

13-705. Partial taking; damages/benefits to land remaining.

In addition to the money damages to be paid to the owner for the property actually taken, you shall determine whether the owner should also recover special items of money damages in connection with the remaining property. In so doing, you shall first determine whether the following special items of claimed damages have been proved by the owner:

(NOTE: The trial lawyers and judge will need here to insert the particular elements of special damages, depending upon the trial proof, such as:

- (a) Change of grade;
- (b) Loss of view;
- (c) Impaired ingress, egress and circuitous indirect access, etc.;
- (d) Cost of fencing;
- (e) Reestablishment of parking areas and signs;
- (f) Loss of fertilizing;
- (g) Reestablishment of irrigation works;
- (h) Relocation expenses.)

Any damages so proved must be reduced to the extent it is proved by the _____ (*here state name of condemning authority*) that the proposed _____ (*insert type of project*) project will result in benefits to the remaining property. If you find that any, or all, of the owner's claimed items of special damages have been proved, then you shall consider whether the _____ (*here state name of condemning authority*) has proved that the proposed project will benefit the remaining property in any of the following particulars:

(NOTE: The trial lawyers and judge will need here to insert the particular elements of special damages, depending upon the trial proof, such as:

- (a) Improved access;
- (b) Increased or decreased traffic flow;
- (c) Desirability for commercial use.)

This determination should not change or, in any way, affect the money damages to be paid to the owner for the property actually taken.

USE NOTE

This instruction, as indicated by the catchline, is to be used only when an issue is presented by the owner as to damages to the remaining property, whether caused by or in connection with the taking. When this instruction is utilized, it should be used in conjunction with UJI 13-704, which would be applicable in determining the base amount of compensation to be paid the owner for the property actually taken. In the event multiple parties, owning separate properties, are involved, the words "each owner" should be used. In inverse condemnation proceedings, the words "owner" and "condemning authority" should be reversed since the condemnee is the moving party.

The New Mexico Supreme Court has not completely delineated the limits of special damages recoverable but it would seem those enumerated would be applicable as well as others which may be pertinent in a particular case.

[As amended, effective January 1, 1987.]