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NOTES

EXPROPRIATION: COMPENSATING THE LANDOWNER TO THE FULL EXTENT OF HIS LOSS

The state highway department expropriated the entire parking and loading area of the defendants' marina. The trial court calculated the compensation award on the basis of the cost of constructing a similar area on the opposite shore of the marina's boat slip. The First Circuit Court of Appeal, although recognizing that the 1974 constitution had widened the scope of compensatory damages, reduced the award to what it found to be the market value of the land.¹ The supreme court reversed and *held* that article I, section 4² of the Louisiana Constitution of 1974 requires compensation for any economic loss sustained by the property owner, including the cost of replacing his business facilities. *State v. Constant*, 369 So. 2d 699 (La. 1979).

Historically, the standard for compensatory damages in expropriation cases in Louisiana has been based on the concept of "just compensation" embodied in the fifth amendment³ to the United

1. *State v. Constant*, 359 So. 2d 666 (La. App. 1st Cir. 1978).

2. LA. CONST. art. I, § 4 provides in pertinent part:

Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit. Property shall not be taken or damaged by any private entity authorized by law to expropriate, except for a public and necessary purpose and with just compensation paid to the owner; in such proceedings, whether the purpose is public and necessary shall be a judicial question. In every expropriation, a party has the right to trial by jury to determine compensation, and the owner shall be compensated to the full extent of his loss.

3. U.S. CONST. amend. V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

It has been held that this constitutional provision is imposed on the states by the due process clause of the fourteenth amendment. *Chicago, Burlington and Quincy R.R. Co. v. Chicago*, 166 U.S. 226 (1897). Of course the states are free to award more than what would be just compensation under the fifth amendment if they so desire.

States Constitution and echoed in article I, section 2⁴ of the Louisiana Constitution of 1921 as "just and adequate compensation." In implementing the standard of just compensation, the Louisiana courts naturally looked to the traditional limiting considerations developed by the federal courts.⁵ Two of these considerations which have often been criticized as producing inadequate awards to the landowner are the "res" concept and the overriding importance of the need to encourage public improvements.⁶

The "res" concept was developed as a corollary to the pertinent clause of the fifth amendment mandating that no "private property be taken for public use without just compensation." The United States Supreme Court has stated it this way: "And this just compensation, it will be noticed, is for the property and not to the owner. Every other clause in this fifth amendment is personal."⁷ Thus the "courts denied payment for loss or expense incurred by owners . . . incidental to the taking, if the losses were not reflected in the value of the property taken."⁸

A second traditional explanation for the limitation of expropriation awards reflects the resolution of the judicial balancing of the loss to the landowner against the public need to limit the amount of the award.⁹ When faced with this conflict, Louisiana courts have most often denied the landowner compensation for "incidental" or "consequential" losses¹⁰ (that is, those damages not directly reflected in the market value of the property), probably for fear that high expropriation awards might retard essential public projects.¹¹

4. LA. CONST. of 1921, art. I, § 2 provided: "No person shall be deprived of life, liberty or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid."

5. That is, Louisiana has adopted the market value standard with its inherent limitations. *See, e.g.*, *State v. Hayward*, 243 La. 1036, 1038, 150 So. 2d 6, 8 (1963). *See text at notes 7-12, infra.*

6. *See, e.g.*, Hershman, *Eminent Domain: Current Concepts and Practical Problems*, in *A PRACTICAL GUIDE TO THE LEGAL AND APPRAISAL ASPECTS OF CONDEMNATION* 3, 4 (S. Searles ed. 1969).

7. *Monogahela Navigation Co. v. United States*, 148 U.S. 312, 326 (1893). For the text of the fifth amendment, *see note 3, supra.*

8. Hershman, *supra* note 6, at 5.

9. According to the United States Supreme Court: "The law of eminent domain is fashioned out of the conflict between people's interest in public projects and the principle of indemnity to the landowner." *United States ex rel. Tennessee Valley Auth. v. Powelson*, 319 U.S. 266, 280 (1943).

10. *See, e.g.*, *State v. Mason*, 254 La. 1035, 229 So. 2d 89 (1969); *Texas Pipe Line Co. v. Barbe*, 229 La. 191, 85 So. 2d 260 (1956).

