

**265 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 was approved by the Committee in 1972 and revised in 1986, 1991, and 2010. The comment was updated in 1982 and 1986. The comment was reviewed without change in 1989.

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-Civil 260.