**10.04 “ASCERTAINABLE LOSS” DEFINED**

[Plaintiff] suffered an ascertainable loss of money or property if [he] [she] [it] received something other than what [he] [she] [it] bargained for. [[Plaintiff’s] loss must be measurable even if the precise amount of the loss is not known.

**Use Note**

This instruction should be used when AS 10.01A and/or AS 10.01B are given. This instruction can be modified to describe the specific loss plaintiff alleges it has suffered.

**Comment**

AS 45.50.531(a) states 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.” The Alaska Supreme Court has not defined what is meant by an “ascertainable loss.” In a footnote in *Garrison v. Dixon*, 19 P.3d 1229, 1235 n.22 (Alaska 2001), the court, without discussion, equated the “ascertainable loss” standard of AS 45.50.531(a) with “monetary losses.” The court, however, has broadly construed the phrase “ascertainable loss of money or property” in other cases, including in *Jones v. Westbrook*, 379 P.3d 963, 970 (Alaska 2016), where the court recognized that the IRS’s recording of a lien against the assets of a debtor constituted an “ascertainable loss” of a creditor who subsequently asserted an UTPA claim against his attorney. *Id.* at 970 (“Jones's first ‘ascertainable loss’ occurred when the IRS recorded its security interest in Northern Heating's physical assets in October 2011, preempting Jones's ability to fix the alleged mistake in the sale documents and properly secure Grunwald's payments on the promissory note.”) In *Cozzetti v. Madrid*, 2017 WL 6395736 (Alaska Dec. 13, 2017), a misrepresentation that led a lower court to improperly grant judgment against a party without jurisdiction and without acknowledging the party’s rights as a purchaser qualified as an “ascertainable loss.” *Id.* at \*9 & n.55. On the other hand, that same court found that a misrepresentation was not actionable in the absence of evidence that the misrepresentation led to the conveyance or transfer of the mobile home at issue because no ascertainable loss was caused by the act. *Id*. at \*8 & n.53. In contrast, in *Donahue v. Ledgends, Inc*., 331 P.3d 342 (Alaska 2014), the court held that the loss of personal injury claims does not constitute an “ascertainable loss of money or property” because there was nothing in the UTPA’s legislative history that suggested it was intended to supplant tort liability for personal injuries. *Id.* at 352-53.

Other courts have found that “ascertainable loss” is a standing requirement which, like the rest of the Act, must be liberally construed and that a plaintiff suffers “ascertainable loss” whenever the plaintiff receives something other than what the plaintiff bargained for, whether better, worse, or simply different. A seminal case is *Hinchliffe v. American Motors Corp.*, 440 A.2d 810, 814-15 (Conn. 1981), where the court explained:

Whenever a consumer has received something other than what he bargained for, he has suffered a loss of money or property. That loss is ascertainable if it is measurable even though the precise amount of the loss is not known. [The Unfair Trade Practice Act] is not designed to afford a remedy for trifles. In one sense the buyer has lost the purchase price of the item because he parted with his money reasonably expecting to receive a particular item or service. When the product fails to measure up, the consumer has been injured; he has suffered a loss. In another sense he has lost the benefits of the product which he was led to believe he had purchased. That the loss does not consist of a diminution in value is immaterial, although obviously such diminution would satisfy the statute.

440 A.2d 810; *see also* *In re West Virginia Rezulin Litigation*, 585 S.E.2d 52, 74-75 (W. Va. 2003) (following *Hinchliffe*); *In re Bridgestone/Firestone, Inc. Tires Products Litigation*, 155 F.Supp.2d 1069, 1097-98 (S.D. Ind. 2001) (applying *Hinchliffe* to both Tennessee and Michigan Acts), *reversed in part on procedural grounds*, 288 F.3d 1012 (7th Cir. 2002),; *Miller v. American Family Publishers*, 663 A.2d 643, 654-55 (N.J. Super. 1995) (*Hinchliffe* and similar decisions “are consistent with a reasonable, rational reading of [the New Jersey Act], and they are also consistent with the admonition from our Supreme Court that the Consumer Fraud Act is remedial legislation and should be read liberally in favor of consumers”); *Rein v. Koons Ford, Inc.*, 567 A.2d 101, 107-08 (Md. 1989) (following *Hinchliffe*); *Weigel v. Ron Tonkin Chevrolet Co.*, 690 P.2d 488, 494-95 (Oregon 1984) (following *Hinchliffe*).