

8105 EMINENT DOMAIN: LANDS CONTAINING MARKETABLE MATERIALS*

You have heard testimony about the presence of (name of material) (in/on) the property, (including the portion taken by (defendant)). Whether the presence of (name of material) affects the fair market value of the property on (date of evaluation) is for you to determine.

You should consider the presence of (name of material) only as explaining and supporting the opinions given of the fair market value of the entire property immediately before (and the remaining property after) (date of evaluation). You should not consider the value of (name of material) separately from the fair market value of the property, nor should you consider or value it as potential merchandise. You must value the entire property immediately before (and the remaining property after)(date of evaluation) with the (name of material) (in/or) on the property given such consideration as you determine affects the fair market value.

COMMENT

This instruction and comment were approved in 2006. The instruction was revised in 2008.

*This instruction may be used in either total or partial taking cases. In partial taking cases, add the bracketed language.

Volbrecht v. State Highway Comm'n, 31 Wis.2d 640, 143 N.W.2d 429 (1966). It is the duty of the landowner to show that there is a market for the materials on or in the property (other than a market created by the particular taking) before the quantity and value of such deposits may be shown to the jury to be used as a factor in an expert's opinion of value.

See also, Rademann v. State of Wisconsin Dept. of Transp., 252 Wis.2d 191, 642 N.W.2d 600 (Ct. App. 2002)(regarding valuation of quarry property).

See also, Ch. 14F "Appropriation and Valuation of Mineral Deposits, Nichols on Eminent Domain, 3rd Ed.