,* 517 U.S. 559 (1996); *State Farm Mutual Auto. Ins. Co. v. Campbell,* 538 U.S. 408 (2003). For Alaska cases applying federal due process standards, *see State v. Carpenter,* 171 P.3d at 65; *Casciola,* 120 P.3d at 1066; and *Central Bering Sea,* 54 P.3d at 284.