

or an elimination of air right or something of that sort, you are not entitled to damages even though your property has been diminished in value.

The purpose of this addition is to provide compensation when your property has been damaged.

Now, what are damages? Damages in this area is not a new uncharted field. There has been in state constitutions since 1870 language involving damage. Illinois started this thing back in 1870. Now, let me read to you what is the basic concept of damages as covered and conceived of in this area to try to be helpful to you, and then after I have told you this I am not going to try to answer any specific cases.

It is, and this I quote from Nichols' "On Eminent Domain", which is a leading authority:

"A physical disturbance of a right—now, remember the word 'right' as against physical property itself—"either public or private which the owner of a parcel of land enjoys in connection with his property or which gives it additional value and that by reason of such disturbances he has sustained a special damage with respect to his property in excess of that sustained by the public generally."

Now, there have been hundreds of cases on this matter. I will just give you a couple of cases on this, and I will just give you a couple of quick illustrations. I am not going to try to go beyond that.

If a man has a house or a store on a highway and the highway is relocated he is not entitled to damages because this is not a physical hurt to the property, but there may be circumstances under which a peculiar loss to him has diminished the value of his property in other ways.

There have been cases in Maryland where a highway has been lowered or raised adjacent to the property, or a freeway built through right next to it where under the present law there are no damages. But if a freeway is built right next to your \$60,000 home and your property is considerably diminished by that immediate noise, immediate smell, immediate everything else, it is not the smell and noise you get damage for but the diminution and damage to your property.

I cannot go into more detail on that.

This would not apply to the property on the other side of you and beyond. It is not

a concept that makes the sky the limit, that gives everybody the right to rush in and get damages, but it does recognize in this day and age when the government is taking more and more property for public improvement that people are entitled to some kind of compensation and more than they have been able to get because of the rather conservative attitude taken by our courts over the last two hundred years.

If that is helpful to you, all right, but please do not press us for details.

DELEGATE J. CLARK (presiding): Delegate Byrnes.

DELEGATE BYRNES: I would say that is very helpful, as is the memorandum prepared by Delegate Burgess.

Could you suggest to me how many other states give this broad coverage?

DELEGATE J. CLARK (presiding): Delegate Kiefer.

DELEGATE KIEFER: I think it is about 25, somewhere between 25 and 30, and it has gone on. The first state was Illinois and I know that was in 1870.

DELEGATE BYRNES: Did your Committee analyze the possible cost of this to the State?

DELEGATE KIEFER: No.

DELEGATE J. CLARK (presiding): Are there any further questions on this section?

Delegate Hargrove.

DELEGATE HARGROVE: Chairman Kiefer, in view of the discussion between yourself and Delegate Byrnes, what form of action would be taken under B? In each instance where there is damage as well as the actual taking, would it be in the form—

DELEGATE KIEFER: It would probably be in the form of some kind of action. I do not know what the mechanics would be, but the mechanics would be easily determinable.

DELEGATE J. CLARK (presiding): Delegate Hargrove.

DELEGATE HARGROVE: In view of that, I would like to ask you this question.

If the General Assembly should provide some sort of a tort action against the State such as the federal Government had, could you see a conflict between the damage provision here and that particular act?

I would like to explain because, under the Federal Tort Claims Act, what we