

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

September 28, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-3198**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**RODNEY O. SLOTTEN,**

**PLAINTIFF-APPELLANT,**

**V.**

**STATE OF WISCONSIN, DEPARTMENT OF  
TRANSPORTATION,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Dane County:  
ANGELA B. BARTELL, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

¶1 PER CURIAM. Rodney Slotten appeals from an order dismissing his claim against the Wisconsin Department of Transportation (DOT). Slotten commenced this action for business replacement compensation after the DOT took

eleven and one-half acres from Slotten's business premises for a highway project. The trial court concluded that Slotten was not entitled to the additional compensation. We agree and therefore affirm.

¶2 Slotten owned thirty-two acres on which he operated a small private airport. The DOT's exercise of eminent domain over eleven and one-half acres forced Slotten to realign his runway at a slightly different angle. Slotten also moved one of his two hangars. He demolished the other, which had a \$7,000 replacement cost, and put up a new \$70,000 hangar in its place.

¶3 The DOT paid Slotten \$239,000 for the land taken and \$28,000 for the cost of transferring his operation to his remaining acreage. It denied his claim for an additional \$50,000 under the business replacement provisions of WIS. STAT. § 32.19(4m) (1997-98).<sup>1</sup> Slotten commenced this action for a judicial determination that he was entitled to the \$50,000 replacement compensation.

¶4 WISCONSIN STAT. § 32.19(4m) provides in relevant part that in addition to the condemnation award, the condemnor shall pay an "owner displaced person" up to \$50,000 for the purchase of a "comparable replacement business" within two years. The payment is intended to compensate an "owner displaced person" for the cost of obtaining a comparable replacement for the condemned business property. An "owner displaced person" is a "displaced person" who owned and operated a business on the condemned property. WIS. STAT. § 32.19(2)(g). A "displaced person" is one who moves from real property due to a

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

condemnation. WIS. STAT. § 32.19(2)(e). Under the regulations enacted to administer § 32.19(4m),

[a]n agency shall pay a person who is an owner of a replacement building or land upon which a replacement building is constructed ... a replacement payment as specified under this subchapter. The fair market value of the land and the building at the time of displacement shall be used as the actual cost in determining the payment.

WIS. ADMIN. CODE § Comm 202.90(3). The DOT agrees that under this provision a person may be paid the fair market value of land he or she already owns if that land is needed to relocate a business displaced by the condemnation.

¶5 Under the provision cited above, Slotten claimed \$50,000 as compensation for the market value of the land under his realigned runway and relocated and rebuilt hangar, and for partial compensation of the \$70,000 spent on the newly constructed hangar. The trial court disagreed, resulting in this appeal.

¶6 Slotten is not entitled to compensation under WIS. STAT. § 32.19(4m). Payment under that section is available to an owner displaced person who “actually purchases a comparable replacement business.” Slotten did not purchase a comparable replacement business. He merely transferred part of his operation to a new location on the same business premises. Nor was he an “owner displaced person” because he did not move his business from real property. He merely moved its location on the same property. Additionally, § 32.19(4m) only compensates for a comparable replacement business. Section 32.19(2)(c) defines “comparable replacement business” as one “when compared with the business premises being acquired by the condemnor, is adequate for the needs of the business, is reasonably similar in all major characteristics, is functionally equivalent with respect to condition, state of repair, land area, [and] building square footage required ....” Under any reasonable application of the

statutory definition, a \$70,000 hangar is not a “comparable replacement” for one that Slotten could have reconstructed for only \$7,000.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

