

1006 GROSS NEGLIGENCE: DEFINED

Gross negligence is conduct involved in (the operation of an automobile) which shows either a willful intent to injure or reckless and wanton disregard of the rights, safety, or property of another person.

You may consider the defendant's conduct in any of its aspects (such as the speed at which (defendant) was driving) to determine whether it was wanton or reckless conduct (whether it showed willful intent to injure).

[Wis JI-Civil 205 Burden of Proof: Middle.]

COMMENT

This instruction and comment were approved in 1978. The instruction was revised in 2002 to correct the reference to the burden of proof and update the comment. The instruction and comment were revised in 2015 to replace the terms, "guilty of" and "guilt." The instruction and comment were revised in 2016.

Gross negligence is no longer a part of Wisconsin common law. Bielski v. Schulze, 16 Wis.2d 1, 114 N.W.2d 105 (1962). It remains a part of Wisconsin statutory law. Wis JI-Civil 1006 is retained for whatever use may be made of it in the trial of cases in which foreign law on gross negligence is to be applied. See Brunke v. Popp, 21 Wis.2d 458, 124 N.W.2d 642 (1963), and Parchia v. Parchia, 24 Wis.2d 659, 130 N.W.2d 205 (1964).

In addition, the Wisconsin Legislature has brought the concept of gross negligence back into Wisconsin law over the last twenty years. See, as examples, Wis. Stat. § 895.4802 (civil liability for discharge of hazardous materials), Wis. Stat. § 118.2925 (civil liability for school officials regarding the use of epinephrine auto-injectors), and Wis. Stat. § 118.293 (concerning civil liability for school officials regarding an athlete who has a concussion). While none of those statutes define "gross negligence," it is the Committee's opinion that it is reasonable to assume the Legislature intended the term to have the meaning previously stated in case law.

This instruction may also be of use in cases arising under Wisconsin statutes which impose civil liability for conduct which is akin to or the equivalent of gross negligence. See, for example, uses of the phrase "willful or wanton," and similar phrases, in Chapter 895 of the Wisconsin Statutes.