* 1. **INTENTIONAL MISREPRESENTATION**

The plaintiff claims that [he][she] was harmed because the defendant made an intentional misrepresentation to the plaintiff. In order to win on this claim, the plaintiff must prove it is more likely true than not true that:

(1) the defendant made a false or misleading statement to the plaintiff;

(2) the defendant knew the statement was false or misleading when [he] [she] made it;

(3) the defendant intended or had reason to expect that the plaintiff would rely on the statement;

(4) the plaintiff justifiably relied on the statement;

(5) the plaintiff suffered a monetary loss; and

(6) the plaintiff’s reliance on the statement was a substantial factor in causing the plaintiff’s loss.

Use Note

This instruction should be followed by 17.02 (Knowledge that Statement is False or Misleading), 17.03 (Justifiable Reliance), and 3.07 (Substantial Factor). If it is appropriate to instruct the jury on nominal damages, see 24.11 (Nominal Damages).

Comment

This instruction is based on *Lightle v. State*, 146 P.3d 980, 983-984 (Alaska 2006). *See also Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1094 n. 48 (Alaska 2008); *Jarvis v. Ensminger*, 134 P.3d 353, 363 (Alaska 2006); *Anchorage Chrysler Center, Inc. v. DaimlerChrysler Corp*., 129 P.3d 905, 914 (Alaska 2006). The test comes from the *Restatement (Second) of Torts* §§ 525, 526, 531, and 538 (1977).

In *Anchorage Chrysler Center, Inc. v. DaimlerChrysler Corp*., 221 P.3d 977 (Alaska 2009), the supreme court held that the loss in a fraudulent misrepresentation case must be a pecuniary loss caused by the plaintiff’s reliance on the misrepresentation. 221 P.3d at 991-92. A plaintiff who can prove pecuniary loss but not the extent of the loss may still be entitled to an award of nominal damages. *Id*.