11. Hershman, *supra* note 6, at 5. That writer goes on to describe several common incidental or consequential losses. These include: (1) the cost of moving personal property and machinery, (2) the cost of searching for a new location, (3) the loss of business

The notion of "fair market value," or simply "market value," was developed by the courts in response to these considerations as a workable and limited standard for determining just compensation. Market value is most often defined as that price most likely to be agreed upon after free and open negotiations between a willing seller and a willing buyer.¹² It is most often computed by the "comparable sales method,"¹³ in which the appraiser analyzes recent sales prices of similar properties and adjusts¹⁴ them in an effort to estimate the value of the subject property. The comparable sales method does make use of "market data" in its analysis, but it must be remembered that this is only a technique for estimating market value and does not represent market value per se.¹⁵

Although the comparable sales method is the preferred approach,¹⁶ market value may also be estimated by the income capitalization method.¹⁷ The value of the property is determined by estimating the present value of income expected to be received in the future.¹⁸ The income capitalization approach is generally considered to be a theoretically sound method of appraising commercial property¹⁹ and is commonly used in this connection in Louisiana.²⁰ This approach does represent something of a deviation from the "res" concept in that it implicitly recognizes that the market value of commercial property must be determined in relation to the use to which it has been put by the owner.

Market value may also be estimated by the use of replacement

goodwill and patronage caused by the relocation and/or interruption of a business, (4) losses on the forced sale of movables not suited to the new location, and (5) transportation and legal expenses. *Id.*

12. M. DAKIN & M. KLEIN, *EMINENT DOMAIN IN LOUISIANA* 30-31 (1970).

13. See *State v. Kornman*, 336 So. 2d 220, 223-24 (La. App. 1st Cir. 1976), and cases cited therein.

14. It is this adjustment for the differences in size, layout, location, and other qualitative variables and their effect on value that causes the most difficulty in implementing the comparable sales method. Therefore, the greater the similarities between the subject property and the "comparables" the more accurate the appraisal. See generally M. DAKIN & M. KLEIN, *supra* note 12, at 188-97.

15. *Id.* at 154-55. See text at note 12, *supra*.

16. M. DAKIN & M. KLEIN, *supra* note 12, at 181.

17. *Id.* at 215-22.

18. This estimation presents the greatest difficulty in applying the income capitalization method since the appraiser must subjectively determine what rate of return the property should earn as well as predict the future income flow. See *Hershman*, *supra* note 6, at 10.

19. *Id.*

20. See, e.g., *State v. Crow*, 286 So. 2d 353 (La. 1973); *State v. Lewis*, 142 So. 2d 652 (La. App. 1st Cir. 1962).

cost²¹ less "depreciation."²² The cost of building a functionally similar improvement is determined, and then an amount which reflects the actual physical deterioration and the functional and economic obsolescence of the existing improvement is deducted. The replacement cost method has generally been relied upon in Louisiana only when there are no comparable sales data available by which to estimate the value of an improvement.²³ When faced with such a situation, the courts have sometimes awarded the replacement cost, less depreciation, of the improvement plus the comparable sales value of the land.²⁴

In the absence of comparable sales data, the courts are sometimes faced with the problem of choosing between an estimate based on replacement cost and one calculated by income capitalization. Generally the lower estimate of the two should be selected as most indicative of market value under the "build or buy" theory. The theory is based upon the presumption that a rational person would choose the most economical way to acquire a commercial facility—considering whether it would be cheaper to build the structure or to buy one with a similar income producing capability.²⁵ For example, if the replacement cost estimate is higher, then it should be rejected since a rational person would not choose to spend more in building a commercial establishment than is justified by its income producing potential. Thus, the cost of "buying" the structure's income potential should reflect its market value.

In certain situations, the standard of just compensation has been expanded to include damages in addition to the market value of the land actually taken. Often property not actually taken suffers a

21. The use of replacement cost has a somewhat confusing and inconsistent history in Louisiana. The courts have often stated that replacement cost is applicable only to the extent that it is reflected in the "market value" (by which they mean market value as estimated by comparable sales) of the property. *See, e.g., State v. Barber*, 238 La. 587, 592, 115 So. 2d 864, 866 (1959). Although both the replacement cost approach and the comparable sales approach are valid methods of computing market value, the preference for the comparable sales approach in Louisiana is so strong that it is often confused with market value itself. *See M. DAKIN & M. KLEIN, supra* note 12, at 154-56 & 244-54. *See also* text at note 15, *supra*.

22. It is the estimation of depreciation that presents the greatest difficulty in calculating replacement cost. Rather than looking to depreciation developed for accounting purposes, the appraiser must estimate the actual decline in value caused by physical deterioration and functional and economic obsolescence. *See M. DAKIN & M. KLEIN, supra* note 12, at 256-62.

