**20.17B VALUE OF LOSS OF THE USE OF PROPERTY DEFINED**

Damages for loss of use of the (insert item of property) are measured by

[the fair rental value of the (insert item of property) for the period of loss of use.]

[the net income that [plaintiff] lost [because plaintiff was unable to use the (item of personal property) [during the period when the (item of personal property) was being repaired] [during the time that it took to replace the (item of personal property)]. In order to determine [plaintiff’s] net income for this period, you must determine the amount of revenue that [plaintiff] would have earned during this period through the use of [item of personal property], and reduce this amount by the expenses that [plaintiff] would have incurred during the same period.]

[the cost of obtaining a substitute for (insert item of property) during the period of loss of use.]

# **Use Note**

Depending on the context, the appropriate measure of usable value should be selected. Those proposed in the body of the instruction may not include all possible formulations.

Where fair rental value is used as a measure of loss of use, Instruction 20.17C (Fair Rental Value defined) should also be given.

# **Comment**

There is no agreement on a standard measure for loss of use damages. Courts have adopted different approaches depending on the context and type of property involved. The Alaska Supreme Court has used a variety of formulations: *Burgess Construction Company v. Hancock*, 514 P.2d 236, 238 (Alaska 1973) (rental value); *Gregory v. Padilla*, 379 P.2d 951, 956 n. 13 (Alaska 1963) (net usable value); *State v. Stanley*, 506 P.2d at 1293 (net earnings); *Ben Lomond, Inc. v. Campbell*, 691 P.2d 1042, 1046 (Alaska 1984) (monthly rental value).