**10.01A ELEMENTS OF A CONSUMER PROTECTION ACT CLAIM**

**UNDER AS 45.50.531(a) BASED ON UNFAIR OR DECEPTIVE ACTS (AS 45.50.471(a))**

[Plaintiff] claims that [he][she][it] was harmed because [defendant] committed an unfair or deceptive act or practice. [Plaintiff] claims that the following acts or practices were unfair or deceptive:

a.

b.

c.

In order to find in favor of [plaintiff] on this claim, you must find that it is more likely true than not true that:

(1) [defendant] engaged in an unfair or deceptive act or practice;

(2) the unfair or deceptive act or practice occurred in [defendant’s] conduct of trade or commerce; and

(3) [plaintiff] suffered an ascertainable loss of money or property as a result of the unfair or deceptive act or practice.

The instructions that follow will explain how to make these determinations.

**Use Note**

This instruction should be given in an action under AS 45.50.531(a) when the plaintiff claims that the defendant violated the general prohibition against unfair or deceptive practices, as stated in AS 45.50.471(a) (as opposed to engaging in a prohibited practice listed in AS 45.50.471(b)). If this instruction is given, instructions 10.02, 10.03A, 10.03B and 10.04 must also be given.

If plaintiff alleges that defendant engaged in conduct that constituted a violation of 45.50.471(a) and that the defendant also engaged in conduct that violated one of the specific prohibitions listed in AS 45.50.471(b), Instruction 10.01B should also be given. In that event, Instructions 10.03A and 10.03B must be given, but they must be modified to explain that they do not apply to the claims that are based on AS 45.50.471(b).

**Comment**

The first two elements of the test for “a prima facie case of unfair or deceptive acts or practices under the Alaska Act” are taken from *State v. O’Neill Investigations, Inc.*, 609 P.2d 520, 534 (Alaska 1980). In *ASRC Energy Servs. Power & Commc'ns, LLC v. Golden Valley Elec. Ass'n*, 267 P.3d 1151 (Alaska 2011), the Alaska Supreme Court further summarized the first two elements that must be proved: “Two elements must be proved to establish a prima facie case of unfair or deceptive acts or practices under the [UTPA]: (1) that the defendant is engaged in trade or commerce; and (2) that in the conduct of trade or commerce, an unfair act or practice has occurred.” *Id.* at 1158-59 (quoting *O'Neill Investigations*, 609 P.2d at 524). The third element of the test, requiring proof of causation and damages, is taken from AS 45.50.531(a). This statute provides that “[a] person who suffers an ascertainable loss of money or property as a result of another person’s act or practice declared unlawful by AS 45.50.471 may bring a civil action to recover for each unlawful act or practice three times the actual damages or $500, whichever is greater.”

See Comment to Instruction 10.01B for a discussion on the causation element of a claim under AS 45.50.531(a).