23. *See* note 21, *supra*.

24. *E.g., Housing Auth. of New Orleans v. Waters*, 233 La. 259, 96 So. 2d 560 (1957).

25. *M. DAKIN & M. KLEIN, supra* note 12, at 240, *citing* 1 J. BONBRIGHT, VALUATION OF PROPERTY 159-61 (1937).

decline in market value due to the expropriation of a portion of the same tract. Such losses are generally called "severance damages" and are normally measured by comparing the market value of the remaining property immediately before the expropriation with its value immediately after the expropriation.²⁶ However, Louisiana courts have sometimes awarded the cost to repair such damages.²⁷ For example, an office building would suffer severance damages if its parking lot were expropriated. The court would probably award the cost of building a new parking lot under the cost-to-repair rationale if this cost were less than the decline in market value caused by the taking.²⁸

Of course, these valuation concepts have been used in conjunction with the traditional notion of just compensation. But article I, section 4 of the Louisiana Constitution of 1974 effected substantial changes in expropriation law, most of which are apparently aimed at protecting the interests of property owners.²⁹ Potentially the most far reaching change was the inclusion of the phrase, "the owner shall be compensated to the full extent of his loss." Although section 4 retains the phrase "just compensation,"³⁰ the courts have looked to the new phraseology as the measure or standard for compensation.³¹

26. "The measure of damages, if any, to the defendant's remaining property is determined on a basis of immediately before and immediately after the taking, taking into consideration the effects of the completion of the project in the manner proposed or planned." LA. R.S. 48:453(B) (Supp. 1976).

27. M. DAKIN & M. KLEIN, *supra* note 12, at 82-85.

28. *Id.* at 82.

29. For example, it specifically grants the option of a jury trial in expropriation cases and restricts the power of private entities authorized by law to expropriate to projects which involve "a public and necessary purpose." See note 2, *supra*. See generally Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 35 LA. L. REV. 1, 10-20 (1974); Jenkins, *The Declaration of Rights*, 21 LOY. L. REV. 9, 19-27 (1975). It is of interest to note that there may be a national trend toward greater protection of property owners' rights in expropriation matters. Section 4 itself is modeled at least in part on article II, section 29 of the Montana Constitution of 1972 which provides for "just compensation to the full extent of the loss" and for reasonable attorneys' fees. Also, on the federal level, 42 U.S.C. § 4601-55 requires that each state set up an administrative procedure for allocating relocation assistance to be provided with federally funded projects that require expropriation. The Louisiana legislature has established that procedure in Revised Statutes 38:3101-09. Finally the Uniform Eminent Domain Code now provides for compensation for any loss of goodwill caused by the taking. UNIFORM EMINENT DOMAIN CODE art. 10, § 1016. However, this trend toward greater concern for the rights of the property owner is not universal. See note 72, *infra*.

30. See note 2, *supra*.

31. *E.g.*, State v. Constant, 359 So. 2d 666, 671-72 (La. App. 1st Cir. 1978), *rev'd*, 369 So. 2d 699 (La. 1979); State v. Champagne, 356 So. 2d 1136, 1140 (La. App. 3d Cir. 1978).

The understanding of the constitutional convention delegates seemed to be that the new standard for compensatory damages should encompass intangible and consequential losses to the owner that are unrelated to the value of his property.³² Speakers at the convention specifically mentioned moving costs and the costs of reestablishing one's business as compensable items.³³ One observer has concluded that "[i]n any event, the convention debate tends to confirm the . . . concept of full compensation as putting one 'in equivalent financial circumstances after the taking,' including items not compensable under existing law."³⁴

However, the appellate courts' interpretations of section 4 left the meaning of the new constitutional language in doubt. The third circuit interpreted the new standard of full compensation as requiring that the owner be placed in "as good a position pecuniarily" as if the expropriation had not taken place.³⁵ In *Louisiana Power & Light Co. v. Caldwell*,³⁶ the first circuit held that article I, section 4 did not expand the measure of compensation beyond market value.³⁷ However, in *State v. Constant*,³⁸ the first circuit reversed itself, finding that "the Article broadens the scope and concept of the measure of damages recoverable in expropriation cases."³⁹ The court then went on to say that "the provision envisions recovery for business losses, moving expenses and other intangibles in a proper case and upon adequate proof of such losses."⁴⁰ But the circuit court felt that no such proof had been presented.⁴¹

The supreme court was thus faced with the task of providing a definitive reading of the new language. In *Constant* the state had expropriated the shelled and bulkheaded parking and loading area

32. The convention debate referred to things "which, perhaps in the past may have been considered *damnum absque injuria* [non-compensable], such as cost of removal," cost of business relocation, and attorneys' fees and court costs. 6 RECORDS OF THE LOUISIANA CONSTITUTIONAL CONVENTION OF 1973: CONVENTION TRANSCRIPTS, Aug. 30, 1973, at 1031 [hereinafter cited as RECORDS]; 7 RECORDS OF THE LOUISIANA CONSTITUTIONAL CONVENTION OF 1973: CONVENTION TRANSCRIPTS, Sept. 13, 1973, at 1240-41. See also Jenkins, *supra* note 29, at 23.

