

**2406 NEGLIGENT MISREPRESENTATION: MEASURE OF DAMAGES IN ACTIONS INVOLVING SALE [EXCHANGE] OF PROPERTY (OUT OF POCKET RULE)**

A person injured by negligent misrepresentation in the sale [exchange] of property is entitled to be fairly and reasonably compensated for any damages the person sustained as a result of the misrepresentation.

In answering question \_\_\_\_, the measure of damages is the difference, if any, between the market value of the property at the time of purchase and the amount of money that (plaintiff) paid for the property.

[For consequential damages, see Wis JI-Civil 3710.]

**COMMENT**

This instruction was approved by the Committee in 1979 and revised in 1992. A reporter's note was deleted in 2014.

Gyldenvand v. Schroeder, 90 Wis.2d 690, 280 N.W.2d 235 (1979): "Prosser, Law of Torts (Hornbook Series, 4th ed. 1971), at 734, . . . notes that it has been suggested that the loss of bargain rule should be applied in cases of intentional misrepresentation, while the out-of-pocket rule applies where negligent misrepresentation is found." See also Costa v. Neimon, 123 Wis.2d 410, 336 N.W.2d 896 (Ct. App. 1985).

Consequential damages, such as loss of profits, expense of adapting other property for use with the property plaintiff has been induced to buy from the defendant, travel expenses necessitated because of the purchase, may also be awarded if such damages do not duplicate the recovery gained under the award of out-of-pocket damages. Gyldenvand, supra. See Dobbs, Remedies (Hornbook series, 1973), at 598.

See instruction 3710 for consequential damages for breach of contract.

In intentional misrepresentation cases, damages are found by applying the "benefit-of-the-bargain" rule. See Wis JI-Civil 2405.