

8130 EMINENT DOMAIN: INCOME APPROACH

Evidence has been received during this trial as to the fair market value of (the subject property) based on the income approach. Under the income approach, the amount of future net income the owner of (the subject property) could reasonably expect to receive is first determined. The net income is then capitalized at (divided by) an appropriate rate of return to arrive at the value of the property. The appropriate rate of return is the rate that a prudent investor would expect to receive on his or her investment. In considering this evidence, you should consider only the income which was produced by the property, not income produced as a result of the owner's particular labor or skill.

COMMENT

This instruction and comment were approved in 2008. In 2007, an instruction entitled "Capitalization of Rental Income" and numbered Wis JI-Civil 8130 was withdrawn.

This instruction would be used only in cases where the Court determines that income evidence is admissible. The second, third, and fourth sentences of this instruction are taken from 5 Nichols on Eminent Domain Sec. 19.01 at 19-3. The fifth sentence is taken from Alsum v. Wisconsin Dept. of Transportation, 2004 WI App. 196, 276 Wis.2d 654, 689 N.W.2d 68. Under Wisconsin law, income evidence is generally not admissible to prove the value of property taken by eminent domain where comparable sales data is available. National Auto Truckstops, Inc. v. Wisconsin Dept. of Transportation, 263 Wis.2d 649, 665 N.W.2d 198 (2003). However, there are three exceptions to the general rule of inadmissibility of income evidence: (1) when the character of the property is such that profits are produced without the labor and skill of the owner, (2) when the income reflects the property's chief source of value, and (3) when the property is so unique that comparable sales are not available. Vivid, Inc. v. Fiedler, 219 Wis.2d 764, 580 N.W.2d 644 (1998); Alsum v. Wisconsin Dept. of Transportation, *supra*.