33. See 7 RECORDS, *supra* note 32.

34. Hargrave, *supra* note 29, at 16.

35. *State v. Champagne*, 356 So. 2d 1136, 1140 (La. App. 3d Cir. 1977); *State v. Alexandria Volkswagen, Inc.*, 348 So. 2d 176, 178 (La. App. 3d Cir. 1977). This "as good a position pecuniarily" language was sometimes used by Louisiana courts even before 1974. See, e.g., *State v. Ragusa*, 234 La. 51, 52, 99 So. 2d 20, 21 (1958).

36. 353 So. 2d 371 (La. App. 1st Cir. 1977).

37. *Id.* at 375.

38. 359 So. 2d 666 (La. App. 1st Cir. 1978), *rev'd*, 369 So. 2d 699 (La. 1979).

39. *Id.* at 672.

40. *Id.*

41. The first circuit actually reduced the award of the trial court. *Id.*

which provided access to the marina's boat slip and which was indispensable to the business operations of the defendants.⁴² The defendants had engaged in several interdependent business enterprises, such as gasoline sales and crewboat rentals, on the site. Moreover, the marina, as the only facility which provided access to a certain swampland oil production area, had a strong competitive advantage in the crewboat rental business.⁴³ Because of the unique location of the marina, no true comparables existed from which to estimate the value of the site as a marina facility.⁴⁴

The supreme court began its analysis by approving the lower court's finding that the new language was intended to broaden the scope of compensatory damages in expropriation cases and by agreeing that the new standard should "permit the owner to remain in equivalent financial circumstances after the taking."⁴⁵ Under this new standard the court found that the replacement cost method represented, "perhaps, the most direct and sensible means [of calculating] the unique value of the loading area to . . . [the landowners'] commercial operations conducted at the site."⁴⁶ The court felt that it was "not constitutionally significant" that the award exceeded the market value of the land comprising the entire tract.⁴⁷ It held that once the defendants have established a reasonable measure of their loss, the burden shifts to the expropriator to show that replacement would not be justified by the income potential of the marina.⁴⁸ The court then refused to subtract an amount equal to what it called the "theoretical" depreciation of the loading area, finding that the state had failed to show any functional or economic obsolescence and that the defendants had shown that the improvements would last indefinitely if properly maintained.⁴⁹

The result reached by the supreme court in *Constant* arguably could have been reached under the pre-1974 jurisprudence. The court could have characterized the award as the cost to repair the loss of access to the boat slip.⁵⁰ In fact the trial court had treated the case as one involving compensation for such severance

42. 369 So. 2d 699, 704 (La. 1979).

43. *Id.*

44. *Id.* at 703.

45. *Id.* at 701.

46. *Id.* at 705.

47. *Id.* at 702. This statement is crucial since it evidences that the award *can* exceed the market value, although arguably the award did not exceed the market value in this particular case. See note 21, *supra*, and see text at notes 50-54, *infra*.

48. 369 So. 2d at 705.

49. *Id.* at 706-07.

50. See text at notes 27-28, *supra*.

damages.⁵¹ Alternatively, the court could have justified the use of replacement cost simply by pointing out that no reliable comparable sales or income data were available, therefore leaving only replacement cost by which to compute the market value of the land as utilized as a marina.⁵² Although the opinion calls for compensation to the landowner for any loss suffered by him,⁵³ the award did not include any consequential losses to the owner that were completely unrelated to the value of the property. For example, no mention was made of the profits that the property owners will be forced to forego while the marina is being reconstructed. Apparently the supreme court agreed with the first circuit that no proof of such additional losses was presented.⁵⁴

