

**165 EXPERT TESTIMONY: HYPOTHETICAL QUESTIONS**

During the trial, an expert witness was told to assume certain facts and asked for an opinion based upon the assumed facts. This is called a hypothetical question. Consider the opinion in answer to the question only if you believe the assumed facts upon which it is based. If you find that the assumed facts in the hypothetical question have not been proved, do not give any weight to the opinion.

**COMMENT**

This instruction and comment were approved by the Committee in 2017. It was adapted from Wis JI-Civil 265.

Wis. Stat. § 907.03; a hypothetical question during the trial may be based on facts not yet in evidence. *Novitzke v. State*, 92 Wis.2d 450, 285 N.W.2d 868 (1979). See also *Schulz v. St. Mary's Hosp.*, 81 Wis.2d 638, 652, 260 N.W.2d 783 (1978), and *Rabata v. Dohner*, 45 Wis.2d 111, 126, 172 N.W.2d 409 (1969).

*Milbauer v. Transport Employes' Mut. Benefit Soc'y*, 56 Wis.2d 860, 866, 203 N.W.2d 135 (1973).

*McGaw v. Wassman*, 263 Wis. 486, 492, 57 N.W.2d 920, 922 (1953).

For Expert Testimony: General, see Wis JI-Children 160.