**17.05 Negligent Misrepresentation**

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

(1) the defendant made a statement in the course of business, employment, or some other enterprise or transaction in which [he][she] had a financial interest;

(2) the statement was false at the time it was made;

(3) the defendant failed to use reasonable care when making the statement;

1. the plaintiff justifiably relied on the statement to [his][her] detriment;

(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

Instructions 17.03 (Justifiable Reliance) and 3.07 (Substantial Factor) should be given with this instruction. For a discussion of reasonable care, see 3.03A (Negligence Defined – Adult). If it is appropriate to instruct the jury on nominal damages, see 24.11 (Nominal Damages).

Comment

This test was most recently cited in *Southern Alaska Carpenters Health and Security Trust Fund v. Jones*, 177 P.3d 844, 857 (Alaska 2008), citing *Bubbel v. Wein Air Alaska*, 682 P.2d 374, 378 (Alaska 1984). The test is based on the Restatement (Second) of Torts § 552(1) (1977). A slightly different version of these elements was set out in *Willard v. Khotol Services Corp.,* 171 P.3d 108, 118-19 (Alaska 2007) and *Reeves v. Alyeska Pipeline Service Co*., 56 P.3d 660, 670-71 (Alaska 2002), but essentially conveys the same test.

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*.