Rather than attempting to justify its decision on more traditional grounds, the court chose instead to explain its holding in terms of the new constitutional requirement that the landowner be compensated "to the full extent of his loss." That the market value standard must be expanded upon in light of the new constitutional language was made clear by the court's statement that "it is not constitutionally significant that the award to them will exceed the market value of the property . . ."⁵⁵ The court justified this award in excess of the "surface value of the land,"⁵⁶ because the excess represented the "value of the loading area to their commercial operations."⁵⁷ The holding thus represents a departure from the "res" concept; it recognizes that the value of the property must be considered in relation to the owner and to his business.⁵⁸

Although the opinion makes it clear that the damages in expropriation cases may well exceed the market value of the property taken, it does not follow that the market value standard will be abandoned. It must be remembered that the "market value" figures rejected in the instant case were not based on the sales of comparable marina property.⁵⁹ Truly comparable sales of similar commercial properties should more adequately reflect the value of the property in relation to the business. Thus when truly comparable sales data are available, the courts seem highly likely to retain their

51. Transcript of Proceedings Before Seventeenth Judicial District (Reasons for Judgment) at 8, *State v. Constant*, 369 So. 2d 699 (La. 1979).

52. See notes 21-24, *supra*, and accompanying text.

53. 369 So. 2d at 702. See note 47, *supra*, and accompanying text.

54. See note 41, *supra*.

55. 369 So. 2d at 702. It is arguable, of course, whether the award did in fact exceed market value. See text at notes 50-54, *supra*.

56. *Id.* at 704.

57. *Id.* at 705.

58. See text at notes 7-8, *supra*.

59. See text at notes 42-44, *supra*.

strong preference for this method of computing the market value of the property.⁶⁰ Then, under the new constitutional requirement, they must find other methods to calculate the extent of any incidental or consequential damages suffered by the property owner in addition to the loss of the property.⁶¹

Since it is the loss to the owner that must be compensated, it logically follows that the owner should be able to demonstrate the extent of his loss in any reasonable manner. Therefore, the court rejected the state's contention that the loss of value to the owner in excess of the surface value of the property can be shown only through the income capitalization approach.⁶² However, this does not mean that the court would have rejected an income capitalization estimate if it had been lower than the replacement cost. The "build or buy" principle⁶³ should still be viable under the new standard for compensation. For example, if the capitalized income value of the facility were found to be less than the cost of replacing the facility, then reconstruction would not be economically justifiable.⁶⁴ Although the owners would be deprived of their property, the capitalized value of its income stream would be the property's financial equivalent and would thus place the property owners in "equivalent financial circumstances."

Although the award in *Constant* did not include compensation for any consequential or incidental losses truly unrelated to the value of the property,⁶⁵ the opinion did evidence the increased concern for the protection of the property owner mandated by article I, section 4. For example, the court, in accepting the defendants' contention that replacement cost was one reasonable method of demonstrating the extent of their loss, shifted the burden of proof to the state to show that some other method more accurately

60. The historical preference for the comparable sales method is well established. See, e.g., *State v. Kornman*, 336 So. 2d 220, 223-24 (La. App. 1st Cir. 1976), and cases cited therein.

61. For a listing of typical damages sustained in addition to the loss of the property, see note 11, *supra*.

62. 369 So. 2d at 705.

63. See text at note 25, *supra*.

64. Thus, if the state expropriated a commercial building suitable only for use in a relatively unprofitable business, it should not be expected to pay for the replacement cost of a building that should not rationally be replaced. On the other hand, if the replacement cost were lower than the income capitalization estimate, then an award of the replacement cost would be the most economical way of returning the property owner to his prior financial position. See M. DAKIN & M. KLEIN, *supra* note 12, at 212; Searles, *The Legal and Appraisal Aspects of Speciality Properties*, in A PRACTICAL GUIDE TO THE LEGAL AND APPRAISAL ASPECTS OF CONDEMNATION 65, 70 (1969).

65. See text at notes 53-54, *supra*.

reflected the loss.⁶⁶ The decision also demonstrated the onerous nature of the state's burden of proof in showing that depreciation had actually reduced the economic value of the property to the owners.⁶⁷ In addition, the court was concerned with the "compensation-lag of protracted judicial proceedings" and the increased expense this would cause the landowners in rebuilding their marina.⁶⁸ Accordingly the court cited the effect of inflation on building costs as a factor further justifying its refusal to subtract depreciation.⁶⁹

The concern that the landowner should not be caused to suffer any consequential or incidental loss is further borne out by the court's pronouncement that the property owner must be maintained in "equivalent financial circumstances."⁷⁰ The language of section 4 itself is very clear in this respect: the property owner must be compensated to the "full extent of his loss."⁷¹ Taken as a whole, the case clearly repudiates the traditional public policy argument that a landowner may be required to suffer financially in order to encourage public improvements.⁷²

