**27.08 DAMAGE TO PERSONAL PROPERTY**

The owner claims that the fair market value of certain items of personal property decreased as a result of the taking. The items include: [list items].

For each item, you must decide whether it is more likely true than not true that:

(1) the item was located on the property taken on the date of taking; and

(2) the fair market value of the item decreased either

(a) because it could no longer be used in connection with the property taken, or

(b) because it was physically damaged as a result of the taking.

If you decide that both (1) and (2) are more likely true than not true, then the government must pay the owner for the loss in fair market value. If not, you must enter "zero" on the Special Verdict Form in the space provided.

I have already explained fair market value to you. To compute the loss, if any, caused by the taking, you must first compute the fair market value of the item before the taking. Next, you must compute the fair market value of the item after the taking. Finally, you must subtract the fair market value after the taking from the fair market value before the taking. The difference, if any, between these amounts is the loss. You should enter the loss, if any, on the Special Verdict Form in the space provided.

**Use Note**

This instruction should be given when the condemnee has produced sufficient evidence that personal property, which was located on the condemned property, depreciated in value because it could no longer be used in connection with the property taken. For example, signs, stationery, etc. that bear the address of the location taken would have their highest value used in connection with the property taken.

The term "owner" should be replaced by the term "tenant" when the condemnee is a lessee.

A special verdict form should accompany these instructions. See Instruction 27.11.

**Comment**

Personalty is property within the meaning of Article I, Sec. 15 of the Alaska Constitution. State v. Hammer, 550 P.2d 620, 823 (Alaska 1976); State v. Ness, 516 P.2d at 1214; Stroh v. Alaska Housing Authority, 459 P.2d 480, 483 (Alaska 1988). Therefore, when personalty located on the property taken is taken or damaged, the owner is entitled to compensation. Id. Damage includes depreciation in value and physical damage. State v. Ness, 516 P.2d at 1214 n.10.

The owner bears the burden of proof to show that the taking was the legal cause of the damage to personalty and the amount of damage. State v. Ness, 516 P.2d at 1214 n.11. The test is diminution in market value. Id. at 1214 n.11.

Lessees of property taken, as well as owners, are entitled to compensation for personal property damaged by the taking. See State v. Hammer, 550 P.2d 820 (Alaska 1976).