

2201 CONVERSION: DAMAGES

In determining what sum of money will reasonably compensate (plaintiff) for the conversion of (his) (her) property by (defendant), you must first determine the manner in which (defendant) came into possession of the (insert description of plaintiff's property).

[If (defendant) rightfully came into possession of the property, but later was unable or refused to return it upon demand, then you are to award (plaintiff), as damages, the value of the property on the date when the property should have been returned to (plaintiff) with interest to the time of trial.]

[If (defendant) wrongfully took (or converted) (plaintiff)'s property, then you are to award (plaintiff), as damages, the value of the property at the time (and place) of the wrongful taking with interest to the time of trial.]

[If (defendant) wrongfully took (plaintiff)'s property and later sold it, (plaintiff) may recover, as damages, the amount for which the property was sold or the value at the time (and place) of the wrongful taking, whichever is greater with interest to the time of trial.]

[If the property wrongfully taken (or converted) is still in the possession of (defendant), but (defendant) refuses to return it to (plaintiff), then (plaintiff) may recover the present value of the property at the place where the property was taken (or converted) in the condition it was when taken (or converted) with interest to the time of trial.]

COMMENT

This instruction and comment were approved in 1982 and revised in 1991, 2014, and 2016.

Production Credit Association v. Nowatzski, 90 Wis.2d 344, 280 N.W.2d 118 (1979); Ingram v. Rankin, 47 Wis. 406 at 420 (1879); Topzant v. Koshe, 242 Wis. 585 (1943); also see 18 Am. Jur.2d Conversion §§ 82-94 (1965).

Damages and Pre-Judgment Interest. The general rule regarding damages for conversion is that "the plaintiff may recover the value of the property at the time of the conversion plus interest to the date of the

trial." Topzant, 242 Wis. at 588; Metropolitan Sav. & Loan Association v. Zuelke's, Inc., 46 Wis.2d 568, 577, 175 N.W.2d 64 (1970); Midwestern Helicopter, LLC v. Coolbaugh, 2013 WI App 126 at ¶9, 351 Wis.2d 211, 839 N.W.2d 167.

Additional Damages. The two cases cited above (Ingram v. Rankin, supra; and Topzant v. Koshe, supra) are also authority for the proposition that while the general rule limits plaintiff's recovery to the value of the property converted (whether it be at the time of the original taking or sale of the property by the converter), the plaintiff may recover additional damages if the plaintiff is deprived of some special use of the property which should be anticipated by the converter. Recovery of this additional damage requires a showing that the special use would have resulted in the plaintiff realizing some benefit from the property had it not been converted. Exemplary or punitive damages also may be awarded in addition to actual damages if the evidence is of such a character as to warrant the submission of punitive damages to the jury.