If compensation awards are no longer to be restricted to the losses reflected in the value of the property, then just what limits do remain? It is interesting to note that the opinion in the instant case uses phrases such as "economic losses,"⁷³ "as good a position

66. 369 So. 2d at 706-07. At least under the "quick-taking" statutes, LA. R.S. 48:441-60 (Supp. 1954 & 1977), the burden had been on the landowner to "prove by a preponderance of the evidence that the fair market value of his land is greater than the highway department's estimate" (the dollar amount of which has been deposited in the registry of the court). M. DAKIN & M. KLEIN, *supra* note 12, at 370-73. The burden of proof issue seldom arises under the general expropriation statutes. *Id.* at 373-75.

67. See text at note 49, *supra*. By grounding its refusal to subtract depreciation upon the factual determination that no depreciation had been proved, the supreme court in effect rejected the dissenting appellate judge's contention that to subtract depreciation from replacement cost would always be to deny the landowner his right to be placed in equivalent financial circumstances. Compare 369 So. 2d at 706-07 with 359 So. 2d at 673 (Lottinger, J., concurring and dissenting).

68. 369 So. 2d at 706.

69. *Id.*

70. The court quoted the language of the appellate court approvingly. *Id.* at 701.

71. See note 2, *supra*.

72. See text at notes 9-11, *supra*. As a good example of the continuing vitality of the public policy argument in cases arising under constitutional provisions which do not go beyond the "just compensation" standard, consider the following statement by Justice Marshall: "Respondent, like other private owners, is not entitled to recover for non-transferable values arising from its unique need for the property. To the extent denial of such an award departs from the indemnity principle, it is justified by the necessity for a workable measure of valuation." *United States v. 564.54 Acres of Land*, 99 S. Ct. 1854, 1860 (1979).

73. 369 So. 2d at 703.

pecuniarily,"⁷⁴ and "equivalent financial circumstances."⁷⁵ Thus compensation may be restricted to damages that can be measured objectively in pecuniary terms.⁷⁶ At least one convention delegate expressed the belief that claims "for mental anguish, for hurt feelings" and other "wholly speculative" intangible damages should not be compensable.⁷⁷ The Third Circuit Court of Appeal has already denied a landowner recovery for what he subjectively felt to be his loss.⁷⁸ However, the constitutional convention debates emphasizing the loss to the owner still leave the issue at least partly in doubt.⁷⁹

Although the decision in *State v. Constant* does not clearly specify just what new types of damages must be included in order to compensate the landowner to the full extent of his loss, it does lay the groundwork for new jurisprudence on expropriation compensation. The decision establishes what almost surely was the intent of the constitutional convention delegates: that the scope of damages in expropriation cases should be expanded. By requiring that the property owner be placed in equivalent financial circumstances, the decision effectively holds that the landowner cannot be required to suffer pecuniarily in order to encourage public improvements. The opinion recognizes that it is the loss of value to the owner that must be compensated, not merely the physical value of the property. With this characterization of the loss, the decision clears the way for the recognition and compensation of other consequential or incidental losses suffered by the landowner when his property is expropriated.

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74. *Id.* at 702.

75. *Id.* at 701.

76. This focus on business and financial losses might not be appropriate in some situations. Certain "specialty properties" (such as churches and schools) may produce no income and have only a nominal market value. See generally Searles, *supra* note 64. The author suggests that an award of replacement cost would then be appropriate if the structure rationally would be replaced. *Id.* at 70. Louisiana cases on the subject have been inconclusive. *E.g.*, *State v. Chicago, R.I. & P. R.R. Co.*, 357 So. 2d 1224, 1228 (La. App. 2d Cir. 1978).

77. 6 RECORDS, *supra* note 32, Aug. 30, 1973, at 1064 (statement of Delegate Leigh). However, the amendment he was speaking in favor of (one to change the wording to "the loss" rather than "his loss" and to delete the provision for jury trials) was defeated. *Id.* at 1066.

78. *State v. Johnson*, 369 So. 2d 191 (La. App. 3d Cir. 1979); *State v. Champagne*, 356 So. 2d 1136, 1140 (La. App. 3d Cir. 1978).

79. For example, Woody Jenkins, one of the moving forces behind the adoption of section 4, has since written that compensation is "to be determined *subjectively* with emphasis on the value placed on the property by the owner." Jenkins, *supra* note 29, at 24 (emphasis added).