**10.05 LIABILITY OF AGENTS AND EMPLOYEES IN CONSUMER PROTECTION CASES**

[Individual defendant] claims that [he][she] cannot be held liable for committing an unfair or deceptive act or practice because [he][she] was acting on behalf of [his][her] employer. [Individual defendant] is personally liable for [plaintiff’s] damages if you find that it is more likely true than not true that [he][she] participated in or had the authority to control the unfair or deceptive act or practice; and (2) had some knowledge that the act or practice was unfair or deceptive.

**Use Note**

Instruction 10.05 should be used when there is a dispute over whether an employee or agent of an entity is personally liable under AS 45.50.531(a) for committing an unfair or deceptive act or practice.

 **Comment**

This instruction recognizes that individual agents and employees can be held personally liable for the unfair or deceptive acts of a principal or employer in cases involving consumer protection act claims. In *Borgen v. A & M Motors, Inc.*, 273 P.3d 575 (Alaska 2012)*,* the Alaska Supreme affirmed dismissal of a claim against an individual for violating the UTPA because there was no evidence that the individual was involved in the transaction at issue. *Id.* at 593. In doing so, the court noted that “under the Federal Trade Commission Act employee liability for misrepresentation is not as broad as corporate liability,” and then summarized the test for finding an individual liable for UTPA violations:

An individual is obligated to make consumer redress for violations of the FTC Act where he (1) participated in or had the authority to control the wrongful acts or practices; and (2) had some knowledge of the wrongful acts or practices. *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 470 (11th Cir.1996). To satisfy the knowledge requirement, the Commission does not need to demonstrate that the individual defendants possessed the intent to defraud, nor that the defendants had actual knowledge of the misrepresentations. *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 574 (7th Cir.1989). “Reckless indifference to the truth or falsity of the representations or an awareness of a high probability of fraud coupled with an intentional avoidance of the truth will suffice. Moreover, a defendant's participation in corporation affairs is probative of knowledge.”

*Id.* at 593 n.75 (quoting *F.T.C. v. SlimAmerica, Inc.*, 77 F. Supp. 2d. 1263, 1276 (S.D. Fla. 1999)). *See also* *Walker v. FDIC*, 970 F.2d 114 (5th Cir. 1992) (applying Texas law); *Daniels v. Baritz*, 2003 WL 21027238 (E.D. Pa.) (holding employees and agents liable if they “participated” in unfair or deceptive acts). The general rule is that if the agent or employee had knowledge of the unfair or deceptive act, and participates in furthering the conduct, he or she can be held personally liable.